

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)

FURTHER AFFIDAVIT OF CELIA JANE ARMSTRONG

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

4 October 2012  
The Representative Growers

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

michael.fernon@clarendonlawyers.com.au

I, **CELIA JANE ARMSTRONG** of Level 17, Rialto North Tower, 525 Collins Street, Melbourne, make oath and say that:

- 1 I am an employee of the firm Clarendon Lawyers Pty Ltd, the solicitors for the Representative Growers in the Timbercorp Rights Proceedings. Subject to the supervision of my principal, Michael Fernon, I have the carriage of this matter on behalf of the Representative Growers and I am authorised to make this affidavit on their behalf.
- 2 Except where otherwise indicated, I make this affidavit from my own knowledge. Where I depose to matters from information or belief, I believe those matters to be true.
- 3 I am making this affidavit in respect of each of the Timbercorp Rights Proceedings. .
- 4 I have submitted a number of affidavits in each of the Timbercorp Rights Proceedings, the most recent being the Further Affidavit of Celia Jane Armstrong dated 4 October 2012, which I refer to in this affidavit as my **Earlier Affidavits**. When I have defined terms in my Earlier Affidavits adopt those terms in this affidavit unless I indicate otherwise.

**Documents provided by Kerree Bezencon**

- 5 On 4 October 2012 Kerree Bezencon (**Ms Bezencon**) provided me with a bundle of documents. These documents are described and exhibited in accordance with the following paragraphs:
  - (a) Letter from Timbercorp regarding how to do a valuation. Now produced and shown to me marked with the letters "**CJA-B**" is a true copy of the letter from Timbercorp.



- (b) Letter from Gideon Meltzer, general counsel and company secretary, Timbercorp Limited. Now produced and shown to me marked with the letters "CJA-C" is a true copy of the letter from Mr Meltzer.
- (c) Printout of a decision impact statement in respect of the case Hance v Federal Commissioner of Taxation: Hannebery v Federal Commissioner of Taxation. Now produced and shown to me marked with the letters "CJA-D" is a true copy of the decision impact statement.
- (d) Timbercorp Lot Auction- 9 November 2005, results summary. Now produced and shown to me marked with the letters "CJA-E" is a true copy of the Timbercorp auction results summary of 9 November 2005.
- (e) Minutes of a meeting of Timbercorp Citrus Projects 2005 held on 22 December 2011. Now produced and shown to me marked with the letters "CJA-F" is a true copy of the minutes of meeting.
- (f) Email from Jodi-Lea Fishchick dated 26 September 2012. Now produced and shown to me marked with the letters "CJA-G" is a true copy of the email from Ms Fishchick.
- (g) Email from Shun King Li dated 28 September 2012. Now produced and shown to me marked with the letters "CJA-H" is a true copy of the email from Mr Li.
- (h) TPIF Citrus Orchard Information Memorandum 24 November 2012. Now produced and shown to me marked with the letters "CJA-I" is a true copy of the TPIF Citrus Orchard Information Memorandum.
- (i) Memorandum of lease commencing on 29 May 2005 and expiring on 30 June 2027 and tabbed and highlighted by Ms Bezencon. Now produced and shown to me marked with the letters "CJA-J" is a true copy of the Memorandum of lease.
- (j) Memorandum of underlease commencing on 19 May 2005 and expiring on 29 June 2027 and tabbed and highlighted by Ms Bezencon. Now produced and shown to me marked with the letters "CJA-K" is a true copy of the memorandum of underlease.
- (k) Licence agreement Solora Estate between Timbercorp Securities Limited, each participant grower, OIM#2 Pty Limited and Timbercorp Limited for the 2005 Timbercorp Citrus Project and tabbed and highlighted by Ms Bezencon. Now produced and shown to me marked with the letters "CJA-L" is a true copy of the licence agreement.
- (l) Land Titles Registration Office South Australia memorandum of transfer number T9759032 dated 31 December 2003 and registered 23 March 2004. Now produced and shown to me marked with the letters "CJA-M" is a true copy of the memorandum of transfer.
- (m) Memorandum of mortgage between Orchard Investments Management Limited and Permanent Nominees (Aust.) Limited. Now produced and shown to me marked with the letters "CJA-N" is a true copy of the memorandum of mortgage.



- (n) Timbercorp Orchard Trust debenture prospectus No. 2 highlighted and tabbed by Ms Bezencon. Now produced and shown to me marked with the letters "CJA-O" is a true copy of the debenture prospectus No. 2.
- (o) Timbercorp Orchard Trust financial report for the year ended 30 June 2010. Now produced and shown to me marked with the letters "CJA-P" is a true copy of the financial report.
- (p) Extract of the Citrus Project PDS. Now produced and shown to me marked with the letters "CJA-Q" is a true copy of the Citrus Projects PDS extract.
- (q) Water licence No. 827 in favour of Align Funds Management Limited. Now produced and shown to me marked with the letters "CJA-R" is a true copy of the water licence.
- (r) Kangara information memorandum dated 30 November 2009, highlighted and tabbed by Ms Bezencon who asked me to point out in particular page 14. Now produced and shown to me marked with the letters "CJA-S" is a true copy of the Kangara information memorandum.

SWORN by CELIA JANE ARMSTRONG  
 at Melbourne in the State of Victoria  
 this 4th day of October 2012

)  
 )  
 ) 



Before me:.....

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

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

This is the exhibit marked "**exhibit CJA-B**" now produced and shown to **CELIA JANE ARMSTRONG** at the time of swearing her affidavit on 4 October 2012.

Before me:.....

**SARAH DORN**  
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**CJA-B**

**Letter from Timbercorp**

**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.

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.**

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This is the exhibit marked "exhibit CJA-C" now produced and shown to **CELIA JANE ARMSTRONG** at the time of swearing her affidavit on 4 October 2012.



Before me:.....

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**CJA-C**

**Letter from Gideon Meltzer**

## 2006 Almond Project - Explanation

The 2006 Almond project is a managed investment scheme registered with ASIC pursuant to Chapter 5C of the Corporations Act which together with the scheme documents regulates the establishment and ongoing operation of the scheme. Upon registration ASIC issued the scheme with Australian Registered Scheme Number (ARSN) 118 387 974.

Timbercorp Securities Ltd (TSL), a wholly owned subsidiary of Timbercorp Limited, is the responsible entity of the scheme and has ultimate responsibility for operation and management of the project. It is also the manager and sub-lessor under the project agreements.

TSL is authorised by ASIC to operate the project under its Australian Financial Services Licence (AFSL) number 235653. When the project was established TSL prepared and lodged with ASIC a compliance plan, as is required under the Corporations Act, to ensure your protection and that it meets its obligations under the project agreements. Amongst other things, the compliance plan describes the internal compliance framework and structures used to administer the project, identifies legal/commercial obligations and identifies the outcomes they are designed to deliver, identifies risks associated with the project and the safeguards that are established to minimise those risks. Deloitte Touche Tohmatsu has been engaged to audit TSL's compliance with the plan annually and a compliance committee comprising a majority of external members meets quarterly to assess the plan's adequacy and TSL's compliance with it.

Upon acceptance into the project you entered into a sub-lease agreement with TSL under which TSL leased to you identifiable Almond lots for the term of the project on which you committed to carry on almond growing activities and contemporaneously under an Almondlot Management Agreement you engaged TSL to cultivate the trees on your lots, harvest the almonds and as your agent to market and sell your almonds.

TSL has leased the whole of the project orchards from the land owner, Almond Land Pty Ltd, which is also a wholly owned subsidiary of Timbercorp Limited. The leases to TSL are registered under the land title laws of Victoria. The registration of the leases is the method by which TSL discharges the obligation it has under its AFSL to secure the paramountcy of growers tenure to the land. This is a condition that is particular to, and common in, AFSLs of agribusiness managed investment scheme operators. The Sub-leases to growers are not registered on title because it is legally and practicably not possible to do so, however, security of grower's tenure is partly achieved by registration of the lease to TSL. It is also worth noting that growers are free to lodge a caveat over the lands' titles to further protect their interests. As a result of the registration of the lease to TSL, any subsequent purchaser of the land hold legal title to the land but subject to the rights of TSL under the lease.



In addition, from time to time, Timbercorp offers forestry and/or horticultural assets (including almond assets) as security for loans advanced by a bank or other financier including trustees acting for retail debenture / bond holders. It is a precondition of every loan and security arrangement entered into that the financier (who generally holds a first registered mortgage of the land) consents up front to the existence and continuation of the lease to TSL and the sub-leases granted by TSL to growers. The effect of this arrangement and the financier's covenant to hold its interest subject to the rights of growers is that if Timbercorp were to become insolvent, the growers' tenure to the land will be unaffected provided they continue to pay rent, as required, under the terms of the sub-lease. These matters are monitored periodically by the compliance committee which is responsible for reporting breaches of the compliance plan.

Further, if Timbercorp were to become insolvent, TSL would be unable to remain as responsible entity of the project. At this stage the Australian Securities Investment Commission (ASIC) will seek to appoint an alternative responsible entity to the project and it would be expected that any financier/mortgagee of the land would liaise closely with ASIC and the replacement responsible entity to ensure that the project continues to operate in accordance with its terms as this would assist to preserve the value of the land and improvements.

I trust the above explanation provides you with the level of comfort you were seeking. Should you have any further queries, please feel free to call me.

Sincerely

Gideon Meltzer  
General Counsel & Company Secretary

TIMBERCORP LIMITED  
Level 8, 461 Bourke Street  
Melbourne, Victoria 3000  
Phone: 03 8615 1207  
Mobile: 0409 599 050  
Fax: 03 9670 4271  
Email: <mailto:G.Meltzer@Timbercorp.com.au>  
Web Site: <http://www.timbercorp.com.au/www.timbercorp.com.au>

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This is the exhibit marked "exhibit CJA-E" now produced and shown to **CELIA JANE ARMSTRONG** at the time of swearing her affidavit on 4 October 2012.

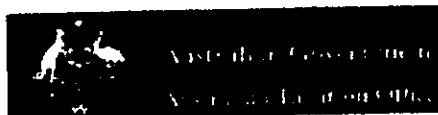
Before me:.....



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**CJA-D**

**Decision impact statement**



## Decision Impact Statement

### Hance v Federal Commissioner of Taxation; Hannebery v Federal Commissioner of Taxation

This document has changed over time. View its history.

#### LIT/ICD/NSD492-3of2008 history

	Date	Version
	5 February 2009	Response
You are here →	9 February 2011	Resolved

#### Court Citation(s):

[2008] FCAFC 196  
2008 ATC 20-085  
74 ATR 644

**Venue:** Full Federal Court

**Venue Reference No:** NSD 492-3 of 2008

**Judge Name:** Finn, Dowsett & Edmonds JJ

**Judgment date:** 19 December 2008

Appeals on foot:  
No.

### Administrative Treatment (Implication on current Public Rulings and Determinations)

#### Relevant Rulings/Determinations:

- TR 2007/8
- GSTR 2008/D1

#### Subject References:

Managed Investment Schemes  
Deductions for contributions

### Précis

Outlines the Tax Office's response to this case which concerned the application of section 8-1 of the *Income Tax Assessment Act 1997* ('ITAA 97') to an investor's contributions to a registered agricultural managed investment scheme ('MIS'). It proceeded by way of a private ruling testing the Tax Office view in TR2007/8.

### Decision Outcome:

Adverse

### Brief Summary of Facts

The applicants applied for private rulings in relation to their proposed involvement in the '2009 AIMA Almond Investment Scheme' ('the Scheme'), which was to be registered as a managed investment scheme under the *Corporations Act 2001* (Corporations Act).

They did so in order to test the view of the Commissioner published in public ruling TR 2007/8, which reflected a change from that previously set out in TR 2000/8.

The Responsible Entity of the Scheme for the purposes of the Corporations Act was to be AIMA Limited ('AIMA'), and the applicants were to enter into an Almondlot Management Agreement ('the management agreement') with AIMA, as well as a sub-lease, in relation to the growing and harvesting of almonds for sale (under which the applicants would gain limited rights to access their own Almondlots). The operation of the Scheme was also to be governed by the Scheme's Constitution, and various other documents.

Outgoings were to be incurred by the applicants over the life of the Scheme (23 years, with the possibility of a further two years), including amounts for 'rent' and 'management fees', as well as amounts referred to as a 'responsible entity fee' ('the relevant outgoings').

The applications for private ruling asked the Commissioner to rule on whether the relevant outgoings were allowable deductions under section 8-1 of the *Income Tax Assessment Act 1997* (ITAA 1997).

The Commissioner ruled, consistently with TR 2007/8, that the relevant outgoings were capital, or capital in nature, being for the acquisition of the applicants' interests in the Scheme, chiefly their right to share in the net proceeds from the Scheme as a whole. This stance was maintained on objections being lodged against the private rulings. Subsequently, applications were made to the Federal Court, and the Chief Justice agreed to the matters being heard by a Full Federal Court.

## Issues decided by the Court or Tribunal

The Commissioner argued that the applicants' involvement in the Scheme would be as 'passive investors', as borne out by the extent to which they would delegate their ability to control the relevant operations to AIMA, and by the fact that they would have no proprietary right in proceeds from the sale of almonds produced on their Almondlots. Instead, it was submitted that they would obtain, in substitution, the right to share rateably in the proceeds of sale of almonds produced by the Scheme as a whole. This was said to follow particularly from those terms of the Scheme documentation concerning the pooling of almonds.

These factors were said to result in the conclusion, amongst others, that the applicants would not be carrying on business as a consequence of their membership of the Scheme.

The Commissioner argued that the applicants' relevant outgoings would obtain for them a capital asset in the form of the right to share proportionately in the net proceeds of the Scheme.

Alternatively, it was submitted that these net proceeds would be held on trust by AIMA for all members of the Scheme, under subsection 601FC(2) of the Corporations Act, which concerned the holding of 'scheme property'. This was consistent with the proposition that the effect of the management agreement would be to convert a proprietary interest in the almonds grown on the applicants' Almondlots into personal rights against AIMA for a rateable portion of the net sale proceeds from the Scheme as a whole.

## Carrying on business

The Court rejected the argument that the applicants would give up any right of ownership of almonds produced on their Almondlots, and held that, up until their sale, the applicants would retain such ownership, which would extend to them being able to withdraw their almonds from any pooling arrangement up until the point of sale.

The Court also rejected the argument that the extent of delegation to AIMA would have any material effect. In particular, the Court said that the argument of the Commissioner here 'focuses too much upon what the applicants will not be doing and pays too little attention to what they will be doing' (at [77]).

The Court referred to certain authorities concerning long established principles to do with the question of whether taxpayers carry on business, and, on the facts before them, held that the applicants would be

doing so in relation to their membership of the Scheme.

## Beneficiaries of a trust

The Court also held that AIMA would not hold any scheme property on trust in a way that would lead to the conclusion that payment of the relevant outgoings would be in exchange for the acquisition of 'an identifiable asset which will produce the net proceeds of sale of his crop' (at [103]). In the likely event that sales would be made from the almond pool it was held that AIMA would hold the gross proceeds from such sales on trust for members of the Scheme 'in accordance with their respective entitlements in those proceeds' (at [101]).

## Characterisation of the relevant outgoings

The Court held that the relevant outgoings would be incurred in the course of carrying on a business, and that the question of their character was governed by their legal form on the face of the documentation, as rent or management fees (including responsible entity fees). Having rejected the arguments that the applicants would be passive investors, and that their outgoings would be on capital account it followed that:

The only answer open is that the relevant outgoings will be incurred as operating expenses in carrying on each applicant's business. It follows that they are deductible pursuant to s 8-1 of the 1997 Act. (at [110])

The Commissioner accepts the decision of the Full Federal Court as authoritative in relation to similar schemes, and will not seek special leave to appeal to the High Court.

## Tax Office view of Decision

The decision of the Full Federal Court that the applicants would be carrying on a business was open to the Court on the facts of the case and it is not apparent that the decision is attended by any relevant error of law.

The Commissioner considers that the decision of the Full Federal Court provides greater certainty in relation to the application of the law to deductions for contributions to registered agricultural managed investment schemes.

The decision also provides clarification of the scope of subsection 601FC(2) of the Corporations Act 2001

## Administrative Treatment

### *Implications on current Public Rulings & Determinations*

N/A

### *Implications on Law Administration Practice Statements*

No PS(LA)s affected.

## Your comments

We invite you to advise us if you feel this decision has consequences we have not identified, or if a precedential decision such as a Public Ruling or an ATO ID requires reconsideration or amendment. Please forward your comments to the contact officer by the due date.

**Date issued:**

5 February 2009

**Due Date:**

2 April 2009

**Contact officer:**

Nick Oliver

**Email address:**

nick.oliver@ato.gov.au

<b>Telephone:</b>	08 8208 1910
<b>Facsimile:</b>	08 8208 1898
<b>Address:</b>	91 Waymouth Street ADELAIDE SA 5000

**Legislative References:**

*Income Tax Assessment Act 1997*  
8-1

*Corporations Act 2001*  
Chapter 5C

**Case References:**

*Sun Newspapers Ltd and Associated Newspapers Ltd v. FCT*  
(1938) 61 CLR 337  
[1938] HCA 73  
[1938] ALR 498

*Clowes v. FCT*  
(1954) 91 CLR 209  
[1954] HCA 10  
[1954] ALR 293

*Vincent v. FCT*  
(2002) 124 FCR 350  
(2002) 2002 ATC 4742  
(2002) 51 ATR 18

*FCT v. Emmakell Pty Ltd*  
(1990) 22 FCR 157  
(1990) 90 ATC 4319  
(1990) 21 ATR 346

*Ferguson v. FCT*  
(1979) 37 FLR 310  
(1979) 79 ATC 4261  
(1979) 9 ATR 873

*Puzey v. FCT*  
(2003) 131 FCR 244  
(2003) 2003 ATC 4782  
(2003) 53 ATR 614

*Milne v. FCT*  
(1976) 133 CLR 526  
(1976) 76 ATC 4001  
(1976) 5 ATR 785

*Vincent v. FCT*  
(2002) 50 ATR 20  
(1976) 76 ATC 4001  
(1976) 5 ATR 785

*FCT v. Raymor (NSW) Pty Ltd*  
(1990) 24 FCR 90  
(1990) 90 ATC 4461  
(1990) 21 ATR 458

*Hallstroms Pty Ltd v. FCT*  
(1946) 72 CLR 634  
[1946] HCA 34  
[1946] ALR 434

*FCT v. Walker*  
(1984) 2 FCR 283  
(1984) 84 ATC 4553  
(1984) 15 ATR 847

*Southern Wine Corporation Pty Ltd (In Liq) v. Frankland River Olive Co Ltd*  
(2005) 31 WAR 162  
[2005] WASCA 236

*Re Global Finance Group Pty Ltd (In Liq); ex parte Read*  
(2002) 26 WAR 385  
[2002] WASC 63

*Mier v. FN Management Pty Ltd*  
[2006] 1 QdR 339  
[2005] QCA 408

*Secretan v. Hart*  
[1969] 1 WLR 1599  
[1969] 3 All ER 1196

*Gideons International Service Mark*  
(1991) 108 RPC 141

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Before me:.....

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**CJA-E**

**Timbercorp auction results summary  
from 9 November 2005**



# 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>Olive:</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

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

4 October 2012  
The Representative Growers

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

michael.fernon@clarendonlawyers.com.au

This is the exhibit marked "exhibit CJA-F-F" now produced and shown to **CELIA JANE ARMSTRONG** at the time of swearing her affidavit on 4 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-F**

**Minutes of meeting of Timbercorp  
Citrus Projects 2005 held on of  
22 December 2011**

# TIMBERCORP CITRUS PROJECTS 2005

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MINUTES OF MEETING  
TIMBERCORP CITRUS PROJECTS  
ARSN's: 114 091 299

HELD AT  
SUITE 8/397 SMITH ST,  
FITZROY  
MELBOURNE VIC  
22ND SEPTEMBER 2011

**PRESENT:** Kerree Bezencon  
Regis Bezencon  
Rex Booker (by Proxy)  
Michael Pointer (by Proxy)

**In Attendance:** Alex Gulabovski  
Jim Gulabovski (by proxy)

## Election of Chairperson

Pursuant to section 252S of the *Corporations Act* the members present must elect a member present to chair the meeting. Nominations were accepted on the floor of the meeting and a member was elected to chair the meeting from those nominations.

Alex Gubalovski nominated Kerree Bezencon as Chair. Rex Booker seconded. Kerree Bezencon accepted the appointment.

**WELCOME:** The chairman welcomed everyone and opened the meeting at 3pm.

## 1. QUORUM

It was noted that a quorum was present for voting purposes. Kerree Bezencon went directly to the matter of the resolutions as previous recent meetings dealt with all other general matters

## 2. VOTING

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

### Resolution 1 -

To consider and if thought pass the following resolution as a special resolution.

That the constitution be amended as follows:

- by renumbering paragraph 19.1 as paragraph 19.1A;
- by inserting a new paragraph 19.1B into the constitution as follows:

#### **19.1B            Directions by Growers**

*Where any matter is authorized or directed by:*

- *a resolution of Growers passed at a meeting of Growers duly convened and held in accordance with the Constitution; or*
- *the written consent or authority of the Growers given in accordance with the Constitution*

*the Responsible Entity is bound to act in accordance with the authority or direction of the Growers and is released from any obligation or liability that would or might otherwise attach to the Responsible Entity in relation to the subject matter of the Growers resolution, consent or authority*

## TIMBERCORP CITRUS PROJECTS 2005

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*unless the Responsible Entity*

- *is of the opinion that the direction is inconsistent with the terms of the Scheme or the provisions of the Constitution or the Corporations Act; and*
- *has either obtained an order from the Court under the Corporations Act setting aside or varying the authority or direction.*

The motion was carried and passed by at least 75% of the votes cast by members entitled to vote on the resolution

### **Item 2**

To consider and if thought fit pass the following resolution as a special resolution.

That the constitution be amended by adding at the end of clause 11 (fa) the words - "*subject to growers agreement at a general meeting.*"

The motion was carried and passed by at least 75% of the votes cast by members entitled to vote on the resolution.

### **3. CLOSURE**

There being no further business, the meeting closed at 3.15 pm.

Adopted as a true and correct record of the meeting:

Kerree Bezencon

Chairman

Date:

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE  
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EXHIBIT NOTE

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

4 October 2012  
The Representative Growers

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

michael.fernon@clarendonlawyers.com.au

This is the exhibit marked "**exhibit CJA-G**" now produced and shown to **CELIA JANE ARMSTRONG** at the time of swearing her affidavit on 4 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-G**

**Email from Jodie-Lea Fishnick  
dated 26 September 2012**



kerree bezencon &lt;kerree@timbercorpgrowers.com&gt;

---

**on NOT being screwed over again**

1 message

---

**Jodi-Lea Fishchick** <fishchick@gmail.com>

Wed, Sep 26, 2012 at 11:26 AM

To: kerree@timbercorpgrowers.com, investorqueries@timbercorp.com.au

~~It took me a lot of effort - real effort, to raise the funds for this investment, let alone the THOUSANDS and THOUSANDS of dollars I had to find each year for maintenance.~~

~~To you corporate jackasses) it is just figures on a page. To me, it was sweat, it was pain, it was exhaustion, it was REAL.~~

And now, I am told that effort is worth 5%. Really? My blood, sweat and tears is worth 5%, while your shining a seat with your butt is worth 95%??!! What country am I in?

The following argument puts it far more eloquently than I can, and I concur.

*I firmly believe that the 5% of the proceeds of the sale that has been offered to pay the growers can only be described as an insult and I fail to comprehend how any fair minded person could consider those recommending the offer be accepted are considering "the best interests of the growers"; frankly I see the offer as nothing more than opportunistic and unconscionable and those making the offer taking advantage of those that have already lost a lot and in a position of weakness*

*What is more galling is the perpetuation of the deception by those appointed to protect the interests of the growers, namely Korda Mentha - the Responsible Entity.....I cannot believe the conflict of interest has permitted to continue to the extent that it has.*

*To date, it has not been satisfactorily explained how the offer of 5% was arrived at, but in my opinion, it seems the intrinsic value of the plantations, orchards and groves, which the growers paid to have planted and nurtured has been totally ignored; indeed, I would venture to say that without the existence of the plantations, groves and orchards on the land that has been sold, the sale of the land would never have occurred; and, let's face it, those who bought the land assets are not property developers about to clear the land they've purchased!*

*if I have a choice, I would rather spend the proceeds paying lawyers to negotiate a better deal in this way - if the banks are going to get their way they will have to fight for it.*

Yours in disgust,  
Jodi-Lea Matheson

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE  
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EXHIBIT NOTE

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

4 October 2012  
The Representative Growers

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

michael.fernon@clarendonlawyers.com.au

This is the exhibit marked "**exhibit CJA-H**" now produced and shown to **CELIA JANE ARMSTRONG** at the time of swearing her affidavit on 4 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-H**

**Email from Shun King  
dated 28 September 2012**



kerree bezencon <kerree@timbercorp growers.com>

---

**you can put my name in**

1 message

---

**Shun KingLi** <SKLi@sealane.com.au>

Fri, Sep 28, 2012 at 11:32 AM

To: "kerree@timbercorp growers.com" <kerree@timbercorp growers.com>



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 6606 (Solara Rights Proceeding)

S CI 2010 1354 (BB Olives Rights Proceeding)

EXHIBIT NOTE

Date of document:

4 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-I" now produced and shown to **CELIA JANE ARMSTRONG** at the time of swearing her affidavit on 4 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-I**

**TPIF Citrus Orchard Information Memorandum  
dated 24 November 2009**

# TPIF Citrus Orchard

## Information Memorandum

24 November 2009

Copy for Allens Arthur Robinson

**Strictly Private and Confidential**

**TPIF Citrus Orchard**

**Information Memorandum  
24 November 2009**

**Issued to** Allens Arthur Robinson

**Date Issued** 24 November 2009

This Information Memorandum is strictly private and confidential. Any unauthorised recipient should immediately return it to:

**Attention: Mike Murphy**

PricewaterhouseCoopers Securities Limited  
Freshwater Place  
2 Southbank Boulevard  
Southbank, Victoria 3006  
Australia

# 1 Disclaimer

This Information Memorandum ("Memorandum") has been prepared by David Laurence McEvoy and Paul William Kirk of PricewaterhouseCoopers ("PwC") as joint and several receivers and managers ("Receivers") appointed to OIM #2 Pty Ltd (Receivers and Managers Appointed) ("OIM #2") as trustee for the Timbercorp Orchard Trust #2 ("TOT #2").

This Memorandum is provided on a confidential basis solely for the information of selected interested parties which have expressed an interest ("Interested Parties") in acquiring the assets of TOT #2 (the "Assets") and which have signed both a confidentiality deed in respect of confidential information in connection with the proposed sale and purchase of the Assets ("Confidentiality Deed") and a release deed poll ("Release Deed Poll") in connection with information provided by KordaMentha and/or Timbercorp Limited (in Liquidation) ("Timbercorp"). The Interested Party is bound by the terms of the Confidentiality Deed. The information and opinions contained in this Memorandum are strictly private and confidential and accordingly the contents of this Memorandum, and any other information or opinion subsequently supplied or given in connection with the Assets, may not be dealt with other than in accordance with the terms of the Confidentiality Deed.

This Memorandum is intended as a guide only. Neither the Receivers, nor the Receivers' partners, employees, advisers or agents ("Representatives") take responsibility for any information, statement or representation contained in this Memorandum or any omission from it. The information contained in this Memorandum has not been audited or verified by the Receivers, the Representatives, OIM #2, or any of their related bodies corporate, respective directors, employees, advisers or agents. This Memorandum shall not be deemed to be an indication of the state of affairs of TOT #2 or of the Assets, nor shall it constitute an indication that there has been no change in the business of TOT #2 or the Assets since the date of this Memorandum or since any other date at which any information contained in this Memorandum is expressed to be stated.

Any projections and forecasts contained in this Memorandum represent best estimates only and involve significant elements of subjective judgement and analysis which may or may not be accurate. No representation or warranty is given as to the achievement or reasonableness of any plans, future projections, management targets, prospects or returns and nothing in this Memorandum is or should be relied upon as a promise or representation as to the future. The Receivers and their Representatives disclaim all liability for any loss or damage of whatsoever kind (whether foreseeable or not) which may arise from any person acting on any information or opinions contained in this Memorandum or any information which is made available in connection with any further enquiries, notwithstanding negligence, default or lack of care. No responsibility is accepted to inform an Interested Party of any matter arising or coming to the Receivers' attention, which may affect any information provided to the Interested Party.

In providing this Memorandum, no obligation is undertaken to provide the Interested Party with access to any additional information. The Interested Party should not rely on any material contained in this Memorandum as a statement or representation of fact, but should satisfy itself as to the accuracy of the material by such independent investigation as it, or its advisers, think fit. The Interested Party should rely on its own enquiries and should also seek appropriate professional, including legal, advice before making any offer to acquire the Assets. No Interested Party should expect the Receivers or their Representatives to owe it any duties or responsibilities in connection with any transaction.

To the maximum extent permitted by law, the Receivers and the Representatives expressly disclaim any and all liability (including without limitation for negligence) for representations or warranties or in relation to the accuracy or completeness of the information, statements, opinions or matters, express or implied, contained in, arising out of or derived from, or for omissions from, this Memorandum or any other written or oral communications transmitted or made available including, without limitation, any historical financial information, any estimates or projections and any other financial information derived therefrom.

The provision of this Memorandum is not and should not be considered as a recommendation to purchase the Assets. Nothing in this Memorandum constitutes an offer by the Receivers to sell all or any part of the Assets. Further, nothing in this Memorandum constitutes a warranty, representation or undertaking by or on behalf of the Receivers or their Representatives or a contract or any obligation to sell or to proceed with negotiations for the sale of all or part of the Assets.

This Memorandum, including any update or supplement, does not and will not form any part of any asset purchase agreement that may result from the review, investigation or analysis by the Interested Party and its advisers. The Receivers have the right to negotiate with other Interested Parties at any time, and enter into binding agreements with any party(ies) in relation to the sale of the Assets, without prior notice to an Interested Party or any other recipients of this Memorandum.

To the extent permitted by law, none of the Receivers or their Representatives shall be liable to compensate or reimburse any Interested Party for any liabilities, costs or expenses incurred in reviewing, investigating or analysing any information relating to the Assets or otherwise, whether or not such information is contained in this Memorandum.

## Contents

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## 2 Introduction

### 2.1 Purpose of Memorandum

On Wednesday 16 September 2009, David Laurence McEvoy and Paul William Kirk of PwC were appointed joint and several Receivers of OIM #2 Pty.Ltd.

The Receivers are seeking offers for the purchase of the Assets, namely Solara South, a high-yielding, premium quality citrus orchard in the Riverland region of South Australia and its associated permanent water rights ("PWR"). The Receivers will consider all offers and offer structures on their individual merits. Final offers for the Assets need to be submitted by 5:00pm AEST on Monday 7 December 2009.

The purpose of this Memorandum is to provide an overview of the Assets to Interested Parties. This Memorandum constitutes the initial information for the purpose of Interested Parties submitting a final offer to acquire the Assets. Further information is available via an on-line data room.

This Memorandum has been prepared on the basis of information available or estimated as at the date of this Memorandum, unless otherwise stated. The provision of this Memorandum is not a recommendation or offer in relation to the purchase of the Assets. The Memorandum does not necessarily provide all the information which Interested Parties will require in order to evaluate the Assets for the purposes of a possible acquisition.

### 2.2 Confidentiality and Additional Information

This Memorandum contains commercially sensitive information and has been provided on the terms set out in the Confidentiality Deed and the Release Deed Poll. Any additional information in relation to the Assets is provided to Interested Parties on the same confidential basis. For the avoidance of doubt, the Receivers are not obliged to provide any further information to any Interested Parties.

If an Interested Party proceeds to make a final offer to acquire the Assets, it shall make and rely solely upon its own investigations and enquiries, including due diligence in respect of the Assets, and not on the information contained, and statements made, in this Memorandum and in the online data room.

No representations or warranties are given to the information contained in this Memorandum and in the online data room.

A condition of our process is that all enquiries, discussions and communication regarding the sale of the Assets must be made through the Receivers. Therefore all correspondence and any request for information should be directed to the PwC representatives in Section 9.4. No communications should occur with management of OIM #2 or of TOT #2, their financiers or any other stakeholder or interested party without our prior consent.

## 2.3 The Receivers' Discretion

This Memorandum is issued by the Receivers. The issuing of this Memorandum does not in any way commit the Receivers to discuss or negotiate with any person or organisation in connection with the sale of the Assets. The Receivers are not obliged to accept any offer and may terminate discussions at any time. The Receivers also reserve the right to:

- undertake any type of transaction for the sale of the Assets or none at all
- evaluate the terms and conditions of a proposal and to pursue or reject it without providing specific reasons
- modify procedures (including the timetable and any deadlines) relating to the sale of the Assets
- invite further parties to submit proposals
- restrict access to data, information or management to a party or all Interested Parties
- require a party to withdraw from the process at any time without explanation
- enter into discussion or a definitive agreement for the sale of the Assets with any Interested Party, without prior notice and without providing specific reasons, all at the sole discretion of the Receivers.



### 3 Attractive Investment Opportunity

#### 3.1 Key Investment Highlights

✓ Substantial Freehold	Freehold land of 580 Ha. Plantable land of 454 Ha (with 418 Ha currently planted).
✓ Owned Water Rights	Owned Permanent Water Rights of 4,510 ML (equivalent to 9.9 ML per Ha at full population).
✓ Diversity in Produce	Solara South produces a variety of citrus fruits including oranges, mandarins, lemons, limes, and grapefruits.
✓ Historical Harvest Success	The Orchard was established in 1960. Harvest volumes have grown to c. 11,900 tonnes in 2008.
✓ Premier Location	Located in a region which is considered an ideal climate for citrus growing, together with excellent transport and water infrastructure. Australian citrus production benefits from proximity to Asia, with over 40% of Australian citrus exports destined for Asian markets.
✓ Highly Skilled Orchard Manager	Existing relationship in place with AgriExchange, a subsidiary of Costa Exchange Limited.
✓ Strong Domestic Demand	The recognition of the health benefits of citrus fruit has driven strong domestic demand for both fresh fruit and juice products.
✓ Strong Global Demand	Global demand for citrus fruits is strong, in particular for fresh counter-seasonal fruits grown in the southern hemisphere being exported to the northern hemisphere.
✓ Additional Planting Capacity	Opportunity to make additional plantings in remaining non-planted land of 36 Ha.

## 3.2 Overview of Opportunity

The Receivers are seeking offers from Interested Parties for the Assets, which comprise the following individual assets:-

- 580 hectares of freehold land in Loxton, South Australia (located in the 'Riverland' region)
- 418 hectares of planted citrus orchards (approximately 222,000 citrus trees with an average maturity of approximately 14 years)
- 4,510 megalitres of PWR per annum
- all other owned infrastructure used at the Orchard

The Receivers are also in discussions with the liquidators of Timbercorp regarding the sale of the Packing Shed and the land on which it is located, which are both owned by Timbercorp (or an entity within the Timbercorp Group) (see section 5.3.3 and the property map in Appendix B for further information). As at the date of this Memorandum, the liquidators of Timbercorp have indicated their interest in selling the Packing Shed (and associated land) in conjunction with the Receivers' sale of the Assets. The Receivers and the liquidators of Timbercorp are currently considering how the sale of the Packing Shed (and associated land) and the sale of the Assets will be structured from a legal viewpoint. Interested Parties will be informed as soon as a decision is reached in that regard.

## 3.3 Background

OIM #2 as trustee for TOT #2, is the registered owner of the citrus orchard at Solara South.

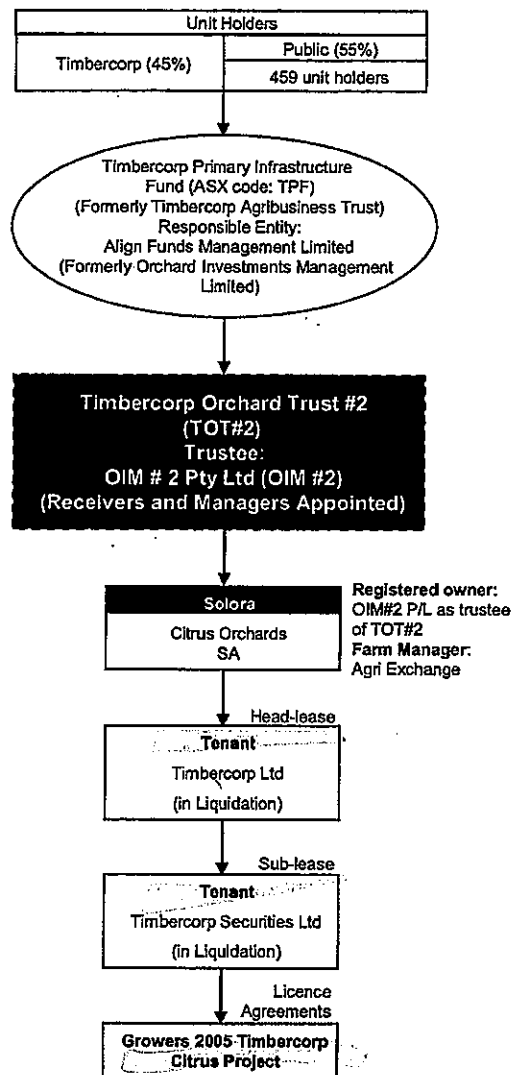
As illustrated in Figure 3.1 overleaf, OIM #2 is wholly owned by Align Funds Management Limited ("Align"). Align is the responsible entity of Timbercorp Primary Infrastructure Fund ("TPF"). Units in TPF are quoted on the Australian Securities Exchange under the code 'TPF' (although trading is currently suspended). TOT #2 is a wholly owned sub-trust of TPF.

The major unitholder of TPF is Timbercorp. On 23 April 2009, Mark Korda and Leanne Chesser of KordaMentha were appointed voluntary administrators of Timbercorp. On 29 June 2009, creditors voted to place Timbercorp into liquidation and the voluntary administrators were appointed liquidators of Timbercorp.

### 3.4 TPF Entities

The TPF company structure and the ownership structure of the Assets are outlined in Figure 3.1 below:

Figure 3.1 Ownership structure of TOT #2



**TPF** – was established in September 2005 to acquire agricultural properties, including associated infrastructure and PWR, for use in agribusiness projects operated by the Timbercorp Group.

**Align** – formerly Orchard Investments Management Limited, is approximately 45% owned by Timbercorp and acts as the Responsible Entity of TPF.

**OIM #2** – trustee of TOT #2 and registered owner of Solara South.

**AgriExchange** – a subsidiary of Costa Exchange Limited, an Australian marketer, distributor and grower of fruit and vegetables listed on the ASX under the code 'CHQ'. It provides management services at the Orchard under the terms of a Citrus Orchard Management Agreement.

**Timbercorp** – Timbercorp leases Solora South from TOT #2.

**Timbercorp Securities Limited** – a wholly owned subsidiary of Timbercorp that leases Solora South from Timbercorp. Also acts as the Responsible Entity of the registered MIS in which Growers participate.

**Growers** – the investors who participate in the Managed Investment Scheme ("MIS") operated by the Timbercorp Group at the Orchard, namely the 2005 Timbercorp Citrus Project (ARSN 114 091 299).

### 3.5 The Assets for Sale and the Basis of Sale

The Assets available for purchase have been outlined in section 3.2 above. The Solora South property is described in more detail in section 5 of this Memorandum. As indicated in Figure 3.1, the Solora South property is currently encumbered by a head-lease and a number of sub-leases, entered into by certain companies in the Timbercorp Group and Growers in connection with the MIS. Licences to use the Solora South property have also been granted to the Growers in the MIS.

The Solora South orchard is divided into two separate parts:

- **"Solora 305"** (being the MIS orchard) – comprising five individual blocks
- **"Solora 150"** – relatively new plantings established in 2006

As at the date of this Memorandum, the Receivers understand that the MIS conducted by the Timbercorp Group on the Solora South property (namely the 2005 Timbercorp Citrus Project which is conducted on that part of the Orchard referred to as Solora 305), is unlikely to continue as a going concern due largely to the insolvency of the Timbercorp Group, including the Responsible Entity of the registered MIS, Timbercorp Securities Limited (in Liquidation) ("TSL"). As a result, the Receivers understand that the liquidators of TSL intend to terminate, surrender or extinguish all of the Growers' rights in connection with the Solora South property in order to permit a sale of the property on an unencumbered basis.

Before exercising such a power, the liquidators will be required to issue a court application to seek directions that they are justified in extinguishing the Growers' rights in connection with the sale of the Solora South property. Similar orders have previously been obtained by the liquidators of the Timbercorp Group in connection with the sale of certain almond and olive properties.

As at the date of this Memorandum, the Receivers understand that the Solora South orchard also comprises 150 hectares which have been developed by Timbercorp Asset Management Pty Limited ("Solora 150") and which do not form part of the MIS. The Receivers presently understand however that Solora 150 may be the subject of the head-lease and sub-lease referred to above. The Receivers will be looking to the liquidators of Timbercorp to terminate the head-lease and sub-lease at settlement of the sale of the Assets.

In the context of these observations, the Receivers are prepared to consider all offers and offer structures by Interested Parties, including offers to purchase the Assets as currently encumbered by the leases and licences used in connection with the MIS; and offers to purchase the Assets on an unencumbered basis.

## 4 Industry Overview

### 4.1 The Global Market for Citrus Fruit

#### 4.1.1 Citrus Fruit Supply

Citrus fruits are grown in over 140 countries around the world, with 70% of production occurring in the northern hemisphere. World production of citrus fruits has experienced substantial growth over the last 30 years, driven by improved cultivation techniques and changing consumer preferences to healthier food choices (source: United Nations Conference on Trade and Development).

Brazil contributes around 18% of the world's citrus supply, followed by China with approx 17% and the United States with 9%. Australia contributes around 0.5-1% of global production (source: Citrus Fruit Market in Australia Business Report, 2009).

#### 4.1.2 Citrus Fruit Demand

Global consumption of citrus fruits has steadily increased over the last three decades, buoyed by demand for fresh fruit and orange juice products in developed countries, underpinned by steady demand for fresh fruits in emerging countries such as India, Brazil and China (source: United Nations Conference on Trade and Development). The industry is expected to enjoy a 2.7% increase in domestic demand during 2009 (source: IBISWorld Industry Report, 2009).

Consumer demand for fresh fruits in developed countries has been significantly influenced by the universal recognition of the nutritional benefits of fresh citrus fruit as part of a balanced diet. This demand for fresh citrus fruits has resulted in increased demand for counter-seasonal fruits grown in the southern hemisphere being exported to the northern hemisphere for year round availability of fresh fruit.

### 4.2 The Australian Citrus Fruit Industry

The Australian citrus fruit industry is an established mature industry driven by increasing domestic consumption demands. Fruit growers have experienced an annualised growth rate of c.5.7% in the five years to June 2009 compared to GDP growth of 3.0% (source: IBISWorld Industry Report 2009, A0119). Australia is the fourth largest Citrus producer in the southern hemisphere, with a total of 30,000 hectares of citrus orchards, producing around 615,000 tonnes of fruit each year.

Australian production includes oranges (60% of production); mandarins (30%) and lemons/limes (10%). The majority of Australia's production is for domestic consumption, with approximately 50% of production being used in the manufacture of fruit juice products, and a further 25% being sold to wholesalers. Approximately 25% of production is exported, with most fruit destined for Asia or the United States.

#### 4.2.1 Geographic Advantages

Due to the physical requirements of growing citrus fruits, the Australian citrus fruit industry has a number of advantages, including:

- an ideal climate and water supply
- a harvest period that is counter-seasonal to that of major northern hemisphere competitors

## Industry Overview

- relatively few pests and diseases destructive of citrus trees and citrus fruits
- proximity to Asia, which accounts for around 40% of citrus exports, with further growth expected in the region (source: Citrus Fruit Market in Australia Business Report, 2009).

### 4.2.2 *Citrus Fruit Growing Regions*

Citrus fruits are grown in all states of Australia. The major Australian citrus fruit growing regions are:

- Riverina (New South Wales)
- Riverland (South Australia)
- Murray Valley (New South Wales/Victoria)
- Central Burnett Region (Queensland)

Factors which influence the locations where citrus fruit is grown include:

- precipitation levels and/or access to water supply
- proximity to markets

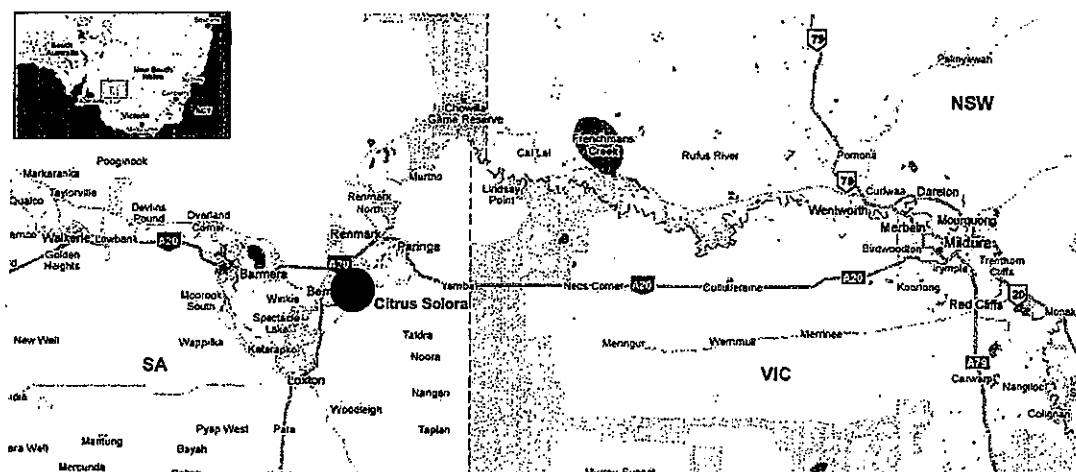
## 5 The Orchard

### 5.1 Property Overview

#### 5.1.1 Location

Per Figure 5.1, the Orchard is located near Loxton in the 'Riverland' region of South Australia.

**Figure 5.1 Location of the Orchard**



#### 5.1.2 Large Scale Infrastructure

Substantial amounts of capital have been invested in land preparation, irrigation systems, fencing and other infrastructure at the Orchard. Table 5.1 below summarises the property, plant and equipment as at 30 June 2008, while Table 5.2 outlines forecast capital expenditure for the year ending 30 June 2010:

**Table 5.1 Property, plant and equipment as at 30 June 2008**

A\$	Total
Internal Irrigation	3,190,242
Mainline upgrades	239,976
Citrus Trees	6,565,977
Land	1,470,831
Water	6,034,345
Water Conservation & Conveyancing Equipment	1,758,522
Infrastructure Wind Breaks	46,605
Infrastructure Roding & Tracks	71,500
<b>Total</b>	<b>19,377,998</b>

Source: TOT # 2 balance sheet as at 30 June 2008

## The Orchard

**Table 5.2 Forecast Capex**

S	FY10
Irrigation	100,214
Buildings	50,707
Plant & Equipment	22,853
Tree Planting	160,960
<b>Total</b>	<b>334,734</b>

Source: Timbercorp

## 5.2 Financial Information

The financial information in this Memorandum comprises historical results sourced from Timbercorp and Align.

Section 5.3 below contains detailed information pertaining to the Orchard (refer Appendix B for property maps):

### 5.3 Solara South Citrus Orchard

[illegible]

As illustrated in Table 5.3 overleaf, the Solara South orchard is divided into two separate parts:

- **“Solara 305”** (being the MIS orchard) – comprising five individual blocks
- **“Solara 150”** – relatively new plantings established in 2006



**Table 5.3 Solora South Citrus Orchard Land Use Distribution**

Block	Planted (ha)	Unplanted (ha)	Total (ha)
Home	91.2	0.0	91.2
726	52.3	0.0	52.3
Old Patch	15.0	0.0	15.0
Quarry	76.0	0.0	76.0
Dam	71.1	0.0	71.1
<b>Solora 305</b>	<b>305.6</b>	<b>0.0</b>	<b>305.6</b>
<b>Solora 150</b>	<b>112.3</b>	<b>36.7</b>	<b>149.0</b>
<b>Total</b>	<b>417.9</b>	<b>36.7</b>	<b>454.6</b>

Source: Timbercorp

### 5.3.1 Historic Crop Returns

**Table 5.4 Historic Crop Returns**

Crop Year (\$'000)	2007	2008F
Total Tonnes	7,298	11,931
<b>Net Sales Proceeds</b>	<b>1,976</b>	<b>5,449</b>
Less:		
Orchard Operating Costs	3,369	3,413
Tree Management Costs	635	857
Equipment Lease Costs	210	209
<b>Total Operating Expenditure</b>	<b>4,213</b>	<b>4,479</b>
<b>Net Crop Return</b>	<b>(2,237)</b>	<b>971</b>

Source: Timbercorp

**Note** i) 2008 figures are shown as forecast pending completion of final reconciliations for the 2008 crop year  
 ii) financials above exclude temporary water costs

### 5.3.2 Forecast Crop Yields

Table 5.5 below outlines the forecast long-term average yields for the Solara 305 Orchard.

Please note, the forecast crop yields in Table 5.5 below are for the Solara 305 Orchard only – i.e. they do not include forecast yields for the Solara 150 Orchard, given its relative immaturity.

**Table 5.5 Forecast Crop Yields (tonnes)**

Year	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Mandarin	5,250	4,890	4,916	5,092	5,039	5,175	5,114	5,208	5,114	5,208
Navel	4,228	4,825	4,715	4,922	4,971	5,006	5,019	5,020	5,020	5,020
Valencia	2,412	2,316	2,539	2,612	2,690	2,768	2,833	2,866	2,879	2,879
Lemons	1,045	1,401	1,282	1,282	1,308	1,392	1,467	1,518	1,541	1,541
Grapefruit	292	362	387	412	438	480	530	575	575	575
Limes	32	54	64	75	75	75	75	75	75	75
<b>Total</b>	<b>13,258</b>	<b>13,848</b>	<b>13,904</b>	<b>14,395</b>	<b>14,521</b>	<b>14,896</b>	<b>15,038</b>	<b>15,263</b>	<b>15,205</b>	<b>15,299</b>

Source: Timbercorp

### 5.3.3 Packing Shed

It is the Receivers' understanding that:

- (i) the Packing Shed and the land on which it is located at the Orchard is owned by Timbercorp (or an entity within the Timbercorp Group); and
- (ii) the Packing Shed is occupied by TOT #2 on a rental basis from Timbercorp (via AgriExchange).

As at the date of this Memorandum, the Receivers are considering how the sale of the Packing Shed (and associated land) and the sale of the Assets will be structured from a legal viewpoint. The liquidators of Timbercorp have indicated their interest in selling the Packing Shed (and associated land) in conjunction with the Receivers' sale of the Assets.

In making an offer, Interested Parties:

- (i) should include as a separate component an amount for the acquisition of the Packing Shed (and associated land) for consideration by the Receivers and liquidators of Timbercorp; and
- (ii) stipulate whether the purchase of the Packing Shed (and associated land) is conditional upon the purchase of the Assets and vice versa.

## 6 South Australian Permanent Water Entitlements

The National Water Initiative (*NWI*) requires that States/Territories grant water access entitlements which are legally recognised, secure shares of water to be taken from a water system. The NWI aims to promote the efficient management of Australia's water resources by making water rights proprietary in nature, so that they can be traded, leased or mortgaged.

In 2004 South Australia introduced a system of water licences for prescribed waterways. A water licence was a single approval that enabled a water user to take water, construct/operate any works necessary to divert that water and to use water on a particular area of land. Although water licences were not necessarily linked to a particular piece of land they could contain a condition that limited the use of the water to a particular area of land, which limited the ability to trade water licences.

To make trade of water rights easier and faster, South Australia is currently replacing water licences with four separate approvals. These approvals "unbundle" the different rights and permissions that were contained in a water licence. Unbundling began on 1 July 2009 when water rights associated with the River Murray were unbundled. Water rights related to other waterways will gradually be unbundled from 2010 to 2014.

The four approvals which now replace the single water licence are:

- Water Access Entitlement (a Water Licence) – this is a permanent right to a specified share of a water resource. Water access entitlements can be traded permanently or temporarily.
- Water Allocation – this represents the actual amount of water that holder of a water access entitlement is able to take in a water use year. The amount of water allocation will vary from time to time depending on how much water is available, and water allocation is stored in a "Water Account". Water allocation can be traded.
- Water Resource Works Approval – this is a permission to construct and operate works to take/divert water from a particular waterway in a particular way (e.g. through a pump or a bore). This permission is linked to a specific location and cannot be transferred to works at another location.
- Site Use Approval – this is the right to use water in a particular way (e.g. for irrigation) at a particular location. This approval is linked to particular land and cannot be transferred to other land.

Water licences, approvals and permits can be searched through the NRM Register. Each water licence, permit or other approval is given an identifying number which can then be used to search the register.

## 7 Management and Employees

There are no members of management or employees included as part of the acquisition of the Assets.

## 8 Management of Citrus Orchard

### 8.1 Costa Exchange

Costa Exchange is an Australian marketer, distributor and grower of fruit and vegetables listed on the ASX. It is one of the largest fresh produce growing, packing, marketing, distribution and exporting companies in the southern hemisphere.

Managing properties producing in excess of 40,000 tonnes of citrus, one of Costa Exchange's six divisions, AgriExchange, is a leader in citrus, avocado and wine grape production. All AgriExchange's fruit is marketed through Vitor Marketing Ltd, mainly under the Vitor and Kangara brands. AgriExchange exports citrus to destinations including the U.S, Europe, Asia & the Middle East.

Timbercorp appointed Costa Exchange to manage its citrus interests (including the Solara South orchard) and provide orchard, processing and marketing services, which it has continued to do following the appointment of Receivers. These arrangements will remain in place until at least 30 November 2009. As at the date of this Memorandum, the Receivers are in discussions with Costa Exchange regarding continuation of these arrangements after 30 November 2009.

## 9 Sale Process and Timing

### 9.1 Outline of the Sale Process

It is envisaged that the sale process will be conducted in two stages:

- Stage 1: Due diligence
- Stage 2: Final offer and completion

#### 9.1.1 Stage 1: Due Diligence

The due diligence process will comprise, inter alia, access to an electronic data room and site visits to the Orchard. The data room will contain selected information and documents for review by Interested Parties.

Requests for additional information will be considered by PwC. A Sale Agreement will be provided to the Interested Parties during the due diligence phase.

#### 9.1.2 Stage 2: Final Offer and Completion

Following the completion of due diligence, Interested Parties will be invited to submit:

- a final offer for the Assets; and
- the draft Sale Agreement marked up with any proposed amendments.

The final offer must include the following details:

#### Details of the Interested Party

Name and brief profile of the proposed acquiring entity, including details of ultimate shareholders.

#### Final Offer Price

The final offer price which the Interested Party is prepared to offer for the acquisition of the Assets. The final offer price should be based on upfront cash consideration, specified in Australian dollars.

The final offer price should be based on the value of the Assets owned by TOT #2, on a debt free and cash free basis – refer section 9.5 for the final offer template. The Interested Party should also provide a description of the material assumptions adopted in determining its final offer price.

#### Funding

Evidence of the financial capacity of the Interested Party, and the proposed means of financing the proposed acquisition of the Assets.

#### Key Terms, Conditions and Approvals

Any material terms and conditions which attach to the final offer. Any regulatory or third party approvals which may be required should also be specified.

## **Sale Process and Timing**

### **Strategic Intentions**

The future intentions of the Interested Party with regard to the operations of the Orchard.

### **Commitment to Timetable**

The ability of the Interested Party to meet the sale timetable and deadlines stipulated in this Memorandum.

### **Other Information**

Any other matter which the Interested Party considers relevant to assist the Receivers in their assessment of the final offer.

Note, prior to the submission of a final offer, an Interested Party may request answers to high-level questions. Questions must be submitted via the Question and Answer facility in the online data room.

On the basis of this final offer, the proposed amendments to the draft Sale Agreement and other factors identified, "Preferred Purchaser" status will be granted to one Interested Party, being the party with which the Receivers wish to transact.

## **9.2 Other Sale Conditions and Requirements**

The Receivers, at their sole and absolute discretion, reserve the right at any stage and in any way, without stating a reason, to:

- alter the sale process or timetable
- terminate or cease the sale process
- invite other Interested Parties to submit offers
- accept any offer, or reject, or not accept any offer
- restrict access to confidential information
- provide additional information
- negotiate with one or more Interested Parties
- terminate discussions with any or all Interested Parties
- enter into agreements for the Assets, without prior notice to any party or other Interested Parties
- make no representation, warranty or assurance as to the state of negotiations with any other Interested Party during the sale process

In all circumstances, the Interested Party will bear its own costs and expenses, whether or not it is successful in entering into any agreement with the Receivers for the purchase of the Assets.

### 9.3 Sale Timetable

The sale process is anticipated to be conducted in accordance with the following timetable in Table 9.1.

**Table 9.1 Sale Timetable**

Event	Date
Publication of the final offer and the final terms and conditions	Friday, 11 November 2011
Signature of the final offer by the bidder	Friday, 11 November 2011
Final offer to be made	Friday, 11 November 2011
Completion of the sale	Friday, 11 November 2011

### 9.4 Enquiries and Contact Particulars

Contact in relation to the sale process should be directed to:

Stewart McCallum	Mike Murphy
Director PricewaterhouseCoopers Freshwater Place 2 Southbank Boulevard Southbank, Victoria 3006 Tel: +61 3 8603 6868 Fax: +61 3 8613 4023 Email: <a href="mailto:stewart.a.mccallum@au.pwc.com">stewart.a.mccallum@au.pwc.com</a>	Associate Director PricewaterhouseCoopers Freshwater Place 2 Southbank Boulevard Southbank, Victoria 3006 Tel: +61 3 8603 2691 Fax: +61 3 8613 5454 Email: <a href="mailto:mike.a.murphy@au.pwc.com">mike.a.murphy@au.pwc.com</a>

### 9.5 Structure of Offer

Interested Parties are required to structure final offers to purchase the Assets as follows:

**Table 9.2 Structure of Offer to Purchase**

Citrus Orchard	Final Offer (\$)
Offer	
Offer	10
Offer	10
Offer, including the offer to purchase	10
Offer	10

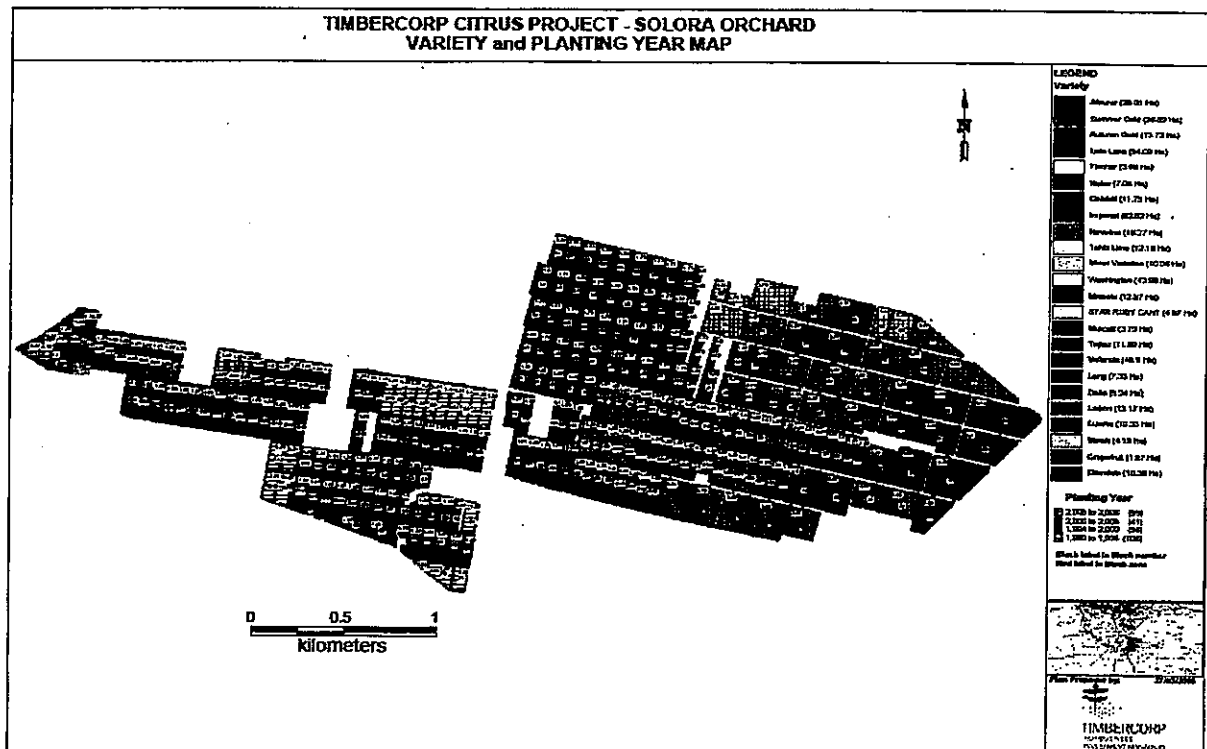
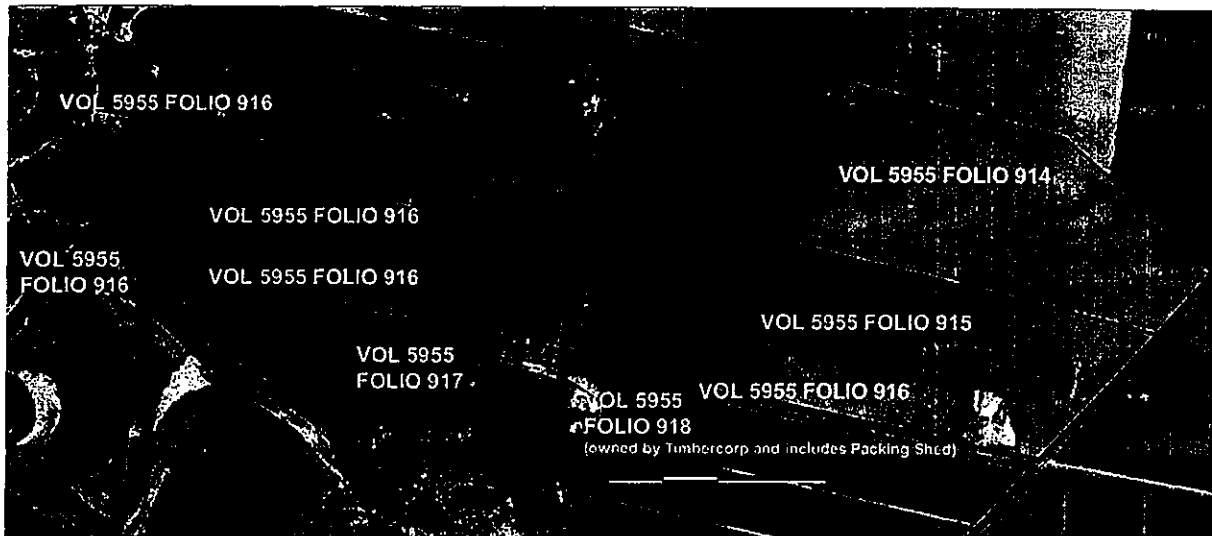
## Appendix A Glossary of Terms

Term	Meaning
\$	Australian dollars, unless otherwise stated
Align	Align Funds Management Limited (ACN 105 684 231)
Assets	The assets of TOT #2, namely the Orchard and PWR
ASX	Australian Securities Exchange
Capex	Capital expenditure
Confidentiality Deed	The confidentiality deed in respect of confidential information in connection with the sale and purchase of Assets signed by an Interested Party
Costa Exchange	Costa Exchange Limited
Growers	The growers who participate in the MIS operated by the Timbercorp Group at the Orchard
ha	Hectares
Interested Parties	Persons which have expressed an interest in acquiring the Assets and which have entered a Confidentiality Deed and the Release Deed Poll
Km	Kilometres
Memorandum	Information Memorandum
MIS	Managed Investment Scheme. The MIS operated by the Timbercorp Group at the Orchard is the 2005 Timbercorp Citrus Project (ARSN 114 091 299)
NRM	Natural Resources Management
NWI	Natural Water Initiative
OIM #2	Orchard Investment Management Pty Ltd (Receivers and Managers Appointed) (ACN 112 691 997) as trustee for TOT #2
Orchard	Orchard South, incorporating title to the freehold interests in the property, the citrus orchard and all owned infrastructure used at the Orchard
Packing Shed	The packing shed located on that part of the Orchard with certificate of title volume 100/100 918
Preferred Purchaser	The Interested Party with which the Receivers wish to transact
PwC	PricewaterhouseCoopers
PWR	Permanently Water Rights
Receivers	David McEvoy and Paul Kirk of PwC in their capacity as joint and several receivers and managers of the Assets
Representatives	Officers, employees, advisers or agents of the Receivers
Timbercorp	Timbercorp Limited (In Liquidation) (ACN 055 185 067)
Timbercorp Group	The Timbercorp group of companies
TOT #2	Timbercorp Orchard Trust #2
TPF	Timbercorp Primary Infrastructure Fund (ARSN 116 024 830)
TSL	Timbercorp Securities Limited (In Liquidation) (ACN 092 311 469)



## Appendix B Property Maps

### Solara South Citrus Orchard



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


4 October 2012  
The Representative Growers

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This is the exhibit marked "exhibit CJA-J" now produced and shown to **CELIA JANE ARMSTRONG** at the time of swearing her affidavit on 4 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-J**

**Memorandum of lease  
Expiring on 30 June 2027**

## MEMORANDUM OF LEASE

HEAD ~~\$\$\$~~ LEASE

C 2005 004

04/05

## CERTIFICATES OF TITLE BEING LEASED

First: The whole of the land comprised in Certificate of Title Register Book Volume 5278 Folio 11,  
 Secondly: Whole CT Volume 5278 Folio 12, Thirdly: Whole CT Volume 5471 Folio 442 Fourthly: Whole  
 CT Volume 5519 Folio 293 Fifthly : Crown Lease 1595/11

## ESTATE AND INTEREST

First - Fourthly: in fee simple  
 Fifthly : an estate as lessee pursuant to  
 Underlease 4983702 Crown Lease Perpetual 5345

## ENCUMBRANCES

NIL

## LESSOR (Full Name and Address)

OIM #2 Pty Ltd (ACN 112 691 997) of Level 2, 613 St Kilda Road Melbourne Victoria 3004

RevenueSA - Stamp Duty - ABN 19 040 349 805	
RevNetID/PRA Bundle No	107 322 536
Orig/Copy	1 of with 2 copies
Consideration/Value/Security	\$ -
SA Proportion (if applicable)	\$ -
SD: \$	LTO Fees: \$ 98.00
Int: \$	Pen/Add Tax: \$ -
Signature: <u>Suzette</u>	Date: 1/6/05

title  
office

## LESSEE (Full Name, Address and Mode of Holding)

Timbercorp Limited ACN 055 185 067 of Level 8, 461 Bourke Street Melbourne Vic 3000

## TERM OF LEASE

COMMENCING ON THE 30<sup>th</sup> day of May 2005

EXPIRING ON THE 30<sup>th</sup> day of June 2027

RENT AND MANNER OF PAYMENT (OR OTHER CONSIDERATION)

The rent and manner of payment will be as is set out in Section 6 of this Lease

OPERATIVE CLAUSE <sup>(a)</sup> delete the inapplicable

The Lessor LEASES TO THE LESSEE the land <sup>(a)</sup> ABOVE / ~~HEREINAFTER~~ described and the LESSEE ACCEPTS THIS LEASE of the land for the term and at the rent stipulated, subject to the covenants and conditions expressed <sup>(a)</sup> herein / in Memorandum No. \_\_\_\_\_ and to the powers and covenants implied by the Real Property Act 1886 (except to the extent that the same are modified or negated below).

DEFINE THE LAND BEING LEASED INCORPORATING THE REQUIRED EASEMENT(S) ETC.

Not applicable

IT IS COVENANTED BY AND BETWEEN THE LESSOR AND THE LESSEE as follows:  
(Covenants, where not deposited, to be set forth on insert sheet(s) and securely attached)

**LEASE**  
**[Solora Estate]**

OIM #2 Pty Ltd

Timbercorp Limited

Timbercorp Securities Limited

**Timbercorp Orchard Trust #2 – Solora Estate**  
**Parent Lease**

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## Details of this Lease

### Date of this Deed:

This Deed is made on 19 May 2005

### Parties to this Deed:

1. **OIM #2 Pty Ltd**  
ACN 112 691 997  
Level 6, 505 St Kilda Road  
Melbourne, Victoria, 3004  
  
in its capacity as trustee for the Timbercorp Orchard Trust #2  
(Lessor)
2. **Timbercorp Limited**  
ACN 055 185 067  
Level 8, 461 Bourke Street  
Melbourne, Victoria, 3000  
  
(Lessee)
3. **Timbercorp Securities Limited**  
ACN 092 311 469  
Level 8, 461 Bourke Street  
Melbourne, Victoria, 3000  
  
(TSL)

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## Background

- A. The Lessor is the registered proprietor or is entitled to become the registered proprietor of the Solora Estate.
- B. The Lessor will lease the Solora Estate to the Lessee in accordance with this Deed.
- C. The Lessee will sub-lease the Existing Citrus Orchard located on the Solora Estate to TSL under a Project Sub-Lease for use in a Project.
- D. The Lessor consents to the Lessee entering into further Project Sub-Leases from time to time, and to TSL entering into Occupancy Agreements with Growers in Projects from time to time.
- E. The Lessee will pay rent in respect of the Solora Estate in accordance with this Lease.



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## The Parties Agree as Follows:

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

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

<b>Administrator:</b>	has the same meaning as defined in section 9 of the Corporations Act;
<b>Authority:</b>	includes any National, State, municipal or other government, statutory or government approved authority or body, which has authority or jurisdiction over the Capital Works, the Required Water Licences or the Solora Estate or any part of them or anything about them;
<b>Best Horticultural Practice:</b>	sound horticultural and environmental practices and industry practices that have been adopted in relation to similar citrus orchards;
<b>Business Day:</b>	any other day other than a Saturday, Sunday or a public holiday on which trading banks are open for general banking business with the public in Adelaide, South Australia;
<b>Capital Works:</b>	<p>(a) the infrastructure and capital works, including any Irrigation Infrastructure, that have been carried out on the Solora Estate, as the case requires, before it was purchased by the Lessor;</p> <p>(b) the infrastructure and capital works that the Lessor has carried out or agreed to carry out, and any other works that the Lessor may in absolute discretion carry out, including any new Irrigation Infrastructure, at its cost, on the Solora Estate, as the case requires; and</p> <p>(c) any Lessee's Works that the Lessee may in its absolute discretion carry out;</p>
<b>Citrus Crop:</b>	the products, rights, benefits or credits derived from the Citrus Trees on the Solora Estate;
<b>Citruslot:</b>	an area of land on the Existing Citrus Orchard or a New Citrus Orchard as the case requires, on which a <u>Grower</u> in a Project carries on or will carry on a business of cultivating and growing citrus;
<b>Citrus Orchard:</b>	the Existing Citrus Orchard and a New Citrus Orchard (if any) established on the Vacant Land;
<b>Citrus Trees:</b>	the citrus trees growing or to be grown on the Solora Estate;
<b>Commencement Date:</b>	the date of this Deed;
<b>Constitution:</b>	the constitution of a Project;

<b>Controller:</b>	has the same meaning as defined in section 9 of the Corporations Act;
<b>Corporations Act:</b>	the <i>Corporations Act 2001 (Cth)</i> and the <i>Corporations Regulations</i> ;
<b>CPI:</b>	<p>(a) the "Weighted Average of Eight Capital Cities All Groups Consumer Price Index" as currently maintained and published by the Australian Bureau of Statistics; or</p> <p>(b) such other index number that replaces it in accordance with clause 6.4;</p>
<b>Encumbrance:</b>	<p>in relation to any property means anything which:</p> <p>(a) reserves, constitutes or evidences any interest in or right over the property or a claim to any interest or right; or</p> <p>(b) prevents, restricts or delays the exercise of any right over the property or the registration by any person of any interest in or right over the property,</p> <p>and includes a Security Interest;</p>
<b>Existing Citrus Orchard:</b>	the existing citrus orchard established on the Solara Estate comprising of approximately 309 hectares and consisting of citrus trees of various ages ranging from 1 to 45 years of age;
<b>Financial Year:</b>	<p>the 12 month period ending on the last day of June with the exception of:</p> <p>(a) the first Financial Year which commences on the Commencement Date and ends on the day before the first day of the next Financial Year; and</p> <p>(b) the last Financial Year which commences on the day after the last day of the last preceding Financial Year and ends on the day of termination of the Project;</p>
<b>Force Majeure:</b>	<p>(a) an event or circumstance (or a combination of events or circumstances) that is beyond the control of the Lessor, including Acts of God, natural disasters, fire and explosions, riots, civil commotion, war, attack or other acts of hostility; acts of terrorism, revolution and radioactive contamination, but</p> <p>(b) not including a lack of funds on the part of the Lessor or the inability of the Lessor to use available funds resulting from an event or circumstance described in paragraph (a);</p>
<b>Further Term:</b>	the further term of 6 years after the Initial Term which is described in clause 3.3(a);
<b>Government Body:</b>	<p>(a) any person, agency or other thing exercising an executive, legislative, judicial or other governmental function of any country or political sub-division of any country;</p> <p>(b) any public authority constituted by or under a law of any country or political sub-division of any country; and</p> <p>(c) any person deriving a right directly or indirectly from any other Government Body;</p>

<b>Grower:</b>	a "Participant Grower" as defined in the relevant Constitution;
<b>GST:</b>	has the meaning given in A New Tax System (Goods and Services Tax) Act 1999 (as amended);
<b>GST Law:</b>	the same as in the A New Tax System (Goods and Services Tax) Act 1999 (as amended);
<b>GST Rate:</b>	the rate of GST under the GST Law;
<b>Indexed:</b>	<p>the amount adjusted on the date on which a relevant payment is due or the date upon which the relevant calculation is made, as the case requires (the Adjustment Date) in accordance with the following formula:</p> $A_t = A_0 \times \text{CPI}_t / \text{CPI}_0$ <p>where:</p> <p><math>A_t</math> = the amount on the Adjustment Date;</p> <p><math>A_0</math> = the amount being adjusted;</p> <p><math>\text{CPI}_t</math> = the highest CPI for a full calendar quarter published between the date <math>\text{CPI}_0</math> is published and the Adjustment Date, including <math>\text{CPI}_0</math>;</p> <p><math>\text{CPI}_0</math> = the CPI for a full calendar quarter most recently published before the date from which the adjustment is being made (the Base Date), provided that if no Base Date is specified, "<math>\text{CPI}_0</math>" will be the CPI published for the full calendar quarter that ended 12 months before the full calendar quarter in respect of which the CPI has most recently been published before the Adjustment Date.</p>
<b>Initial Term:</b>	the period commencing on the Commencement Date, and, subject to clause 13, expiring on 30 June 2027;
<b>Irrigation Infrastructure:</b>	<del>water pumps, mainlines and other irrigation infrastructure situated, constructed or installed on or servicing the Solara Estate or on other lands for use in connection with the Solara Estate;</del>
<b>Lease:</b>	the lease granted by this Deed;
<b>Lessee's Approvals:</b>	all certificates, consents, approvals, <u>licences</u> and permits that will be necessary or required by any Authority in order for the Lessee's Works to be carried out;
<b>Lessee's Budget:</b>	the costs budget prepared by the Lessee in connection with the execution of the Lessee's Works approved by the Lessor under clause 24;
<b>Lessee's Plans and Specifications:</b>	the plans and specifications prepared by the Lessee for the execution of the Lessee's Works approved by the Lessor under clause 24;
<b>Lessee's Works:</b>	<p>(a) the Citrus Trees planted in place of existing Citrus Trees;</p> <p>(b) the replacement of any infrastructure, <u>including Irrigation Infrastructure</u>; and</p> <p>(c) any other improvements of a structural nature,</p>

	authorised by the Lessor, and undertaken at the Lessee's cost and expense, in accordance with clause 24;
<b>New Citrus Orchard:</b>	each new citrus orchard (if any) to be established on the Vacant Land from time to time;
<b>Occupancy Agreements:</b>	the sub-leases, licences or other occupancy rights proposed to be granted by TSL over the Solara Estate to Growers in a Citrus Project or Wine Grape Project, as they may from time to time be amended in accordance with their terms and conditions, provided that such agreements must not grant the Growers any greater rights than those that are granted to the Lessee under this Deed;
<b>Orchard Trust:</b>	the Timbercorp Orchard Trust #2;
<b>Orchard Trust Constitution:</b>	the constitution of the Orchard Trust made on 25 February 2005 (as amended);
<b>Project Sub-Lease:</b>	a sub-lease granted or to be granted by the Lessee to TSL to, in relation to a Project established by TSL;
<b>Projects:</b>	the citrus projects and such other projects of a horticultural nature undertaken on the Solara Estate from time to time by the Timbercorp Group or other responsible entities or managers, whether or not registered as a managed investment scheme under Chapter 5C of the Corporations Act;
<b>Quarter:</b>	the three month period ending on the last day of March, June, September or December with the exception of: <ul style="list-style-type: none"> <li>(a) the first Quarter which commences on the Commencement Date and ends on the day before the first day of the next Quarter; and</li> <li>(b) the last Quarter which commences on the day after the last day of the last preceding Quarter and ends on the day of termination of this Deed;</li> </ul>
<b>Rent:</b>	the amount specified in clause 6 as varied under this Deed;
<b>Required Water Licences:</b>	the water licences that are, or will be, owned or acquired by the Lessor and that are attributed to the Solara Estate as required from time to time, and that provide for a maximum entitlement specified in clause 5.1, as reduced by any variation in the maximum licence entitlement from time to time by the relevant water Authority restricting the amount or rate at which water may be taken, or the purpose for which it may be taken, or prohibiting the taking of water, or the purpose of its use;
<b>Security Interest:</b>	an interest or right: <ul style="list-style-type: none"> <li>(a) reserved over property; or</li> <li>(b) created or otherwise arising over property under a mortgage, charge, bill of sale (as defined in any relevant statute), lien, pledge, trust or right,</li> </ul> by way of security for the payment of a debt or other monetary obligation or the performance of any other obligation, but excluding any charge or lien arising in favour of any Government Body by operation of law provided there is no default in payment of moneys owing under such charge and any possessory lien arising in the

*Parent*

	ordinary course of business whether arising by operation of law or by contract;
<b>Solora Estate:</b>	means the <u>Existing Citrus Orchard</u> and the Vacant Land, and includes the residential land described in Schedule 1 which is situated on the land that comprises the Existing Citrus Orchard;
<b>TAT:</b>	Timbercorp Agribusiness Trust;
<b>TAT Trustee:</b>	the trustee of TAT, which at the date of this Deed is Orchard Investments Management Limited (ACN 105 684 231);
<b>Term:</b>	the term of this Lease, as described in clause 3;
<b>Timbercorp:</b>	Timbercorp Ltd (ACN 055 185 067);
<b>Timbercorp Group:</b>	Timbercorp and its controlled entities as defined in Accounting Standard AASB1024 "Consolidated Accounts";
<b>Trustee:</b>	the trustee of the Orchard Trust, which at the date of this Deed is OIM #2 Pty Ltd (ACN 112 691 997);
<b>Vacant Land:</b>	means the vacant land situated on the Solora Estate consisting of approximately <u>150 hectares</u> , as described in Schedule 1, other than the vacant land on which any part of a Citrus Orchard is situated.

## 1.2 Interpretation

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

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

## 1.2 Master Lease

- (a) This Deed is intended to operate as a master deed containing the terms and

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conditions that are to apply in respect of the Solora Estate and each further area of land that the Lessor and the Lessee agree in future to make subject to this Deed.

- (b) A new Schedule is to be prepared and annexed to this Deed in respect of each new area of land leased by the Lessor to the Lessee and the parties must initial the Schedule.

### 1.3 Headings

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

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## 2. CAPACITY AND LIABILITY OF THE LESSOR

### 2.1 Capacity of Lessor

The parties acknowledge that:

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

### 2.2 Benefit to Lessor

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

### 2.3 Limitation of Liability

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

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## 3. GRANT AND TERM OF LEASE

### 3.1 Grant and Term of Lease

Subject to the terms of this Deed the Lessor grants to the Lessee a lease of the Solora Estate and the Capital Works, and a licence of the Required Water Licences, to use and occupy the Existing Citrus Orchard, the Vacant Land and the Capital Works and to use the Required Water Licences in accordance with the terms and conditions of this Deed for a period commencing on the Commencement Date and, subject to clause 13, expiring on 30 June 2027 (or such earlier or later date as may be determined by the parties).

### 3.2 Representations

The Lessor represents and warrants that:

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

### 3.3 Option to renew

- (a) This Deed will automatically be renewed for a further term of 6 years if the Lessee:
  - (i) gives notice in writing to the Lessor at least three months before the end of the Initial Term that it wishes to take a new lease;
  - (ii) has during the Initial Term duly and promptly paid the Rent;
  - (iii) the Lessee has not during the Initial Term been frequently in default of its material obligations under this Deed, even though those defaults may have been rectified; and
  - (iv) is not in default of this Deed at the time it gives the notice under clause 3.3(a)(i) and at the expiry of the Initial Term,unless this Deed has been previously terminated.
- (b) If the requirements in clause 3.3(a) are satisfied, the Lessor will, at the Lessee's cost (inclusive of stamp duty and the Lessor's reasonable legal costs), grant a new lease to the Lessee on the same terms and conditions that are contained in this Deed, except that:
  - (i) this clause 3.3 will be deleted;
  - (ii) the Commencement Date and the Term, and the obligations imposed on the parties upon the expiry of the Initial Term, are to be adjusted to reflect the renewal of the Lease for the Further Term;
  - (iii) the Rent during the Further Term is to continue to be determined and adjusted in accordance with clause 6, but with any references to "Commencement Date" in clause 6 being to the commencement date under this Deed; and
  - (iv) the new deed must reflect any variations to this Deed that become effective during the Initial Term.

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## 4. ESTABLISHMENT AND MAINTENANCE OF EXISTING CITRUS ORCHARD

### 4.1 Warranty by Lessor as to the Existing Citrus Orchard

The Lessor warrants and represents to the Lessee that, to its knowledge, the Existing Citrus Orchard has been established in accordance with Best Horticultural Practice having regard to the age of the orchard and that the necessary infrastructure and other capital works have been constructed and carried out, and without limiting the generality of this clause 4.1, it is satisfied:

- (a) that part of Land on which the Existing Citrus Orchard is located has been prepared to ensure that the Citrus Trees can grow satisfactorily;
- (b) appropriate irrigation equipment has been installed and the necessary irrigation works have been carried out to ensure proper reticulation of water to the Citrus Trees on the Existing Citrus Orchard;

warranty

- (c) drainage work and other works have been carried out to help prevent soil erosion on the Existing Citrus Orchard;
- (d) as far as reasonably possible any pests and competitive weeds which may affect the growth or yield of the Citrus Trees on the Existing Citrus Orchard have been eradicated;
- (e) Citrus Trees on the Existing Citrus Orchard have been planted in accordance with Best Horticultural Practice having regard to the age of the orchard so that the Citrus Trees can be harvested commercially;
- (f) the Citrus Trees on the Existing Citrus Orchard were planted at various times over the past approximately 45 years; and
- (g) such other ~~capital works, services or things~~ which, in the reasonable opinion of the Lessor, were incidental or ancillary to the effective establishment and provision of the works referred to in paragraphs 4.1(a) to (f) above, have been provided or undertaken, as the case requires.

## 4.2 Acknowledgments

- (a) The Lessee acknowledges that the Capital Works and Citrus Trees on, and the Required Water Licences for use on the Existing Citrus Orchard are, and will at all times remain, the property of the Lessor, subject to any rules or regulations made by any Authority and any Lessee's Works that are the property of the Lessee.
- (b) The Lessee agrees and acknowledges that the Lessor will not be liable for any loss or damage incurred by the Lessee, including where such loss or damage arises out of, or is in connection with, any act or omission of the Lessor or its officers, directors, employees, agents or agents under this Deed, whether or not constituting negligence, except that this paragraph 4.2(b) will not apply in the case of wilful default, dishonesty or fraud or breach of this Deed.

## 4.3 Acknowledgments by the Lessor

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

## 4.4 Cultivation and maintenance obligations in relation to the Citrus Orchard

The Lessee, at its cost and expense, must cultivate, maintain and manage the Citrus Trees, the Citrus Orchard, the Vacant Land and the Solara Estate generally, in a good workmanlike and commercially responsible manner and to a standard consistent with Best Horticultural Practice including the following (as appropriate), having regard to good workmanlike and commercially responsible standards and Best Horticultural Practice:

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



- (c) **Vermin:** keep the Citrus Orchard free from vermin;
- (d) **Insects and Diseases:** use its reasonable endeavours to keep the Citrus Trees free from insects and diseases, which might damage or inhibit the growth of the Citrus Trees;
- (e) **Spray diaries:** prepare and provide the Lessor upon request with proper and accurate records of all fertilisers, nutrients and other chemicals applied to the Citrus Orchard and the Solara Estate, which records must detail the types and quantities or concentrations applied and the times at which they were applied;
- (f) **Advise the Lessor of deterioration or impurity:** promptly advise the Lessor of any deterioration of or impurity in the Citrus Crop or the Citrus Trees, which is apparent to the Lessee;
- (a) **Destruction:** destroy any Citrus Trees which a reasonable horticulturist would destroy having regards to the best interests of the remaining unaffected Citrus Trees and promptly advise the Lessor in writing of the Citrus Trees destroyed and the reasons for destroying the Citrus Trees;
- (g) **Fencing:** maintain any fencing, trellising, staking or netting used on the Citrus Orchard in accordance with Best Horticultural Practice; and
- (h) **Other horticultural activities:** otherwise use and maintain the Citrus Trees, the Citruslots, the Citrus Orchard, in accordance with the constitution and other Project documents for the relevant Project.

*Subject to growers*

#### 4.5 Lessee's Obligations upon Termination

- (a) At the end, or on termination, of this Lease, subject to the Growers' rights to continue to occupy the Solara Estate in accordance with paragraph 11.2(b) and clause 12.5, the Lessee must return the Solara Estate and any Capital Works and the relevant Citrus Orchard to the Lessor in good condition in accordance with the obligations of the Lessee under clause 4.4, but the Lessee is not required to remove the Citrus Trees or restore the Capital Works and the relevant Citrus Orchard to their original condition, including making good any reasonable wear and tear during the Term.
- (b) Any structures or plant and equipment of any description which belong to the Lessee, TSL or the Grower, other than the Lessee's Works, must be removed from the relevant Citruslots within 30 days after the end, or on termination, of this Deed, subject to the Growers' rights to continue to occupy the Solara Estate in accordance with paragraph 11.2(b) and clause 12.5. If the Lessee does not comply, procure TSL or the Grower to comply, with this requirement then all structures and plant and equipment remaining on the relevant Citrus Orchard at the time will become the absolute property of the Lessor. *subject to grower's rights*
- (c) The Lessor has no obligation to pay the Lessee, TSL or the Grower any compensation at the end, or on termination, of this Deed, including for any structures and plant and equipment remaining on the relevant Citrus Orchard that become the absolute property of the Lessor in accordance with paragraph 4.5(b).
- (d) The Lessee must ensure that the Required Water Licences in existence throughout the Term are preserved in full force and effect, and at the end, or on termination, of this Deed, are returned to the Lessor.

## 5. WATER LICENCES

### 5.1 Required Water Licences

- (a) The required water licences for the Existing Citrus Orchard are 4,361.54 megalitres as at the Commencement Date.
- (b) The parties acknowledge that approximately 1,582.54 megalitres of the required water licences are excess to the water requirements of the Existing Citrus Orchard at full maturity. The Lessor agrees that the Lessee may trade such excess water.

### 5.2 Use of Required Water Licences

The Lessor must at its cost:

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

### 5.3 Acknowledgments

The Lessee acknowledges that:

- (a) the Required Water Licences for the land specified in clause 5.1 need to be in place only by the dates specified in clause 5.1;
- (b) the Lessor may, at its cost, purchase water licences, in addition to the Required Water Licences, and provide water to the Lessee using such additional water licences; and
- (c) such additional water licences will at all times remain the property of the Lessor.

## 6. RENT PAYMENTS

### 6.1 Purpose of this clause 6

- (a) In calculating the Rent under this clause 6 and in interpreting the provisions of this clause 6, the parties must have regard to the objective underlying this clause 6, being that the Lessor is to receive a return of 10.3% on the Solora Estate CIP, including the Required Water Licences purchased with the Solora Estate, as adjusted for CPI from time to time.
- (b) For the purpose of this clause 6, the "Solora Estate CIP" means the total cost inclusive price (excluding GST) paid or payable by the Lessor in purchasing the Solora Estate on which the Existing Citrus Orchard and the Vacant Land is situated and the Required Water Licences purchased with the Solora Estate, including all stamp duty, registration and legal costs.

## 6.2 Rent

- Cost Inclusive Price*
- (a) Subject to paragraphs 6.2(b) and (c), the Lessee must pay to the Lessor Rent for each Quarter payable in advance on the last day of each immediately preceding Quarter, equal to the amount which is 10.3% of the Solora Estate CIP multiplied by the number of days in the relevant Quarter divided by 365. *10.3% Cost Price*
- (b) The first Rent payment is payable on the Commencement Date.
- (c) The Rent payable under this Deed is subject to any adjustments under clauses 6.3, 6.4, and 6.5.

## 6.3 Adjustments to Rent for Indexation

The Solora Estate CIP used in clause 6.2(b) to calculate the Rent payable by Lessee must be Indexed as at 31 December of each year, beginning on 31 December 2008, using the Commencement Date as the Base Date with any adjustments to the Solora Estate CIP under clause 6.5 also being adjusted under this clause 6.3.

## 6.4 Discontinuance or suspension of CPI

- (a) If the Consumer Price Index (All Groups) Weighted Average of Eight Capital Cities is discontinued or suspended, such other index number that most closely reflects changes in the cost of living for the eight capital cities of Australia as is mutually agreed between the Lessor and the Lessee will replace it as the new "CPI" or, if they fail to agree, such alternative index number, as in the opinion of an expert appointed by the President for the time being of the Institute of Chartered Accountants (Victorian Division) at the request of either of them most closely reflects changes in the cost of living for the eight capital cities of Australia will replace it as the new "CPI".
- (b) The cost of any expert determination carried out under this clause 6.4 must be borne equally between the Lessor and the Lessee.

## 6.5 Cost Inclusive Price

- CIP*
- (a) Subject to paragraph 6.5(b), the Cost Inclusive Price of purchasing the Solora Estate is estimated as at the Commencement Date to be \$13,950,000. *10.3% = 113.3%*
- (b) The Solora Estate CIP and the Rent is to be re-calculated once the actual cost inclusive price of purchasing the Solora Estate (including all stamp duty, registration and legal costs) is ascertained.
- (c) Upon the Solora Estate CIP being re-calculated to reflect the correct cost inclusive price, the Rent payable under this clause 6 will be adjusted, including any adjustment required under clause 6.3, to reflect the new cost inclusive price for the Solora Estate. Any adjustment to the Rent will have effect from the Commencement Date and the Lessee must pay any difference due to such adjustments, including any adjustment required under clause 6.3, to the Lessor on the next date for payment of the Rent. *Value*
- (d) The Rent may be adjusted under this clause 6.5 on more than one occasion. *Adjust*

## 7. LESSOR'S OBLIGATIONS AND RIGHTS

### 7.1 Obligations

The Lessor must:

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- (a) maintain for the Term all local, State and Commonwealth government approvals, licences or permits required for the establishment and ownership by the Lessor of all the Solara Estate;
  - (b) subject to the terms of this Deed, allow the Lessee to peaceably and quietly hold and enjoy the Solara Estate without any interruption by the Lessor or any person claiming through or under the Lessor;
  - (c) not store or use any chemical, inflammable, noxious or dangerous substances in a manner which is likely to result in damage to vegetation, crops or water reserves on the Citrus Orchards and Citruslots;
  - (d) not create any Encumbrances over the whole or any part of the Solara Estate, ranking in priority to the interests of the Lessee, TSL or the Growers who may sub-lease, licence or otherwise occupy the Solara Estate from the Lessee in the future, except where required to do so by an Authority;
  - (e) take all reasonable measures to ensure that any fires which may occur or be lit on any neighbouring land owned or occupied by the Lessor are properly controlled and supervised; and
  - (f) comply with all laws and regulations relating to the use and occupancy of any neighbouring land occupied by the Lessor.

## 7.2 Rights

The Lessor:

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

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## 8. RATES, TAXES AND CHARGES

- (a) The Lessee must pay when due all taxes, charges and assessments levied upon the Solara Estate including:
    - (i) local authority rates;
    - (ii) sewerage rates; and
    - (iii) land tax and other State taxes,on or before the due date for such payments or as and when requested by the Lessor.
  - (b) The Lessor must promptly deliver to the Lessee all rates and notices received by the Lessor in respect of the Solara Estate.
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## **9. INSURANCE**

### **9.1 Lessee must maintain insurance**

The Lessee must:

- (a) in connection with the Solora Estate, maintain with insurers and on terms approved by the Lessor (which may not unreasonably withhold its approval) in the names of the Lessee, the Lessor and any other person named by the Lessor and the Lessee:
  - (i) public liability insurance for at least \$10 million (as varied by notice from the Lessor to the Lessee);
  - (ii) the replacement value of the Capital Works, including the Citrus Trees and the Irrigation Infrastructure; and
  - (iii) other insurances required by law or that, in the Lessor's reasonable opinion, a prudent lessee would take out having regard to the cost of such insurance;
- (b) give the Lessor evidence when asked to do so that the Lessee has complied with paragraph 9.1(a); and
- (c) notify the Lessor immediately if an insurance policy required by this clause 9.1 is cancelled or an event occurs that allows a claim or affects rights under an insurance policy in connection with the Solora Estate.

### **9.2 Claims under insurance policies**

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

### **9.3 Insurance proceeds**

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

### **9.4 Parties not to affect rights under insurance**

Each party agrees that it will not do or permit or suffer to be done any act, matter or thing which may prejudice or render void or voidable any insurances in respect of the Solora Estate, Citrus Orchard, including the Capital Works, the Citruslots or the Citrus Trees, or result in the premiums for such insurances being increased.

## 9.5 Damage to, or destruction of, of the Citruslots or Capital Works

- (a) Upon damage to, or destruction of, part or all of the Citruslots or Capital Works, the Lessor and the Lessee must:
  - (i) negotiate in good faith to determine how to best replace and reinstate the relevant Citruslots or Capital Works;
  - (ii) the Lessor and the Lessee must use any insurance proceeds they receive in respect of such damage or destruction to replace and reinstate the relevant Citruslots or Capital Works, as agreed under paragraph 9.5(a)(i).
- (b) In the event that the Lessor and the Lessee are unable to agree under paragraph 9.5(a) within 30 days, the matter is to be determined under clause 23.
- (c) The Lessee may in its absolute discretion use its own funds to replace and reinstate Citruslots or Capital Works that have been damaged or destroyed, and in such event the Lessor:
  - (i) must use any insurance proceeds the Lessor receives in respect of such damage or destruction in accordance with clause 9.3 to assist the Lessee in replacing and reinstating the relevant Citruslots or Capital Works;
  - (ii) agrees and acknowledges that the Lessee may undertake the reinstatement and replacement of the relevant Citruslots or Capital Works provided such works are done in accordance with Best Horticultural Practice.

## 10. USE OF SOLORA ESTATE

### 10.1 Permitted use

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

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

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- (c) The Lessee may only use the Solora Estate in any other manner with the prior and express written consent of the Lessor, which consent may be given or refused at the absolute discretion of the Lessor.

## **10.2 Lessee's duties**

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

- (a) comply with Best Horticultural Practice and this Deed;
- (b) comply with all laws and regulations relating to the use and occupancy of the Solora Estate;
- (c) take all reasonable steps to avoid interfering with the activities carried out on any neighbouring land by the owner or occupier of that land;
- (d) maintain the Solora Estate in accordance with Best Horticultural Practice including, using soil management technique methods to reduce erosion and maintain soil quality;
- (e) repair and maintain all Capital Works to a standard equal to Best Horticultural Practice;
- (f) permit the Lessor and its employees, agents and contractors to enter upon the Solora Estate, from time to time with or without equipment for the purposes of observing the state of repair of the Solora Estate or any part thereof; and
- (g) permit the Lessor and its employees, agents and contractors to enter upon the Solora Estate, from time to time with or without equipment for the purpose of performing its obligations under this Deed.

## **10.3 Indemnity**

The Lessee must indemnify the Lessor from and against all claims, demands, proceedings, judgments, damages, costs and losses of any nature which the Lessor may suffer or incur in connection with the loss of life and/or personal injury to any person or damage to any property wheresoever occurring arising from:

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

except where the loss of life and/or personal injury or damage to property is the result of an act of default or neglect by the Lessor or the Lessor's invitees.

## **10.4 Structural work**

- (a) The Lessee need not carry out structural work to the Solora Estate unless the work is required because of the negligence or default of:
    - (i) the Lessee; or
    - (ii) the Lessee's officers, employees, agents, contractors or invitees;
    - (iii) TSL's officers, employees, agents, contractors or invitees; or
    - (iv) the Growers and their agents, contractors or invitees.
  - (b) Any work undertaken under paragraph 10.4(a), must be undertaken in accordance with Best Horticultural Practice.
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## 11. ASSIGNMENTS, SUB-LEASES AND MORTGAGES

### 11.1 Assignment by Lessee

The Lessee must not assign its interest under this Deed or transfer, sublet or part with possession of the Solara Estate or any part of the Solara Estate other than as authorised by this Deed, without the prior written consent of the Lessor, which consent is not to be unreasonably withheld.

### 11.2 Lessor consents to Lessee sub-letting

- (a) The Lessor consents to:
- (i) the Lessee entering into deeds in relation to Project Solara in its absolute discretion;
  - (ii) TSL entering into Occupancy Agreements in its absolute discretion; and
  - (iii) the Lessee and TSL granting sub-leases, licences or other occupancy rights to any other persons over the Solara Estate in their absolute discretion,

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

- (b) Upon this Deed terminating for whatever reason, the Lessor irrevocably authorises and consents to the granting or continuation (or both) by the Growers of a right to occupy or use that part of the Solara Estate granted under the Occupancy Agreements.

- (c) The Lessor agrees and acknowledges that:
- (i) paragraph 11.2(b) is for the benefit of all the Growers in Projects that are to be established; and
  - (ii) the Growers, or the responsible entity or manager of a Project on behalf of the relevant Growers, may take action to enforce paragraph 11.2(b) independently of any other party taking action to enforce it.

### 11.3 Lessee must not mortgage its interest

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

### 11.4 Assignment or mortgage by Lessor

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

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



- (b) the Lessor is being replaced as the Trustee of the Orchard Trust.

## 11.5 Delegation

The Lessor and the Lessee are each entitled to:

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

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

## 12. DEFAULT AND RE-ENTRY

### 12.1 Default by Lessee

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

- (i) if the Lessee fails or neglects to make a payment within the time required under this Deed, including failing to pay the rent payable under this Deed by the due date, and such amount is not paid within 60 days after the Lessor has served a written notice on the Lessee requiring the Lessee to pay the amount; or *notice 60 days after*

- (ii) the Lessee commits or permits to occur any material breach or default in the due and punctual performance of any of its obligations under this Deed, and fails to remedy the breach or make reasonable compensation in money within 60 days after the Lessor has served a written notice on the Lessee requiring the Lessee to remedy the breach or make reasonable compensation in money, except where the Lessee:

- (A) has within the period of 60 days after receipt of the written notice from the Lessor:

- (1) advised the Lessor of a plan of remedial action to rectify any such default; and  
(2) taken all reasonable steps to implement such plan of remedial action; and

- (B) the Lessee implements the whole plan of remedial action as soon as reasonably practicable.

- (b) The written notice referred to in paragraph 12.1(a) must specify the breach and request the breach to be remedied. *notice specify breach*

### 12.2 Re-entry by Lessor

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

### 12.3 Re-entry does not prejudice Lessor's rights

Should the Lessor exercise its rights under clause 12.2, it will do so without prejudice to any action or other remedy, which the Lessor has for arrears of rent or breach of

covenant or for damages as a result of any breach of the terms of this Deed by the Lessee.

## 12.4 Lessor discharged from obligations

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

## 12.5 Lessor's rights subject to Growers' rights

The Lessor's rights under this clause 12 are subject to the rights granted by:

- (a) ~~the Lessee or TSL to the Growers under the Occupancy Agreements in accordance with this Deed; and~~
- (b) ~~the Lessor to the Growers under paragraph 11.2(b).~~

GROWERS  
PRIORITY

## 13. TERMINATION

### 13.1 Termination of Deed by the Lessor

Without prejudice to the Lessor's rights under clause 12, the Lessor may terminate this Deed in respect of all or part of the Solara Estate, with immediate effect, if an act of default in clause 12.1 has not been rectified by the Lessee to the Lessor's reasonable satisfaction within the period of notice specified in clause 12.1.

### 13.2 Termination of Deed by the Lessee

- (a) The Lessee may terminate this Deed by notice in writing to the Lessor immediately, if:

- (i) the Lessor goes into liquidation, other than for the purposes of reconstruction or amalgamation, or a Receiver, Controller or Administrator is appointed in relation to the undertaking or any part of the undertaking of the Lessor or the Orchard Trust;
- (ii) the Lessor ceases to carry on business as Trustee of the Orchard Trust;
- (iii) the Orchard Trust is terminated;
- (iv) the Lessor fails or neglects to make a payment within the time required under this Deed and such amount is not paid within 60 days after the Lessee has served a written notice on the Lessor requiring the Lessor to pay the amount; or
- (v) the Lessor fails or neglects to pay any moneys due to the Lessee, or is in default of any material obligation under this Deed and such default continues for a period of 60 days after receipt by the Lessor of written notice from the Lessee specifying the default and requesting that the default be remedied, except where the Lessor:

no notice

- (A) has within the period of 60 days after receipt of the written notice from the Lessee:

- (i) advised the Lessee of a plan of remedial action to rectify any such default; and
- (ii) taken all reasonable steps to implement such plan

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of remedial action; and

- (B) the Lessor implements the whole plan of remedial action as soon as reasonably practicable.

- (b) Damage to, or destruction of, part or all of the Citrus Orchard, or the Citruslots, by fire or any other cause whatsoever, will not entitle the Lessee to terminate this Deed.
- (c) Upon damage to, or destruction of, part or all of the Citrus Orchard or the Citruslots, the Lessor and the Lessee must:
- (i) negotiate in good faith to determine how to best replace and reinstate the Citrus or Citruslots; and
  - (ii) the Lessor and Lessee must use any insurance proceeds they receive in respect of such damage or destruction to replace and reinstate the Citrus Orchard or the Citruslots, as agreed under paragraph 13.2(c)(i).

### **13.3 Effect of Termination**

- (a) Termination of the whole of this Deed under clauses 13.1 or 13.2, is without prejudice to any rights and obligations that may have accrued prior to the date of termination.
- (b) The termination of this Deed will terminate the rights and obligations of the parties under this Deed except to the extent that those rights and obligations are expressed to survive termination.

### **13.4 Attorneys**

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

### **13.5 Limited right of termination**

- (a) Except as expressly provided in this clause 13, a party may not terminate or rescind this Deed and the Lessor will not be entitled to re-enter the Solara Estate or forfeit this Deed at any time prior to the expiration of the Term.
- (b) Without limiting the generality of paragraph 13.5(a), damage to, or destruction of, part or all of the Citruslots, by fire or any other cause whatsoever, will not entitle the Lessee to terminate this Deed.

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## **14. LEGAL COSTS**

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

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## **15. NOTICES**

### **15.1 Form of Notice**

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

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

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

### **15.2 Receipt of Notice**

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

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

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## **16. PROPER LAW**

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

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## **17. SEVERANCE**

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

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## **18. ENTIRE AGREEMENT**

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

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## **19. GST**

- (a) If any supply made by a party ("Supplier") to another party ("Recipient")

under this Deed is a taxable supply (according to GST Law) so that the Supplier is liable to GST, the parties agree that the consideration payable for that taxable supply represents the value of the taxable supply (the "GST Exclusive Amount") and not the price for that taxable supply.

- (b) In addition to the GST Exclusive Amount for a taxable supply under this Deed, the Recipient must pay to the Supplier a further amount in respect of the taxable supply calculated as an amount equal to the GST Exclusive Amount multiplied by the GST rate.
- (c) The GST payable under paragraph 19(b) is payable by the Recipient without deduction or set-off of any other amount, at the same time and on the same basis as the GST Exclusive Amount is payable by the Recipient under this Deed.
- (d) The right of a Supplier to payment under this clause 19 is subject to a valid tax invoice, which complies with GST Law, being issued and delivered by the Supplier to the Recipient.
- (e) If a payment to satisfy a claim or a right to claim under or in connection with this Deed, for example, a claim for damages for breach of contract, gives rise to a liability to pay GST, the payment is the GST Exclusive Amount and an additional amount must be paid to the Supplier in accordance with paragraph 19(b).
- (f) If a decision making body orders that a payment be made to a party to satisfy a claim under or in connection with this Deed, and such payment will give rise to a liability to pay GST, the parties authorise the decision making body to order that a further amount, calculated as an amount equal to the payment multiplied by the GST Rate, be paid to the party in whose favour the order is made.
- (g) If a party has a claim under or in connection with this Deed for a cost on which that party must pay GST, the claim is for the cost plus all GST, except any GST for which that party is entitled to an input tax credit, including a reduced input tax credit or an adjusted input tax credit.
- (h) If a party has a claim under or in connection with this Deed and the amount of the claim depends on actual or estimated revenue or lost revenue, revenue must be calculated without including any amount received or receivable as reimbursement for GST, whether that amount is separate or included as part of a larger amount.
- (i) This clause 19 does not apply to any amount payable by the Lessor under clause 24.10.

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## 20. STATUTORY PROVISIONS

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

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## 21. CAVEAT

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

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

## 24.9 Indemnity

The Lessee indemnifies the Lessor from and against all claims, demands, proceedings, judgments, damages, costs and losses of any nature which the Lessor may suffer or incur in connection with:

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

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

## 24.10 Reimbursement of cost of Lessee's Works

- (a) Upon completion of the Lessee's Works, the Lessee must provide verification of the actual cost of the Lessee's Works to the reasonable satisfaction of the Lessor (including the Lessee producing documentary evidence and the Lessee's tax invoices in respect of all such costs) ("**Cost**").
- (b) The Lessor will pay to the Lessee an amount equal to the lower of the Cost and the net book value of the Lessee's Works in the Lessee's books and records (inclusive of GST) ("**Reimbursement**") upon:
  - (i) the sale of any part of Solara Estate on which such Lessee's Works are situated ("**Event 1**");
  - (ii) the expiry of the Term (as extended if the Lessee exercises its option to renew under clause 3.3) ("**Event 2**");
  - (iii) lawful termination of the Lease by the Lessee ("**Event 3**"),

provided that:

  - (iv) the Lessee's Works are completed in accordance with the requirements of this Deed; and
  - (v) the Lessee is not in breach of this Deed.
- (c) Upon Event 1 occurring, the Lessor must pay the Reimbursement to the Lessee within 30 days of the later of the Lessor receiving:

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- (c) Upon the expiration or earlier termination of this Deed, the Lessee must promptly withdraw at its own expense any caveat lodged under this clause 21.
  - (d) The Lessee irrevocably appoints the Lessor its attorney to execute a withdrawal of any caveat required to be withdrawn by the Lessee pursuant to paragraph 21(c) in the event of the Lessee failing promptly to do so.
  - (e) The Lessee agrees to ratify anything done by the attorney in accordance with paragraph 21(d).
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## 22. FURTHER ASSURANCES

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


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## 23. DISPUTES

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

### 24.1 Lessee's Works

- (a) The Lessee may:
    - (i) plant Citrus Trees in place of existing Citrus Trees;
    - (ii) replace any infrastructure on the Solara Estate Land, including Irrigation Infrastructure; or
    - (iii) undertake other improvements of a structural nature, at its own cost and expense in accordance with this clause 24.
  - (b) This clause 24 does not apply to any works that must be undertaken in accordance with:
    - (i) clause 4.4;
    - (ii) clause 9.5; and/or
    - (iii) clauses 10.4(a) and 10.4(b).
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## 24.2 Lessee's Approvals

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

## 24.3 Approvals by the Lessor

- (a) Before commencing to carry out the Lessee's Works:
    - (i) the Lessee must submit to the Lessor for approval:
      - (A) the name of the contractors that will carry out the Lessee's Works, and which may include related entities of the Lessee;
      - (B) the form of contract between the Lessee and the contractors in relation to the Lessee's Works;
      - (C) the Lessee's Approvals;
      - (D) the Lessee's Budget; and
      - (E) the Lessee's Plans and Specifications.
    - (ii) the Lessor must not unreasonably withhold approval to the contractors where the Lessee has demonstrated to the Lessor that the contractors have the suitable skill, resources, experience and industrial relations record for the proper execution of the Lessee's Works;
    - (iii) the Lessor may refer the Lessee's Approvals, the Lessee's Budget and the Lessee's Plans and Specifications to the Lessor's advisers;
    - (iv) the Lessor must acting reasonably and without unnecessary delay either:
      - (A) grant approval to the Lessee's Approvals, the Lessee's Budget and the Lessee's Plans and Specifications;
      - (B) grant approval to the Lessee's Approvals, the Lessee's Budget and the Lessee's Plans and Specifications subject to such conditions or modifications as may be considered necessary by the Lessor and the Lessor's advisers having regard to Best Horticultural Practice;
      - (C) refuse approval to the Lessee's Approvals, the Lessee's Budget and the Lessee's Plans and Specifications in which case the Lessor must give written notice to the Lessee with reasons for the disapproval and giving the Lessee reasonable time to provide further Lessee's Approvals, the Lessee's Budget and Lessee's Plans and Specifications,
- unless the Lessor exercises its discretion under clause 24.3(c).
- (b) The Lessee must pay to the Lessor, on demand, the reasonable costs of the Lessor's advisers reviewing the Lessee's Approvals, the Lessee's Budget the Lessee's Plans and Specifications.
  - (c) The Lessee agrees and acknowledges that the Lessor may in its absolute discretion determine that it will carry out the proposed Lessee's Work at the Lessor's own cost and expense, in which case the parties must negotiate in good faith to agree on any additional rent to be paid by the Lessee having regard to the cost of the works and the purpose outlined in clause 6.1.
  - (d) The Lessee may in its absolute discretion determine that it is no longer wishes to carry out the Lessee's Work, and it will be under no obligation to carry out



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

#### **24.4 Changes to the Lessee's Plans and Specifications, the Lessee's Budget and Lessee's Approvals**

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

#### **24.5 Fitness of Lessee's Works**

The Lessee acknowledges, warrants and agrees that:

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

#### **24.6 Rent**

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

#### **24.7 Commencement of Lessee's Works**

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

- (a) the date on which the Lessor has approved the contractors and the form of contract between the Lessee and the contractors;
- (b) the date on which the Lessor has approved the Lessee's Approvals, the Lessee's Budget and the Lessee's Plans and Specifications;
- (c) the date on which the Lessee has given to the Lessor all insurance policies the Lessor reasonably requires in the name of the Lessor and the Lessee to cover them each as the insured against any loss or damage to property or injury to any person which may arise in the course of the Lessee's Works;
- (d) the date on which the Lessee has secured all approvals required under clause 24.2;
- (e) the date on which the Lessee has paid the Lessor all costs payable under clause 24.3(b).

#### **24.8 Execution of Works**

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

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

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

provided that the Lessee must first give the Lessor a tax invoice which complies with the GST legislation in respect of the Reimbursement.
- (e) If the Lessor has decided that it will not be selling any part of Solora Estate upon which Lessee's Works are situated, it must advise the Lessee in writing within a reasonable time after it makes such a decision.
- (f) The Lessee agrees and acknowledges that the Lessor may pay the Reimbursement using a combination of:
  - (i) immediately available funds; and / or
  - (ii) units in TAT credited as fully paid (with the number of units to be issued being calculated on the basis that the TAT Trustee and the Lessee are deemed to have reached an agreement for the issue of such units on the date that the Lessor advises the Lessee in writing that the payment of some or all of the Reimbursement is to be satisfied by the issue of units in TAT.
- (g) In the event that only part of Solora Estate on which the Lessee's Works are situated is sold, the Reimbursement to be paid to the Lessee in respect of the Lessee's Works is to be adjusted proportionately.
- (h) No Reimbursement will be payable under this clause 24.10 in respect of any Lessee's Works that are removed, replaced or destroyed.
- (i) No Reimbursement will be payable under this clause 24.10 in the event that the Lease is lawfully terminated by the Lessor.
- (j) The amount of the Reimbursement will be calculated as at the date Event 1, Event 2 or Event 3 occurs.
- (k) Each stage of the Lessee's Works is to be treated separately for the purposes of this clause 24.10.
- (l) Upon the Lessor giving reasonable notice, the books and records of the Lessee and its subsidiaries and related bodies corporate must be made available for inspection and audit by the Lessor during regular business hours for the purpose of verifying any Reimbursement to be paid by Lessor under this clause 24.10.
- (m) The Lessee must provide such verification of any matter disclosed in the books and records as may be reasonably required by the Lessor.

#### 24.11 Ownership of Lessee's Works

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

*Grower = Tenant*

*tenant fixtures*

- 
- (i) the Lessee's Works will become the absolute property of the Lessor; and
  - (ii) the Lessor has no obligation to pay the Lessee any compensation at the end, or on termination, of this Deed in respect of such Lessee's Works, except as required under clause 24.10.
- (c) Upon the sale of any part of Solara Estate on which Lessee's Works are situated before the end, or on termination, of this Deed:
- (iii) the relevant Lessee's Works will become the absolute property of the Lessor immediately before the completion of the sale; and
  - (iv) the Lessor has no obligation to pay the Lessee any compensation in respect of such Lessee's Works, except as required under clause 24.10.

## 24.12 Deductions from Reimbursement

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

---

## 25. PAYMENTS

### 25.1 Interest

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

- (a) the Lessee must pay interest on such amounts not paid on the due date;
- (b) the rate of interest will be the Bank Bill Swap Reference Rate (being the 90 day rate from time to time published in the Australian Financial Review) plus 3.0%;
- (c) the interest is to be calculated on and from the day after the due date until the date payment is made.

### 25.2 Set-off

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

---

## 26. TAT TRUSTEE

OIM 105 684231


- (a) Where the consent, waiver or agreement of the Lessor is required in connection with this Deed, the consent, waiver or agreement of the TAT Trustee must also be obtained at the same time.
  - (b) Any notice that must be served on the Lessor, must also be served on the TAT Trustee at the same time.
  - (c) The Lessee and TSL agree and acknowledge that the TAT Trustee may enforce any of the provisions of this Deed on behalf of the Lessor.
- 9

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---

**Executed as a Deed:**

EXECUTED by OIM #2 PTY LTD )  
AS TRUSTEE FOR THE )  
TIMBERCORP ORCHARD TRUST )  
#2 in accordance with section 127 )  
of the Corporations Act:

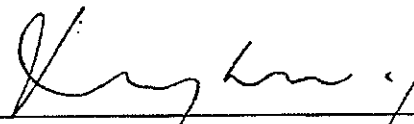
  
\_\_\_\_\_  
Signature

Michael Emery  
\_\_\_\_\_  
Full Name  
Director

  
\_\_\_\_\_  
Signature  
Director Sol Rabinowicz


\_\_\_\_\_  
Full Name  
Director/ Secretary

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

  
\_\_\_\_\_  
Signature

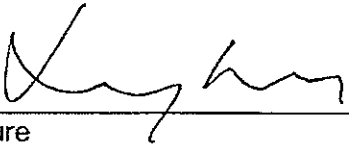
John Vaughan

\_\_\_\_\_  
Full Name  
Director

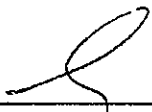
  
\_\_\_\_\_  
Signature  
Mark H Pryor

\_\_\_\_\_  
Full Name  
Director/ Secretary

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

  
\_\_\_\_\_  
Signature  
**John Vaughan**

\_\_\_\_\_  
Full Name  
Director

  
\_\_\_\_\_  
Signature  
**Mark H Pryn**

\_\_\_\_\_  
Full Name  
~~Director~~ Secretary

# SCHEDULE 1

## DESCRIPTION OF THE LAND (Clause 1.1)

- The "Solora Estate" comprises the following pieces of land:

Solora Estate	Particulars
<b>Existing Citrus Orchard</b>	
Citrus	Sections 633, 634 and 636 on CT 5278/12
Citrus	Section 726 on CT 5471/ 442
Citrus	Allotment 2/ DP 41712 on CT 5278/ 11
Citrus	Allotment 1/ DP 41712 on CT 5519/ 293
<b>Vacant Land</b>	
Vacant Land	<p>Allotment 2, V 5278 F 11 – which is a total of 165.5 hectares (on which approximately 2284.72 hectares of Existing Citrus Orchards are situated and are to be excluded from the definition of "Vacant Land");</p> <p>and</p> <p>Allotment 1, V 5519 F 293 which is a total of 208.5 hectares (on which approximately 60.99 hectares of Existing Citrus Orchards are situated and are to be excluded from the definition of "Vacant Land").</p>
<b>Residential Land</b>	
Residential Land	Sections 630 and 631 on CT 5278/12

CONSENTS OF MORTGAGEES AND SECTION 32 DEVELOPMENT ACT 1993 CERTIFICATION

This Lease does not contravene Section 32 Development Act 1993

consents to the within Lease as pursuant to hereby


DATED 30 May 2005

EXECUTION

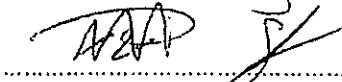
Lessor

EXECUTED by OIM #2 Pty Ltd

by the authority of the directors

 Director/~~Sole Director and Sole Secretary~~

Michael Emery Print full name

 \*Director/Secretary

Sol Rabinowicz

Print full name

(\*please delete the inapplicable title Note: Please affix common seal if required by the Company's Constitution

Lessee

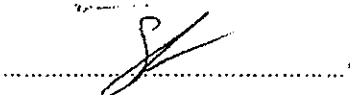
EXECUTED by Timbercorp Limited

by the authority of the directors

 Director/~~Sole Director and Sole Secretary~~

Robert Hance

Print full name

 \*Director/Secretary

Sol Rabinowicz

Print full name

(\*please delete the inapplicable title) Note: Please affix common seal if required by the Company's Constitution

LANDS TITLES REGISTRATION  
OFFICE  
SOUTH AUSTRALIA

Lessees Copy

10237316

15:38 2-Jun-2005

Fees: \$0.00

Lessees Copy

10237316A


15:38 2-Jun-2005

Fees: \$0.00

**BELOW THIS LINE FOR OFFICE USE ONLY**

Date	Time	
FEES		
R.G.O.	POSTAGE	NEW C.T.

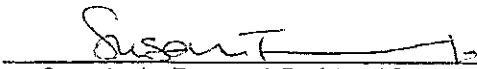
CORRECTION	PASSED
------------	--------

REGISTERED	19 JAN 2006
 REGISTRAR GENERAL	

**MEMORANDUM OF LEASE**

FORM APPROVED BY THE REGISTRAR GENERAL

**BELOW THIS LINE FOR AGENT USE ONLY**

CERTIFIED CORRECT FOR THE PURPOSES OF THE REAL PROPERTY ACT 1886
 Susan Louise Townsend Registered Conveyancer

Lodged by:

TOWNSENDS

AGENT CODE

Correction to: TOWNSENDS 91 HALIFAX STREET ADELAIDE

TOWN

TITLES, CROWN LEASES, DECLARATIONS ETC. LODGED WITH  
INSTRUMENT (TO BE FILLED IN BY PERSON LODGING)

1. ....
2. ....
3. ....
4. ....
5. ....

Assessor

PLEASE ISSUE NEW CERTIFICATES OF TITLE AS FOLLOWS

1. ....
2. ....
3. ....

DELIVERY INSTRUCTIONS (Agent to complete)  
PLEASE DELIVER THE FOLLOWING ITEM(S) TO THE  
UNDERMENTIONED AGENT(S)

ITEM(S)	AGENT CODE
LESSOR'S COPY LEASE	TOWN
LESSEE'S COPY LEASE	TOWN
UNLESSOR'S COPY LEASE	TOWN
UNLESSEE'S COPY LEASE	TOWN



Ref's to Lessee Lessor

subj to growers

Judd did it say "stingiest rights"

simply said they had power/legally

to but it was a commercial

decision by KM.

Why stingiest a right/bargaining power.

w/out knowing it value.

Separate Assets

- our idea/proposal

- BB did, citrus did PWR

Re Water Sale - constant as from Citrus  
ALL TANDU, ?

RE Citrus  
Tom, Fabal, Huxley, Macrocorp. RMM  
OIM

RE Olives

May: Green & Gold, Gardoumish  
until 2008

Companions done  
interviews

RE still willing FABAL

Crop Sale Agreement

Person Pill vs COI Shenden

who said to accept as

NO person pill

(check rent)

Thwart a sale but

they thwarted replay RE.

Refused/Not provided to the RE.

Subsies/Willingness

many + COI requests not answered

despite form 535, spreadsheets for  
each product  
by Bryan

lack of info - leases, licences etc  
not avail

- grower links not avail  
unless \$250 per

Citrus no mktg even  
Pushed meeting

Consultation process

= miss hearing others g's

= miss hearing contrary arguments

= miss getting further info that  
might be critical

Debtors Holders Discussions

Wanted to continue to rent

Rent 10.3 Db got 9%

Opportunity

Latte  
PILLS

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:

4 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-K" now produced and shown to **CELIA JANE ARMSTRONG** at the time of swearing her affidavit on 4 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-K**

**Memorandum of underlease  
expiring on 29 June 2027**

# MEMORANDUM OF UNDERLEASE

LEASE BEING UNDERLEASED: NUMBER Lessor, OIM #2 Pty Ltd (ACN 112 691 997) of Level 2, 613 St Kilda Road Melbourne Victoria 3004  
Lessee, Timbercorp Limited ACN 055 185 067 of Level 8, 461 Bourke Street, Melbourne Vic 3000 dated the <sup>19</sup>~~30~~ day of May 2005

CERTIFICATE(S) OF TITLE AFFECTED BY UNDERLEASE First, <sup>whole</sup> ~~portion~~ CT 5278/12

Secondly, <sup>whole</sup> ~~portion~~ CT 5471/726 442

Thirdly, <sup>whole</sup> ~~portion~~ CT 5278/11

Fourthly, <sup>whole</sup> ~~portion~~ CT 5519/293

Fifthly: Whole CL 1595/11

State whether WHOLE or PART of land in lease

WHOLE / PART

ENCUMBRANCE(S) AGAINST LEASE

NIL

First, subject to \_\_\_\_\_ Secondly, subject to \_\_\_\_\_ Thirdly, subject to \_\_\_\_\_ Fourthly, subject to \_\_\_\_\_ and \_\_\_\_\_

UNDERLESSOR (Full Name and Address)

Timbercorp Limited ACN 055 185 067 of Level 8, 461 Bourke Street Melbourne Vic 3000

UNDERLESSEE (Full Name, Address and Mode of Holding)

Timbercorp Securities Limited ACN 092 311 469 of Level 8, 461 Bourke Street Melbourne Vic 3000

RevenueSA - Stamp Duty - ABN 19 040 349 865

RevNetID/PRA Bundle No.: 107322846

Orig/Copy 1 of with 2 copies

Consideration/Value/Security: \$ -

SA Proportion (if applicable): \$ -

SD: \$ 98 - LTO Fees: \$ 98 -

Int: \$ - Pen/Add Tax: \$ -

Signature: SUSAN T Date: 1/6/05

TERM OF UNDERLEASE

COMMENCING ON THE <sup>19</sup>~~30~~ May 2005

EXPIRING ON THE 29th day of June 2027

## RENT AND MANNER OF PAYMENT

The rent and manner of payment will be as is set out in Clause 6 of this Underlease


## CONSENTS

(If applicable)


OIM #2 Pty Ltd (ACN 112 691 997) of Level 2, 613 St Kilda Road Melbourne Victoria 3004 as Lessor pursuant to Lease dated the 28<sup>th</sup> day of May 2005 hereby consents to the within Underlease

EXECUTED by OIM #2 Pty Ltd

by the authority of the directors

.....Director/Sole Director and Sole Secretary

Michael Emery.....Print full name

.....\*Director/Secretary

Sol Rabinowicz.....Print full name

(\*please delete the inapplicable title)

Note: Please affix common seal if required by the Company's Constitution

OPERATIVE CLAUSE <sup>(a)</sup> delete the inapplicable

The Underlessor UNDERLEASES TO THE UNDERLESSEE the LEASE above described as regards the land above described and the Underlessee accepts this Underlease of the said lease for the term and at the rent stipulated and subject to the covenants and conditions expressed <sup>(a)</sup> herein / in-Memorandum

No. \_\_\_\_\_ and to the powers and covenants implied by the Real Property Act 1886 (except to the extent that the same are modified or negated below).

IT IS COVENANTED BY AND BETWEEN THE UNDERLESSOR AND THE UNDERLESSEE as follows:

(Covenants, where not deposited, to be set forth on the insert sheet(s) and securely attached)

**Sub-lease  
Solara Estate**

Timbercorp Limited

Timbercorp Securities Limited

OIM #2 Pty Limited

**2005 Timbercorp Citrus Project**

**Sub-Lease – Solara Estate**

## Details of this Sub-lease

### Date of this Sub-lease:

This Deed is made on *19 May* 2005

### Parties to this Sub-lease:

1. **Timbercorp Limited**  
ACN 055 185 067  
Level 8, 461 Bourke Street  
Melbourne, Victoria, 3000

(Sub-lessor)

2. **Timbercorp Securities Limited**  
ACN 092 311 469  
Level 8, 461 Bourke Street  
Melbourne, Victoria, 3000

(Sub-lessee)

3. **OIM #2 Pty Ltd**  
ACN 112 691 997  
Level 6, 505 St Kilda Road  
Melbourne, Victoria, 3004

in its capacity as trustee for the  
Timbercorp Orchard Trust #2

(Land Owner)

## Background

- A. The Sub-lessor is the lessee of the Solara Estate, from the Land Owner.
- B. The Sub-lessor has agreed to sub-lease the Solara Estate, to the Sub-lessee in accordance with this Sub-lease and grant a licence to use and exploit the Required Water Licence for use in the 2005 Timbercorp Citrus Project. The Solara Estate and the Kangara Undeveloped Land (the subject of a separate sub lease) will together constitute the land to be used in the 2005 Timbercorp Citrus Project.
- C. Under the Lease, the Land Owner consents to the Sub-lessor entering into this Sub-lease and the Sub-lessee entering into the Licence Agreements with the Growers in the Project.
- D. The Sub-lessee has agreed to pay the Rent for the sub-lease of the Solara Estate in accordance with this Sub-lease.

## The Parties Agree as Follows:

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

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

<b>2005 Timbercorp Citrus Project:</b>	the citrus managed investment scheme to be operated by the Sub-lessee on the <u>Solara Estate</u> and part of the Kangara Undeveloped Land, interests in which will be first offered in the financial year ending 30 June 2005;
<b>Administrator:</b>	has the meaning given to it in section 9 of the Corporations Act;
<b>Authority:</b>	includes any Federal, State, municipal or other government, statutory or government approved authority or body, that has authority or jurisdiction over the Capital Works, the Required Water Licences and the Solara Estate, or any part of them or anything about them;
<b>Best Horticultural Practice:</b>	sound horticultural and environmental practices and industry practices that have been adopted in Australia in relation to similar Orchards;
<b>Business Day:</b>	any other day other than a Saturday, Sunday or a public holiday on which trading banks are open for general banking business with the public in Adelaide, South Australia;
<b>Capital Works:</b>	<ul style="list-style-type: none"><li>(a) the infrastructure and capital works, including any Irrigation Infrastructure, that have been carried out on the Solara Estate, as the case requires, before it was purchased by the Land Owner;</li><li>(b) the infrastructure and capital works that the Land Owner has carried out or agreed to carry out, and any other works that Timbercorp, Timbercorp Securities or the Land Owner may be required to carry out, including any new Irrigation Infrastructure, at their cost respectively, on the Solara Estate, as the case requires; and</li><li>(c) any Sub-lessor's Works that the Sub-lessor may in its in absolute discretion carry out;</li></ul>
<b>Citrus Crop:</b>	the products, rights, benefits or credits derived from the Citrus Trees on the Solara Estate;
<b>Citruslot Management Agreement</b>	the agreement of that name between Timbercorp Securities in its personal capacity, and each <u>Participant Grower</u> as amended from time to time;
<b>Citrus Trees:</b>	the citrus trees growing or to be grown on the Solara Estate;
<b>Commencement Date:</b>	the date of this Sub-Lease or such other date as agreed between the Sub-lessor and the Sub-lessee;
<b>Constitution:</b>	the constitution of the Project;

<b>Controller:</b>	has the same meaning as in the Corporations Act;
<b>Corporations Act:</b>	the <i>Corporations Act 2001</i> of the Commonwealth of Australia;
<b>Encumbrance:</b>	in relation to any property means anything which: <ul style="list-style-type: none"> <li>(a) reserves, constitutes or evidences any interest in or right over the property or a claim to any interest or right; or</li> <li>(b) prevents, restricts or delays the exercise of any right over the property or the registration by any person of any interest in or right over the property,</li> </ul> and includes a Security Interest;
<b>Existing Citruslots:</b>	each separate identifiable area of the Existing Orchard, which in aggregate comprises approximately 0.15 hectares, established on the Solora Estate;
<b>Existing Orchard:</b>	all of the Existing Citruslots established on the Solora Estate, comprising approximately 309 hectares being the whole of the land described in Schedule 1 of this Sub-lease as the Existing Orchard, <u>and the Capital Works, the Required Water Licences and other improvements attributable to the Existing Orchard for the purposes of this Sub-lease;</u>
<b>Financial Year:</b>	the 12 month period ending on the last day of June with the exception of: <ul style="list-style-type: none"> <li>(a) the first Financial Year, which commences on the Commencement Date and ends on the day before the first day of the next Financial Year; and</li> <li>(b) the last Financial Year, which commences on the day after the last day of the last preceding Financial Year and ends on the day of termination of the Project;</li> </ul>
<b>Force Majeure:</b>	<ul style="list-style-type: none"> <li>(a) an event or circumstance (or a combination of events or circumstances) that is beyond the control of the Sub-lessor, including Acts of God, natural disasters, fire and explosions, riots, civil commotion, war, attack or other acts of hostility; acts of terrorism, revolution and radioactive contamination, but</li> <li>(b) not including a lack of funds on the part of the Sub-lessor or the inability of the Sub-lessor to use available funds resulting from an event or circumstance described in paragraph (a);</li> </ul>
<b>Government Body:</b>	<ul style="list-style-type: none"> <li>(a) any person, agency or other thing exercising an executive, legislative, judicial or other governmental function of any country or political sub-division of any country;</li> <li>(b) any public authority constituted by or under a law of any country or political sub-division of any country; and</li> <li>(c) any person deriving a right directly or indirectly from any other Government Body;</li> </ul>
<b>Grower:</b>	a "Participant Grower" as defined in the Constitution;



<b>GST:</b>	has the meaning given in A New Tax System (Goods and Services Tax) Act 1999 (as amended);
<b>GST Law:</b>	the same as in the A New Tax System (Goods and Services Tax) Act 1999 (as amended);
<b>GST Rate:</b>	the rate of GST under the GST Law;
<b>Irrigation Infrastructure:</b>	water pumps, mainlines and other irrigation infrastructure situated, constructed or installed on or servicing the Solara Estate;
<b>Kangara Undeveloped Land:</b>	that part of the land described as the Kangara Undeveloped Land as selected by the parties, in a separate deed of sub-lease between Orchard Investments Management Limited (ACN 105 684 231) as land owner, the Sub-Lessor and the Sub-Lessee, on which the New Orchard and New Citruslots will be developed on or about 31 December 2005;
<b>Land:</b>	the Solara Estate leased or to be leased by the Land Owner to the Sub-lessor, under the Lease;
<b>Land Owner:</b>	the Trustee for the time being under the Orchard Trust constitution;
<b>Lease or Parent Lease:</b>	means the lease (parent lease) of the Land granted by the Land Owner to the Sub-lessor;
<b>Licence Agreements:</b>	the agreements under which licences are to be granted by the Sub-lessee over the Solara Estate to Growers in the Project, as they may from time to time be amended in accordance with their terms and conditions, provided that such agreements must not grant the Growers any greater rights than those that are granted to the Sub-lessee under this Sub-lease;
<b>New Citruslots:</b>	each separate identifiable area of the New Orchard which in aggregate comprises approximately 0.10 hectares to be established on the Kangara Undeveloped Land on or about 31 December 2005;
<b>New Orchard:</b>	all of the New Citruslots to be established on the Kangara Undeveloped Land, comprising 200 hectares;
<b>Orchard Trust:</b>	the Timbercorp Orchard Trust # 2;
<b>Orchard Trust Constitution:</b>	the constitution of the Orchard Trust (as amended);
<b>Project:</b>	the 2005 Timbercorp Citrus Project and any other project or scheme conducted by the Sub-lessee on the Solara Estate;
<b>Quarter:</b>	the three month period ending on the last day of March, June, September or December with the exception of: <ul style="list-style-type: none"> <li>(a) the first Quarter, which commences on the Commencement Date and ends on the day before the first day of the next Quarter; and</li> <li>(b) the last Quarter, which commences on the day after the last day of the last preceding Quarter and ends on the day of termination of this Sub-lease;</li> </ul>

<b>Rent:</b>	the amount specified in paragraph 6.1(a);
<b>Required Water Licences:</b>	the water licences that are, or will be, owned or acquired by the Land Owner in respect of the Existing Orchard that are attributed to the Solora Estate as required from time to time, <del>that provide for a maximum licence entitlement specified in clause 5.1, as reduced by any variation in the maximum licence entitlement from</del> time to time by the relevant water Authority restricting the amount or rate at which water may be taken, or the purpose for which it may be taken or prohibiting the taking of water or the purpose of its use; <span style="float: right;">} <i>Perman</i></span>
<b>Security Interest:</b>	an interest or right: (a) reserved over property; or (b) created or otherwise arising over property under a mortgage, charge, bill of sale (as defined in any relevant statute), lien, pledge, trust or right, by way of security for the payment of a debt or other monetary obligation or the performance of any other obligation, but excluding any charge or lien arising in favour of any Government Body by operation of law provided there is no default in payment of moneys owing under such charge and any possessory lien arising in the ordinary course of business whether arising by operation of law or by contract;
<b>Solora Estate:</b>	the Existing Citrus Orchard and the Vacant Land, and includes the residential land described in Schedule 1 which is situated on the land that comprises the Existing Citrus Orchard;
<b>Sub-lease:</b>	the sub-lease granted under this Deed;
<b>Sub-lessor's Works:</b>	(a) the Citrus Trees planted in place of existing Citrus Trees; (b) the replacement of any infrastructure, including Irrigation Infrastructure; and (c) any other improvements of a structural nature, at the Sub-lessor's cost and expense in accordance with clause 24 of the <u>Parent Lease</u> ; <span style="float: right;"><i>Reference to Parent Lease</i></span>
<b>Term:</b>	the term of this Sub-lease, as described in clause 3;
<b>Timbercorp:</b>	Timbercorp Ltd (ACN 055 185 067);
<b>Timbercorp Securities:</b>	Timbercorp Securities Limited (ACN 092 311 469); and
<b>Trustee:</b>	the trustee for the time being under the Orchard Trust Constitution, which is OIM #2 Pty Ltd (ACN112 691 997) as at the date of this Deed.
<b>Vacant Land:</b>	that part of the Solora Estate consisting of approximately 150 hectares that is described in Schedule 1 as the vacant land, other than the land on which any part of an Existing Citrus Orchard is situated.

## 1.2 Interpretation

In this Sub-lease, unless expressed or implied to the contrary:

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

## 1.2 Headings

Headings are for convenience only and do not affect the interpretation of this Sub-lease.

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## 2. CAPACITY OF THE SUB-LESSEE

### 2.1 Capacity

The Sub-lessee enters into this Deed in its personal capacity.

### 2.2 Sub-lease is not Scheme Property

Neither this Sub-lease nor the Rent forms part of "scheme property", as defined in section 9 of the Corporations Act, of the Project.

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## 3. GRANT AND TERM OF LEASE

### 3.1 Grant and Term of Lease

Subject to the terms of this Sub-lease, the Sub-lessor grants to the Sub-lessee a sub-lease of the Solara Estate (including the Capital Works and the Water Licences) for a period commencing on the date of this Sub-lease and, subject to clause 13, expiring on 29 June 2027.

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### 3.2 Representations

The Sub-lessor represents and warrants that:

- (a) the Sub-lessor is entitled to grant the sub-lease under this Sub-lease; and
  - (b) any consents which may be required to the granting of the sub-lease under this Sub-lease have been or will be obtained.
- 

## 4. ESTABLISHMENT AND MAINTENANCE OF THE ORCHARD

### 4.1 Warranty by Sub-lessor as to the Existing Citruslots

The Sub-lessor warrants and represents to the Sub-lessee that, to its knowledge, the Existing Citruslots on the Existing Orchard have been established in accordance with Best Horticultural Practice having regard to the age of the orchard and that the necessary infrastructure and other capital works have been constructed and carried out, and without limiting the generality of this clause 4.1, it is satisfied:

- (a) that part of Land on which each Existing Citruslot is located has been prepared to ensure that the Citrus Trees can grow satisfactorily;
- (b) appropriate irrigation equipment has been installed and the necessary irrigation works have been carried out to ensure proper reticulation of water to the Citrus Trees on each Existing Citruslot;
- (c) drainage work and other works have been carried out to help prevent soil erosion on the Existing Orchard;
- (d) as far as reasonably possible, any pests and competitive weeds which may affect the growth or yield of the Citrus Trees on the Existing Citruslots have been eradicated;
- (e) Citrus Trees on each Existing Citruslot have been planted in accordance with Best Horticultural Practices so that the Citrus Trees can be harvested commercially;
- (f) the Citrus Trees on the Existing Citruslots were planted at various times over the past approximately 40 years; and
- (g) such other capital works, services or things which, in the reasonable opinion of the Sub-lessor, were incidental or ancillary to the effective establishment and provision of the works referred to in paragraphs 4.1(a) to (f) above, have been provided or undertaken, as the case requires.

### 4.2 Acknowledgments by the Sub-lessee

- (a) The Sub-lessee acknowledges that the Capital Works and Citrus Trees on, and the Required Water Licences attaching to, the Existing Citruslots are, and will at all times remain, the property of the Land Owner, subject to any rules or regulations made by any Authority and any Sub-Lessor's Works that are the property of the Sub-Lessor.
- (b) The Sub-lessee agrees and acknowledges that the Sub-lessor and the Land Owner will not be liable for any loss or damage incurred by the Sub-lessee, including where such loss or damage arises out of, or is in connection with, any act or omission of the Sub-lessor or its officers, directors, employees, agents or agents under this Sub-lease, whether or not constituting negligence,

except that this paragraph 4.2(b) will not apply in the case of wilful default, dishonesty or fraud or breach of this Sub-lease.

#### 4.3 Acknowledgments by the Sub-lessor

The Sub-lessor acknowledges and agrees with the Sub-lessee that during the Term of this Sub-lease, the Citrus Crop and all rights, benefits and credits derived from the Citrus Crop will be and will remain the property of the Sub-lessee or the Growers (or any other person or entity deriving title to the Citrus Crop through the Sub-lessee or the Growers).

#### 4.4 Cultivation and maintenance obligations in relation to the Existing Orchard

The Sub-lessee, at its cost and expense, must cultivate, maintain and manage the Citrus Trees, the Existing Citruslots and the Existing Orchard in a good workmanlike and commercially responsible manner and to a standard consistent with Best Horticultural Practice, including the following, having regard to good workmanlike and commercially responsible standards and Best Horticultural Practice:

- (a) Irrigation and fertilisation: provide the Existing Orchard with necessary irrigation water, irrigate the Existing Orchard and apply fertilisers and nutrients at the appropriate times (this includes efficient irrigation application management and salinity and groundwater monitoring and control);
- (b) Weed control: ensure no impediment to Citrus Tree development and Citrus Crop production, including impediments, such as weeds, brambles, briars, blackberries or other noxious growth;
- (c) Vermin: keep the Existing Orchard free from vermin;
- (d) Insects and Diseases: use its reasonable endeavours to keep the Citrus Trees free from insects and diseases, that might damage or inhibit the growth of the Citrus Trees;
- (e) Spray diaries: prepare and provide the Sub-lessor upon request with proper and accurate records of all fertilisers, nutrients and other chemicals applied to the Existing Orchard, which records must detail the types and quantities or concentrations applied and the times at which they were applied;
- (f) Advise the Sub-lessor of deterioration or impurity: promptly advise the Sub-lessor of any deterioration of or impurity in the Citrus Crop or the Citrus Trees, that is apparent to the Sub-lessee.
- (g) Other horticultural activities: otherwise use and maintain the Citrus Trees, the Existing Citruslots, and the Existing Orchard in accordance with the Constitution, the Citruslot Management Agreement and the Licence Agreements.

#### 4.5 Sub-lessee's Obligations upon Termination

- (a) At the end, or on termination, of this Sub-lease, subject to the Growers' rights to continue to occupy the Existing Orchard in accordance with paragraph 11.2(a) and clause 12.5, the Sub-lessee must return the Existing Orchard and any Capital Works and the Existing Citruslots to the Sub-lessor in good condition in accordance with the obligations of the Sub-lessee under clause 4.4. But the Sub-lessee is not required to remove the Citrus Trees or restore the Capital Works and the Existing Citruslots to their original condition, including making good any reasonable wear and tear during the Term.
- (b) Any structures or plant and equipment of any description that belong to the

Sub-lessee or the Grower must be removed from the Existing Citruslots within 30 days after the end, or on termination, of this Sub-lease, subject to the Growers' rights to continue to occupy the Existing Orchard in accordance with paragraph 11.2(a) and clause 12.5. If the Sub-lessee does not comply or procure the Grower to comply with this requirement, then all structures and plant and equipment remaining on the Existing Citruslots at the time will become the absolute property of the Sub-lessor.

- (c) The Sub-lessor has no obligation to pay the Sub-lessee or the Grower any compensation at the end, or on termination, of this Sub-lease, including for any structures and plant and equipment remaining on the Existing Citruslots that become the absolute property of the Sub-lessor in accordance with paragraph 4.5(b).
- (d) ~~The Sub-lessee must ensure that the Required Water Licences in existence throughout the Term are preserved in full force and effect and on termination are returned to the Sub-lessor.~~

## 5. WATER LICENCES

### 5.1 Required Water Licences

The required water licences, per hectare of the Existing Orchard are specified in the following table:

Year	Required Water Licences, being a maximum licence entitlement of:
<b>Solara Estate</b>	
15 August 2006	8.8 ML/ha (2,717 ML for the whole Solara Estate)
15 August 2007	9 ML/ha (2,779 ML for the whole Solara Estate)
15 August 2008 and thereafter	9 ML/ha (2,779 ML for the whole Solara Estate)

### 5.2 Use of Required Water Licences

The Sub-lessor must at its cost:

- (a) use all reasonable endeavours to ensure that its rights under the Required Water Licences are maintained to enable the Sub-lessee to maximise the use and enjoyment of them by the Sub-lessee and the Growers;
- (b) ~~take all reasonable steps to avoid interfering with the supply of water to the Existing Citruslots and to avoid any actions that would prejudice the Sub-lessee's rights under this Sub-lease and the Growers' rights under the Licence Agreements; and~~
- (c) procure the Land Owner to purchase and maintain the Required Water Licences during the Term of this Sub-Lease, except where any Force Majeure or any action or requirement of any Authority prevents or inhibits the Land Owner from doing so.

### 5.3 Acknowledgments

The Sub-lessee acknowledges that:

- (a) the Required Water Licences for the Existing Orchard specified in clause 5.1 must be in place on 15 August in each relevant year specified in clause 5.1;

- (b) the Land Owner may at its cost purchase water licences, in addition to the Required Water Licences, and provide water under those additional water licences to the Sub-lessor; and
- (c) such additional water licences will at all times remain the property of the Land Owner. *excludes existing*

## 6. RENT PAYMENTS

### 6.1 Rent

- (a) ~~The Sub-lessee must pay to the Sub-lessor an amount of rent which is equal to that part of the licence fees (on a GST exclusive basis) the Sub-lessee receives from Growers under the Licence Agreements.~~ *IF GET 0 FROM GROWERS NOT IN DEFAULT. MUST ONLY PAY WHATS RECEIVED FROM GROWERS*
- (b) The Sub-lessee must pay to the Sub-lessor, the Rent when it receives the licence fees from the Growers, and by no later than 60 days after receiving licence fees from Growers under the Licence Agreements.

## 7. SUB-LESSOR'S OBLIGATIONS AND RIGHTS

### 7.1 Obligations

The Sub-lessor must:

- (a) maintain for the Term all local, State and Commonwealth government approvals, licences or permits required for the establishment and ownership by the Sub-lessor of all the Existing Citruslots;
- (b) subject to the terms of this Sub-lease, allow the Sub-lessee to peaceably and quietly hold and enjoy the Existing Orchard without any interruption by the Sub-lessor or any person claiming through or under the Sub-lessor; *CAUTION*
- (c) not store or use any chemical, inflammable, noxious or dangerous substances in a manner which is likely to result in damage to vegetation, crops or water reserves on the Existing Citruslots;
- (d) ~~not create any Encumbrances over the Existing Orchard or the Existing Citruslots or any part thereof ranking in priority to the interests of the Sub-lessee or the Growers who may sub-lease, licence or otherwise occupy the Existing Orchard or the Existing Citruslots from the Sub-lessee in the future, except where required to do so by an Authority,~~ *CAUTION*
- (e) take all reasonable measures to ensure that any fires which may occur or be lit on any neighbouring land owned or occupied by the Sub-lessor are properly controlled and supervised; and
- (f) comply with all laws and regulations relating to the use and occupancy of any neighbouring land occupied by the Sub-lessor.

### 7.2 Rights

The Sub-lessor:

- (a) is entitled to full and free access for the purposes of carrying out its obligations and exercising its rights under this Sub-lease with or without vehicles to the Existing Orchard along any road or track or any

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- neighbouring land owned or occupied by the Sub-lessor, the Land Owner, the Sub-lessee or Growers which gives access to the Existing Orchard;
- (b) is entitled to full and free access with or without vehicles to the Existing Orchard for the purpose of accessing neighbouring land owned or occupied by the Sub-lessor, the Land Owner, the Sub-lessee or Growers; and
  - (c) may at its own expense erect and maintain a sign on the Existing Orchard detailing such matters as the Sub-lessor reasonably considers appropriate.
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## **8. RATES, TAXES AND CHARGES**

- (a) The Sub-lessee must reimburse the Sub-lessor for or pay the Sub-lessor's liability for all local authority rates, sewerage rates and land tax and other State taxes with respect to the Existing Orchard on the due date for such payments.
  - (b) The Sub-lessor must promptly deliver to the Sub-lessee all rates and notices received by the Sub-lessor in respect of the Existing Orchard.
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## **9. INSURANCE**

### **9.1 Sub-lessee must maintain insurance**

The Sub-lessee must:

- (a) in connection with the Existing Orchard maintain with insurers and on terms approved by the Sub-lessor (which may not unreasonably withhold its approval) in the names of the Sub-lessee, the Sub-lessor and any other person named by the Sub-lessor and the Sub-lessee:
  - (i) public liability insurance for at least \$10 million (as varied by notice from the Sub-lessor to the Sub-lessee);
  - (ii) the replacement value of the Capital Works, including the Citrus Trees and the Irrigation Infrastructure; and
  - (iii) other insurances required by law or that, in the Sub-lessor's reasonable opinion, a prudent Sub-lessee would take out having regard to the cost of such insurance;
- (b) give the Sub-lessor evidence when asked to do so that the Sub-lessee has complied with paragraph 9.1(a); and
- (c) notify the Sub-lessor immediately if an insurance policy required by this clause 9.1 is cancelled or an event occurs that allows a claim or affects rights under an insurance policy in connection with the Existing Orchard.

### **9.2 Claims under insurance policies**

- (a) The Sub-lessor must not enforce, conduct, settle or compromise claims under any insurance policy required by this Sub-lease, if the Sub-lessee gives the Sub-lessor a notice that the Sub-lessee wishes to do these things, despite that policy covering other property.
- (b) The Sub-lessee must provide the Sub-lessor with 21 days' prior written notice if the Sub-lessee intends to enforce, conduct, settle or compromise claims under any insurance policy required by this Sub-lease.



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### **9.3 Insurance proceeds**

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

### **9.4 Parties not to affect rights under insurance**

Each party agrees that it will not do or permit or suffer to be done any act, matter or thing which may prejudice or render void or voidable any insurances in respect of the Existing Orchard, including the Capital Works, the Existing Citruslots, the Citrus Trees or result in the premiums for such insurances being increased.

### **9.5 Damage to, or destruction of, the Existing Citruslots or Capital Works**

- (a) Upon damage to, or destruction of, part or all of the Existing Citruslots or Capital Works, the Sub-lessor and the Sub-lessee must:
  - (i) negotiate in good faith to determine how to best replace and reinstate the relevant Citruslots or Capital Works;
  - (ii) the Sub-lessor and the Sub-lessee must use any insurance proceeds they receive in respect of such damage or destruction to replace and reinstate the relevant Citruslots or Capital Works, as agreed under paragraph 9.5(a)(i).
- (b) In the event that the Sub-lessor and the Sub-lessee are unable to agree under paragraph 9.5(a) within 30 days, the matter is to be determined under clause 22.
- (c) The Sub-lessee may in its absolute discretion use its own funds to replace and reinstate Citruslots or Capital Works that have been damaged or destroyed, and in such event the Sub-lessor:
  - (i) must use any insurance proceeds the Sub-lessor receives in respect of such damage or destruction in accordance with clause 9.3 to assist the Sub-lessee in replacing and reinstating the relevant Citruslots or Capital Works;
  - (ii) agrees and acknowledges that the Sub-lessee may undertake the reinstatement and replacement of the relevant Citruslots or Capital Works provided such works are done in accordance with Best Horticultural Practice.

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## **10. USE OF EXISTING ORCHARD**

### **10.1 Permitted use**

- (a) The Sub-lessee must only use the Existing Orchard in accordance with this Sub-lease and Best Horticultural Practice, including:

- (i) harvesting and processing the Citrus Crop;
  - (ii) removing and selling or otherwise dealing in the Citrus Crop and retaining all income from such sale or dealing.
- (b) Subject to paragraph 10.1(c), the Sub-lessor agrees and acknowledges that:
  - (i) the Sub-lessee may enter into Licence Agreements in its absolute discretion; and
  - (ii) the Sub-lessee may grant sub-leases, licences or other occupancy rights to any other person over the Existing Orchard in its absolute discretion

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

## 10.2 Sub-lessee's duties

The Sub-lessee must, at its cost and expense, ensure that it and the Growers:

- (a) comply with Best Horticultural Practice and this Sub-lease;
- (b) comply with all laws and regulations relating to the use and occupancy of the Existing Citruslots;
- (c) take all reasonable steps to avoid interfering with the activities carried out on any neighbouring land by the owner or occupier of that land;
- (d) maintain the Existing Citruslots in accordance with Best Horticultural Practice including, using soil management technique methods to reduce erosion and maintain soil quality;
- (e) repair and maintain all Capital Works to a standard equal to Best Horticultural Practice;
- (f) permit the Sub-lessor and its employees, agents and contractors to enter upon the Existing Citruslots from time to time with or without equipment for the purposes of observing the state of repair of the Existing Citruslots;
- (g) permit the Sub-lessor and its employees, agents and contractors to enter upon the Existing Citruslots from time to time with or without equipment for the purpose of performing its obligations under this Sub-lease.

## 10.3 Indemnity

The Sub-lessee must continuously indemnify the Sub-lessor from and against all claims, demands, proceedings, judgments, damages, costs and losses of any nature which the Sub-lessor may suffer or incur in connection with the loss of life and/or personal injury to any person or damage to any property wheresoever occurring arising from:

- (a) an occurrence at the Existing Orchard, other than that attributable to an act or omission of the Sub-lessor and its officers, directors, employees or agents: or
- (b) the use by the Sub-lessee or the Sub-lessee's invitees, employees and agents of the Existing Orchard,

except where the loss of life and/or personal injury or damage to property is the result of an act of default or neglect by the Sub-lessor or the Sub-lessor's invitees.

## 10.4 Structural work

- (a) The Sub-lessee need not carry out structural work to the Existing Orchard unless the work is required because of the negligence or default of:
  - (i) the Sub-lessee;
  - (ii) the Sub-lessee's officers, employees, agents, contractors or invitees; or
  - (iii) the Growers and their agents, contractors or invitees.
- (b) Any work undertaken under paragraph 10.4(a) must be undertaken in accordance with Best Horticultural Practice.
- (c) Subject to paragraph 10.4(b), the Sub-lessee may in its reasonable discretion, and at its cost and expense, carry out structural work to the Existing Orchard, provided that the Sub-lessee obtains the prior written consent of the Sub-lessor which consent is not to be unreasonably withheld or delayed.

## 11. ASSIGNMENTS, SUB-LEASES AND MORTGAGES

### 11.1 Assignment by Sub-lessee

The Sub-lessee must not assign its interest under this Sub-lease or transfer, sublet or part with possession of the Existing Orchard or any part of the Existing Orchard other than as authorised by this Sub-lease, without the prior written consent of the Sub-lessor, which consent is not to be unreasonably withheld.

### 11.2 Sub-lessor consents to Sub-lessee sub-letting

- (a) The Sub-lessor consents to:
  - (i) <sup>TSL</sup> the Sub-lessee entering into Licence Agreements in its absolute discretion; and <sup>GROWERS ACKNOWLEDGED</sup>
  - (ii) <sup>TSL</sup> the Sub-lessee granting sub-leases, licences or other occupancy rights to any other person over the Existing Orchard in its absolute discretion;

provided that any such agreements ~~do not grant any greater rights than those~~ which are granted to the Sub-lessee under this Sub-lease. PASS  
THRU

- (b) <sup>TIM</sup> The Land Owner covenants that if the Parent Lease terminates before it would otherwise have expired by the effluxion of time, then this Sub-Lease will continue with all necessary modifications as if the Land Owner were named as the Sub-lessor from the date of termination of the Sub-Lease. PASS  
THRU

- (c) If the Land Owner becomes the sub-lessor as a result of the circumstances described in paragraph 11.2(b), the Sub-lessee agrees to pay to the Land Owner an amount equal to the difference between the amount payable by the Sub-lessee under clause 6 of this Sub-Lease and the rent which the Land Owner would have otherwise received from the Sub-lessor under the Parent Lease on each occasion the Sub-lessee makes a payment of Rent to the Land Owner in accordance with the terms of this Sub-Lease.

- (d) The Sub-lessee and Timbercorp agree and acknowledge that the Land Owner will not be liable for any loss or damage incurred by them arising out of, or in connection with, this Deed, other than any loss or damage incurred by them

arising out of, or in connection with, any act or omission of the Land Owner after it becomes the sub-lessor under this Deed in accordance with clause 11.2(b).

### 11.3 Sub-lessee must not mortgage its interest

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

### 11.4 Assignment or mortgage by Sub-lessor

The Sub-lessor must not dispose of or Encumber any interest in the Sub-lessor's rights under this Sub-lease except where:

- (a) the Sub-lessor gives the Sub-lessee 14 day's notice before the Sub-lessor disposes of or Encumbers any interest in its rights under this Sub-lease or enters into any agreement to do so; and
- (b) the third party has agreed to, and acknowledged, the paramountcy of the Sub-lessee's and the Grower's rights, as described in this Sub-lease.

### 11.5 Delegation

The Sub-lessor and the Sub-lessee are each entitled to:

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

its employees, agents and contractors, but any delegation by the Sub-lessor or the Sub-lessee does not release the Sub-lessor or the Sub-lessee from liability under this Sub-lease.

## 12. DEFAULT AND RE-ENTRY

### 12.1 Default by Sub-lessee

- (a) The Sub-lessor and the Sub-lessee agree the following are events of default under this Sub-lease:

- (i) if the Sub-lessee fails or neglects to make a payment within the time required under this Sub-lease, including failing to pay the rent payable under this Sub-lease by the due date, and such amount is not paid within 60 days after the Sub-lessor has served a written notice on the Sub-lessee requiring the Sub-lessee to pay the amount;

- (ii) the Sub-lessee commits or permits to occur any material breach or default in the due and punctual performance of any of its obligations under this Sub-lease, and fails to remedy the breach or make reasonable compensation in money within 60 days after the Sub-lessor has served a written notice on the Sub-lessee requiring the

no notice  
is no default

no notice  
ever sent

Robert?

breach

Sub-lessee to remedy the breach or make reasonable compensation in money, except where the Sub-lessee:

- (A) has within the period of 60 days after receipt of the written notice from the Sub-lessor:
    - (1) advised the Sub-lessor of a plan of remedial action to rectify any such default; and
    - (2) taken all reasonable steps to implement such plan of remedial action; and
  - (B) the Sub-lessee implements the whole plan of remedial action as soon as reasonably practicable.
- (b) The written notice referred to in paragraph 12.1(a) must specify the breach and request the breach to be remedied.

## 12.2 Re-entry by Sub-lessor

The Sub-lessor will have the right to re-enter and take possession of the Existing Orchard if an act of default in clause 12.1 has not been rectified by the Sub-lessee to the Sub-lessor's reasonable satisfaction within the period of notice specified in clause 12.1.

## 12.3 Re-entry does not prejudice Sub-lessor's rights

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

## 12.4 Sub-lessor discharged from obligations

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

## 12.5 Sub-lessor's rights subject to Growers' rights

The Sub-lessor's rights under this clause 12 are subject to the rights granted by:

- (a) ~~the Sub-lessee or the Growers under the Licence Agreements in accordance with this Sub-lease; and~~
- (b) ~~the Sub-lessor to the Growers under paragraph 11.2(a).~~

GROWER  
RIGHT PRIORITY

# 13. TERMINATION

## 13.1 Termination of Sub-lease by the Sub-lessor

Without prejudice to the Sub-lessor's rights under clause 12, the Sub-lessor may terminate this Sub-lease in respect of all of the Existing Orchard, with immediate effect, if an act of default in clause 12.1 has not been rectified by the Sub-lessee to the Sub-lessor's reasonable satisfaction within the period of notice specified in clause 12.1.

## 13.2 Termination of Sub-lease by the Sub-lessee

- (a) The Sub-lessee may terminate this Sub-lease by notice in writing to the Sub-

lessor immediately, if:

- (i) the Sub-lessor goes into liquidation, other than for the purposes of reconstruction or amalgamation, or a Controller or Administrator is appointed in relation to the undertaking of the Sub-lessor or any part of its undertaking;
  - (ii) the Sub-lessor ceases to carry on business;
  - (iii) the Sub-lessor fails or neglects to make a payment within the time required under this Sub-lease and such amount is not paid within 60 days after the Sub-lessee has served a written notice on the Sub-lessor requiring the Sub-lessor to pay the amount; or
  - (iv) the Sub-lessor fails or neglects to pay any moneys due to the Sub-lessee, or is in default of any material obligation under this Sub-lease and such default continues for a period of 60 days after receipt by the Sub-lessor of written notice from the Sub-lessee specifying the default and requesting that the default be remedied, except where the Sub-lessor:
    - (A) has within the period of 60 days after receipt of the written notice from the Sub-lessee:
      - (i) advised the Sub-lessee of a plan of remedial action to rectify any such default; and
      - (ii) taken all reasonable steps to implement such plan of remedial action; and
    - (B) the Sub-lessor implements the whole plan of remedial action as soon as reasonably practicable.
- (b) Damage to, or destruction of, part or all of the Existing Citruslots, by fire or any other cause whatsoever, will not entitle the Sub-lessee to terminate this Sub-lease except as set out in clause 13.3.
- (c) Upon damage to, or destruction of, part or all of the Existing Citruslots, the Sub-lessor and the Sub-lessee must use any insurance proceeds they receive in respect of such damage or destruction to replace and reinstate the Existing Citruslots, as agreed under paragraph 9.5(a)(i).

### 13.3 Damage to Existing Orchard

If, in respect of the whole of the Existing Orchard:

- (a) the whole of the Existing Orchard is damaged or destroyed whether by fire or any other cause whatsoever; or
- (b) an independent horticultural consultant jointly commissioned by the Sub-lessor and the Sub-lessee reasonably determines that the whole of the Existing Orchard is no longer commercially viable,

the Sub-lessee may terminate this Sub-lease in respect of the whole of the damaged or destroyed Existing Orchard by giving not less than 4 months' prior written notice of such termination to the Sub-lessor. Termination under this clause 13.3 will take effect on and from expiry of the 4 months' notice.

### 13.4 Effect of Termination

- (a) Termination of the whole of this Sub-lease under clauses 13.1, 13.2 or 13.3, is without prejudice to any rights and obligations that may have accrued prior to

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the date of termination.

- (b) The termination of this Sub-lease will terminate the rights and obligations of the parties under this Sub-lease except to the extent that those rights and obligations are expressed to survive termination.

### **13.5 Attorneys**

Upon termination of the whole or part of this Sub-lease under clauses 13.1, 13.2 or 13.3, by the Sub-lessor or the Sub-lessee, as the case may be, the party terminating this Sub-lease is hereby appointed by the other as its attorney to do all things and sign all documents necessary to give effect to the termination under this clause 13 of the whole or part of this Sub-lease, as the case requires.

### **13.6 Limited right of termination**

Except as expressly provided in this clause 13, a party may not terminate or rescind this Sub-lease and the Sub-lessor will not be entitled to re-enter the Existing Orchard or forfeit this Sub-lease at any time prior to the expiration of the Term.

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## **14. LEGAL COSTS**

The Sub-lessee must pay the reasonable costs of the Sub-lessor's solicitors of and incidental to the preparation, execution, stamping and registration of this Sub-lease including all registration fees and stamp duty payable and including the cost of obtaining any necessary consents.

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## **15. NOTICES**

### **15.1 Form of Notice**

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

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

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

### **15.2 Receipt of Notice**

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

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

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## 16. PROPER LAW

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

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## 17. SEVERANCE

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

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## 18. ENTIRE AGREEMENT

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

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## 19. GST

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



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order that a further amount, calculated as an amount equal to the payment multiplied by the GST Rate, be paid to the party in whose favour the order is made.

- (g) If a party has a claim under or in connection with this Sub-lease for a cost on which that party must pay GST, the claim is for the cost plus all GST, except any GST for which that party is entitled to an input tax credit, including a reduced input tax credit or an adjusted input tax credit.
- (h) If a party has a claim under or in connection with this Sub-lease and the amount of the claim depends on actual or estimated revenue or lost revenue, revenue must be calculated without including any amount received or receivable as reimbursement for GST, whether that amount is separate or included as part of a larger amount.

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## **20. STATUTORY PROVISIONS**

To the extent permitted by law, all provisions implied by statute are expressly excluded from this Sub-lease and the sub-lease granted under this Sub-lease, including all provisions implied in licences by the Real Property Act 1886 (SA).

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## **21. FURTHER ASSURANCES**

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

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## **22. DISPUTES**

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

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## **23. THE LAND OWNER**

### **23.1 Capacity of Land Owner**

The parties acknowledge that:

- (a) the Land Owner has entered into this Deed in its capacity as Trustee under

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the Orchard Trust Constitution; and

- (b) the Land Owner has full, complete and valid authority and power to enter into this Deed under the terms of the Orchard Trust Constitution.

## **23.2 Benefit to Land Owner**

The parties to this Deed acknowledge and agree that every agreement and condition in this Deed for the benefit of the Land Owner benefits the Land Owner personally and in its capacity as Trustee under the Orchard Trust Constitution.

## **23.3 Limitation of Liability**

The parties agree that the Land Owner will in no circumstances be required to satisfy any liability owed to the Sub-lessor or Sub-lessee or to any party claiming through the Sub-lessor or Sub-lessee for breach of any obligation pursuant to, or in respect of, this Deed out of any funds, property or assets other than the assets held as the Trustee under the Orchard Trust Constitution under the Land Owner's control and in its possession and available to be properly resorted to by the Land Owner, except that the limitation contained in this clause 23.3 does not apply in the case of any fraud or breach of trust on the part of the Land Owner.

## **23.4 Rights of access**

The Land Owner:

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

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# **24. PAYMENTS**

## **24.1 Interest**

If the Sub-lessee fails to make a payment of any amount under this Deed:

- (a) the Sub-lessee must pay interest on such amounts not paid on the due date;
- (b) the rate of interest will be the Bank Bill Swap Reference Rate (being the 90 day rate from time to time published in the Australian Financial Review) plus 3.0%;
- (c) the interest is to be calculated on and from the day after the due date until the date payment is made.

## **24.2 Set-off**


All payments by the Sub-lessee under this Deed must be made to the Sub-lessor without set-off or counterclaim.

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## Executed as a Deed:

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


  
\_\_\_\_\_  
Signature Sol Rabinowicz

\_\_\_\_\_  
Full Name  
Director


  
\_\_\_\_\_  
Signature Mark H Pryn

\_\_\_\_\_  
Full Name  
~~Director~~/ Secretary

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

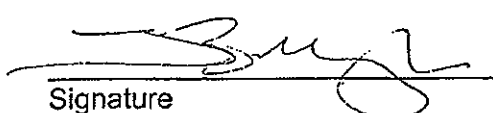
  
\_\_\_\_\_  
Signature Sol Rabinowicz

\_\_\_\_\_  
Full Name  
Director

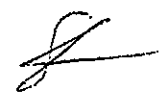
  
\_\_\_\_\_  
Signature Mark H Pryn

\_\_\_\_\_  
Full Name  
~~Director~~/ Secretary

EXECUTED by OIM #2 Pty Limited )  
as trustee for the TIMBERCORP )  
ORCHARD TRUST #2 in )  
accordance with section 127 of )  
the Corporations Act: )

  
\_\_\_\_\_  
Signature Trevor Mann

\_\_\_\_\_  
Full Name  
Director

  
\_\_\_\_\_  
Signature Sol Rabinowicz

\_\_\_\_\_  
Full Name  
~~Director~~/ Secretary

## SCHEDULE 1

### DESCRIPTION OF THE LAND (Clause 1.1)

1. The "Solora Estate" comprises the following pieces of land:

Solora Estate	Particulars
<b>Existing Citrus Orchard</b>	
Citrus	Sections 633, 634 and 636 on CT 5278/12
Citrus	Section 726 on CT 5471/ 442
Citrus	Allotment 2/ DP 41712 on CT 5278/ 11
Citrus	Allotment 1/ DP 41712 on CT 5519/ 293
<b>Vacant Land</b>	
Vacant Land	Allotment 2, V 5278 F 11 – which is a total of 165.5 hectares (on which approximately 2284.72 hectares of Existing Citrus Orchards are situated and are to be excluded from the definition of "Vacant Land"); and Allotment 1, V 5519 F 293 which is a total of 208.5 hectares (on which approximately 60.99 hectares of Existing Citrus Orchards are situated and are to be excluded from the definition of "Vacant Land").
<b>Residential Land</b>	
Residential Land	Sections 630 and 631 on CT 5278/12

SECTION 32 DEVELOPMENT ACT CERTIFICATION

This Underlease does not contravene Section 32 Development Act 1993

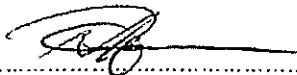
DATED 30/9 May 2005

EXECUTION

Underlessor

EXECUTED by Timbercorp Limited

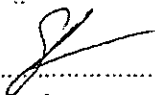
by the authority of the directors



.....Director/~~Sole Director and Sole Secretary~~

Robert Hance

.....Print full name



.....\*Director/~~Secretary~~

Sol Rabinowicz

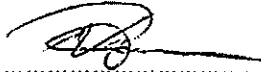
.....Print full name

(\*please delete the inapplicable title) Note: Please affix common seal if required by the Company's Constitution

Underlessee

EXECUTED by Timbercorp Securities Limited

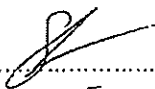
by the authority of the directors



.....Director/~~Sole Director and Sole Secretary~~

Robert Hance

.....Print full name



.....\*Director/~~Secretary~~

Sol Rabinowicz

.....Print full name

(\*please delete the inapplicable title) Note: Please affix common seal if required by the Company's Constitution

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LANDS TITLES REGISTRATION  
OFFICE  
SOUTH AUSTRALIA

Lessees Copy

10237317

15:38 2-Jun-2005


Fees: \$0.00

MEMORANDUM OF UNDERLEASE

FORM APPROVED BY THE REGISTRAR GENERAL

BELOW THIS LINE FOR AGENT USE ONLY

CERTIFIED CORRECT FOR THE PURPOSES  
OF THE REAL PROPERTY ACT 1886

  
Susan Louise Townsend Registered Conveyancer

Series No.	Prefix
2	UL

BELOW THIS LINE FOR OFFICE USE ONLY

Date	Time	
FEES		
R.G.O.	POSTAGE	NEW C.T.

AGENT CODE

Lodged by: TOWNSENDS

TOWN

Correction to: TOWNSENDS 91 HALIFAX STREET ADELAIDE

TOWN

TITLES, CROWN LEASES, DECLARATIONS ETC. LODGED WITH  
INSTRUMENT (TO BE FILLED IN BY PERSON LODGING)

1. ....
2. ....
3. ....
4. ....
5. ....

Assessor

PLEASE ISSUE NEW CERTIFICATES OF TITLE AS FOLLOWS

1. ....
2. ....
3. ....

CORRECTION

PASSED

REGISTERED

1 g JAN 2006

 pro



REGISTRAR-GENERAL

DELIVERY INSTRUCTIONS (Agent to complete)  
PLEASE DELIVER THE FOLLOWING ITEM(S) TO THE  
UNDERMENTIONED AGENT(S)

ITEM(S)	AGENT CODE