

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-L" 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-L**

**Licence agreement**

C 2005 0036

## **Licence Agreement**

**Solara Estate**

**Timbercorp Securities Limited**

**Participant Grower**

**OIM #2 Pty Limited**

**Timbercorp Limited**

## **2005 Timbercorp Citrus Project**

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## Details of this Licence Agreement

### Date of the Agreement:

In respect of each several Participant Grower means the date on which Timbercorp Securities has accepted the Participant Grower's application for Citruslots being offered under the PDS as specified in the Schedule to this Agreement.

### Parties to the Agreement:

1. **TIMBERCORP SECURITIES LIMITED**  
ACN 092 311 469  
Level 8, 461 Bourke Street  
Melbourne, Victoria, 3000  
**(Timbercorp Securities)**
2. The Participant Grower named in the Schedule to this Agreement in relation to the relevant Existing Citruslots.  
**(Participant Grower)**
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)**
4. **TIMBERCORP LIMITED**  
ACN 055 185 067  
Level 8, 461 Bourke Street  
Melbourne, Victoria, 3000  
**(Timbercorp)**

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## Background to the Agreement

- A. Timbercorp Securities has established a project for the management of a Citrus orchard, the cultivation of Citrus Trees and harvesting and processing of Citrus for commercial gain.
- B. ~~Timbercorp Securities sub-leases from Timbercorp the Solara Estate and the Citrus Trees, the Required Water Licences and the Capital Works and any other capital works that may be established on the Solara Estate under the Existing Orchard Sub-Lease. Timbercorp's rights to use the Solara Estate and the Citrus Trees, the Required Water~~

Licences and the Capital Works are granted to it by the Land Owner under the Existing Orchard Parent Lease.

- C. Timbercorp Securities has agreed to grant a licence to the Participant Grower to use the Existing Citruslots for the cultivation of Citrus Trees and the harvesting and processing of Citrus, subject to the terms and conditions of this Agreement.
- D. The Land Owner and Timbercorp have entered into this Agreement for the purpose of the agreements in paragraph 10.6.
- E. Contemporaneous with execution of this Agreement, the parties will enter into the New Orchard Licence Agreement in respect of the relevant New Citruslots.

## The Parties Agree as Follows:

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

In this Agreement, unless the context otherwise requires or implies, the following expressions have the meanings set opposite each of them:

<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, which has authority or jurisdiction over the Capital Works, the Required Water Licences or 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 are 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>	(a) the infrastructure and capital works on the Existing Orchard as at the date of this Agreement; and (b) the infrastructure and capital works that Timbercorp Securities has agreed to procure the Land Owner to carry out, and any other works that Timbercorp Securities, Timbercorp or the Land Owner may be required in future to carry out, at their cost respectively, on the Existing Orchard;
<b>Citrus:</b>	the citrus grown or growing on the Existing Citruslots of the Participant Grower or the Existing Orchard, whichever is applicable, and whether harvested or unharvested, and any other products, rights, benefits or credits derived from the Citrus Trees;
<b>Citrus Trees:</b>	the citrus trees planted or to be planted on the Participant Grower's Existing Citruslots or the Existing Orchard, whichever is applicable;
<b>Citruslot:</b>	an interest in the Project held by a Participant Grower, including

	an interest in, and rights in relation to, each coupled Existing Citruslot and New Citruslot (being approximately 0.25 hectares of the Orchard) on which a Participant Grower will conduct the Citruslot Operations and which includes the Citrus Trees, the Capital Works and the Required Water Licences attributed to the Project;
<b>Citruslot Management Agreement:</b>	the agreement of that name for the management of the Citruslot Operations conducted on the relevant Existing Citruslots and the operations conducted on the relevant New Citruslots between Timbercorp Securities and the Participant Grower;
<b>Citruslot Operations:</b>	the growing and cultivation of Citrus on, and management of, the relevant Existing Citruslots for the production of Product for commercial gain;
<b>Commencement Date:</b>	in respect of each Participant Grower, the date of this Agreement;
<b>Constitution:</b>	the deed entered into by the Responsible Entity and all the Participant Growers, which governs the Project;
<b>Controller:</b>	has the meaning given to it in section 9 of the Corporations Act;
<b>Corporations Act:</b>	the Corporations Act 2001 of the Commonwealth of Australia;
<b>CPI:</b>	the "Weighted Average of Eight Capital Cities All Groups Consumer Price Index" as currently maintained and published by the Australian Bureau of Statistics or should it be discontinued or suspended such other index as determined in accordance with clause 7.3;
<b>Existing Citruslot:</b>	each separate and identifiable area of the Existing Orchard, which in aggregate comprises approximately 0.15 hectares consisting of 14 young Citrus Trees, 16 intermediate Citrus Trees and 37 mature Citrus Trees (each individually numbered and separately identifiable) and the area of land immediately surrounding the Citrus Trees;
<b>Existing Orchard:</b>	all of the Existing Citruslots established on the Solara Estate, comprising approximately 309 hectares;
<b>Existing Orchard Licence Agreement:</b>	this Agreement;
<b>Existing Orchard Parent Lease:</b>	the deed of lease (as amended) made between Timbercorp, as lessee, the Land Owner, as lessor, and Timbercorp Securities whereby Timbercorp has been, or will be, granted a lease of the Existing Orchard;
<b>Existing Orchard Proportion:</b>	the proportion (expressed as a percentage) which the plantable area of the Existing Orchard bears to the plantable area of whole of the Orchard, as at the date of this Agreement;
<b>Existing Orchard Sub-Lease:</b>	the deed (as amended) made or to be made between Timbercorp Securities, as sub-lessee, Timbercorp, as sub-lessor, and the Land Owner whereby Timbercorp Securities has been, or will be granted a sub-lease of the Solara Estate;

<b>Financial Year:</b>	a period of 12 months ending on 30 June in any year and includes the period commencing on the date of this Agreement and ending on 30 June 2005 and the period ending on the termination of this Agreement and commencing on the preceding 1 July;
<b>Force Majeure:</b>	<p>any event or circumstance not reasonably within the control of Timbercorp Securities or the Land Owner, as the case requires, or which Timbercorp Securities or the Land Owner, as the case requires, is not reasonably able to prevent. It includes:</p> <ul style="list-style-type: none"> <li>(a) pestilence, vermin, disease, fire, acts of God, landslide, earthquake, flood, washout, lightning, storm, drought, seasonal and climatic conditions and the elements;</li> <li>(b) strikes, lock-outs, bans, work limitations, boycotts and industrial disturbances or action;</li> <li>(c) act of the enemies, wars, blockades, insurrection, riots and civil disturbances;</li> <li>(d) orders of any court or the order, act or omission or failure to act of any government or governmental authority or instrumentality (including any failure to grant or any withdrawal of any licences, consent or authority);</li> <li>(e) epidemic or quarantine;</li> <li>(f) shortage or unavailability of equipment, materials or labour or any restriction on equipment, materials or labour or on the use of equipment, materials or labour;</li> <li>(g) delays in transportation or communication; and</li> <li>(h) breakage or breakdown of, or damage to, equipment or machinery, or the necessity to repair equipment or machinery to prevent its breakdown.</li> </ul> <p>Each of these paragraphs and each of the terms within each paragraph are to be construed separately and independently. None of them is to limit the generality of any other;</p>
<b>GST:</b>	a tax, levy, duty, charge or deduction, together with any related additional tax, interest, penalty, fine or other charge, imposed by or under a GST Law;
<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 <b>Adjustment Date</b>) 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>CPI_t</math> = the highest CPI for a full calendar quarter published between the date <math>CPI_0</math> is published and the Adjustment Date, including <math>CPI_0</math>;</p> <p><math>CPI_0</math> = the CPI for a full calendar quarter most recently published before the date from which the adjustment is being made (<b>the Base Date</b>), provided that if no Base Date is specified, "<math>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>Kangara Undeveloped Land:</b>	those parts of the undeveloped land located on the Kangara estate near Renmark, South Australia, more particularly described in Allotment 9/FP 106444 on Certificate of Title 5171/43 on which the New Orchard will be established on or about 31 December 2005;
<b>Land Owner:</b>	OIM #2, and its permitted assigns and successors.
<b>Licence Fees:</b>	the Licence fees payable under clause 7 of this Agreement;
<b>New Citruslot:</b>	each separate identifiable area of the New Orchard comprising approximately 0.10 hectares established or to be established by OIML 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 approximately 200 hectares;
<b>New Orchard Licence Agreement:</b>	the licence agreement in respect of the relevant New Citruslots between Timbercorp Securities, the Participant Grower, Timbercorp and OIML;
<b>OIM #2:</b>	OIM #2 Pty Ltd (ACN 112 691 997) as trustee for the Timbercorp Orchard Trust #2, of Level 6, 505 St Kilda Road, Melbourne, Victoria;
<b>OIML:</b>	Orchard Investments Management Limited (ACN 105 684 231) as responsible entity for the Timbercorp Orchard Trust (ARSN 106 557 297), of Level 6, 505 St Kilda Road, Melbourne, Victoria;
<b>Orchard:</b>	all of the Existing Citruslots and the New Citruslots;
<b>Participant Grower:</b>	<p>(a) a several person (or if more than one person, those persons jointly) who is named or otherwise described in the Schedule; and</p> <p>(b) the term "Early Grower" refers to a Participant Grower whose application under the PDS is accepted on or before 15 June 2005; and</p> <p>(c) the term "Post 30 June Grower" refers to a Participant Grower whose application under the PDS is accepted on or after 1 July 2005 until 30 September 2005;</p>
<b>Participating</b>	has the same meaning as in the Citruslot Management

<b>Interest:</b>	Agreement;
<b>PDS:</b>	the product disclosure statement (as defined in section 761 of the Corporations Act) in relation to the Project;
<b>Proceeds:</b>	has the meaning given in the Citruslot Management Agreement;
<b>Product:</b>	Citrus produced in a saleable condition from the relevant Participant Grower's Existing Citruslots or the Existing Orchard, whichever is applicable;
<b>Project:</b>	the 2005 Timbercorp Citrus Project promoted by Timbercorp Securities, and which includes the management of a Citrus Orchard, the cultivation and harvesting of Citrus Trees and the processing of Citrus for commercial gain;
<b>Required Water Licences:</b>	<p>(a) the water licences that are, or will be, licensed to Timbercorp Securities and that are attributed to the Solora Estate as required from time to time; and</p> <p>(b) that provide for a maximum licence entitlement specified in paragraph 3.2(a), 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;</p>
<b>Responsible Entity</b>	the responsible entity of the Project;
<b>Solora Estate:</b>	those parts of the land located at Bookpurnong near Renmark, South Australia, more particularly described in Certificate of Title Register Book Volume 5278 Folio 11, Volume 5278 Folio 12, Volume 5471 Folio 442, and Volume 5519 Folio 293 on which the Existing Orchard is located;
<b>Term:</b>	the term of this Agreement set out in clause 4.1; and
<b>Timbercorp:</b>	Timbercorp Limited (ACN 055 185 067).

## 1.2 Interpretation

In this Agreement, 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 Agreement;
  - (i) if a party comprises two or more persons, this Agreement binds them jointly and each of them severally unless a contrary intention is expressed in the Agreement;
  - (j) if any of the persons comprising the Participant Grower is a trustee, this Agreement binds that person in its capacity as a trustee and personally; and
  - (k) the word "**include**" or "**includes**" is to be read as if the expression "**(but is not limited to)**" immediately followed such word and the word "**including**" is to be read as if the expression "**(but not limited to)**" immediately followed such word.

### 1.3 Headings

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

### 1.4 Grower and Agreement

- (a) The term "**Participant Grower**" in this Agreement is a reference to the particular Participant Grower named in the Schedule to this Agreement in relation to the relevant Existing Citruslot.
- (b) The term "**Participant Growers**" in this Agreement is a reference to all several Participant Growers that hold Citruslots in the Project and according to the context, the term "**Participant Growers**" may also include the particular Participant Grower.
- (c) This Agreement is entered into in respect of Participant Growers' Existing Citruslots referred to in the Schedule and, must be read as if it were a separate Agreement on the terms and conditions of this Agreement in respect of the relevant Existing Citruslots held by each Participant Grower in the Project.

### 1.5 Delegation

Timbercorp Securities is entitled to:

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

its employees, agents and contractors, but any delegation by Timbercorp Securities does not release Timbercorp Securities from liability under this Agreement.

### 1.6 Licence Agreement is not Project Property

This Agreement does not form part of "scheme property", as defined in section 9 of the Corporations Act.

### 1.7 Capacity of Timbercorp Securities

Timbercorp Securities enters into this Agreement in its personal capacity.

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## 2. THE CITRUS ORCHARD

### 2.1 Warranty by Timbercorp Securities as to the Existing Citruslots

Timbercorp Securities warrants and represents to the Participant Grower that, to its knowledge, the Existing Citruslots on the Existing Orchard have been established in accordance with Best Horticultural Practice and that the necessary infrastructure and other capital works have been constructed and carried out, and without limiting the generality of this clause 2.1, it is satisfied:

- (a) that part of Solara Estate 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 all Solara Estate on which Existing Citruslots are located;
- (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 Practice so that the Trees can be harvested commercially; and
- (f) such other capital works, services or things which, in the reasonable opinion of Timbercorp Securities, were incidental or ancillary to the effective establishment and provision of the works referred to in paragraphs (a) to (e) above, have been provided or undertaken, as the case requires.

### 2.2 Acknowledgments by the Participant Grower

- (a) The Participant Grower acknowledges that the Capital Works and Citrus Trees on, and the Required Water Licences attaching to, the Participant Growers' Existing Citruslots are, and will at all times remain, the property of the Land Owner.
- (b) The Participant Grower agrees and acknowledges that Timbercorp Securities will not be liable for any loss or damage incurred by the Participant Grower arising out of or in connection with any act or omission of the Land Owner or Timbercorp or their respective officers, directors, employees, agents, or agents under this Agreement, whether or not constituting negligence, misconduct, dishonesty or fraud.

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## 3. LICENCES

### 3.1 Grant of Licence

- (a) Timbercorp Securities grants to the Participant Grower and the Participant Grower takes from Timbercorp Securities a licence, effective from the Commencement Date, to use the relevant Existing Citruslots ~~for the sole~~ purpose of conducting the Citruslot Operations. ~~CAVEAT~~
- (b) Timbercorp Securities represents and warrants that:
  - (i) as at the date of this Agreement, the Existing Orchard Sub-Lease is valid and subsisting;

- (ii) Timbercorp Securities is entitled under the Existing Orchard Sub-Lease to grant the licence under this Agreement; and
- (iii) any consents which may be required to the granting of the licence under this Agreement, have been or will be obtained.

### 3.2 Water Licences

- (a) The required water licences for the Existing Orchard are the water requirements specified in the following table:

#### Water requirements for the Existing Orchard

Year	2005/06	2006/07	2007/08 onwards	
Existing orchard – ML/ha	8.8	9.0	9.0	✓ — PERMANENT
Existing orchard – 308.78ha	2,717	2,779	2,779	NOT TEMPY

- (b) Timbercorp Securities must:
  - (i) do all things necessary to ensure that its rights under the Required Water Licences are fully exploited to maximise the use and enjoyment of them by all the Participant Growers in the Project; CAVEAT
  - (ii) take all steps to avoid interfering with the supply of water to the relevant Existing Citruslots and to avoid any actions that would prejudice the Participant Grower's rights under this Agreement; and
  - (iii) ensure that the Required Water Licences are maintained during the Term of the Project.
- (c) The Participant Grower acknowledges that:
  - (i) the Land Owner may purchase additional water licences and provide water to Timbercorp Securities to meet its obligations under the Citruslot Management Agreement, or to Timbercorp under the Existing Orchard Parent Lease; and
  - (ii) such additional water licences will at all times remain the property of the Land Owner.

## 4. TERM OF AGREEMENT

### 4.1 Term of Agreement

- (a) This Agreement will commence on the Commencement Date.
- (b) Subject to clauses 6, 10.1 to 10.3 and clauses 10.5 and 12, this Agreement will continue until the earlier of:
  - (i) the date which is one day before the expiry or termination of the

- Existing Orchard Sub-Lease;
- (ii) termination of the Participating Grower's Participating Interest in the Project;
  - (iii) 29 June 2027; and
  - (iv) termination of the Project.

#### 4.2 Grower's Obligations Upon Termination

- (a) At the end of this Agreement, the Participant Grower must return the relevant Existing Citruslots to Timbercorp Securities in good condition, but the Participant Grower is not required to remove Citrus Trees or restore the relevant Existing Citruslots to their original condition.
- (b) Any structures or plant and equipment of any description that belong to the Participating Grower must be removed from the relevant Existing Citruslots within 30 days after the end of this Agreement. If the Participating Grower does not comply with this requirement then, as between Timbercorp Securities and the Participant Grower, all structures and plant and equipment remaining on the relevant Existing Citruslots at the time will become the absolute property of Timbercorp Securities.
- (c) The Land Owner and Timbercorp have no obligation to pay the Participant Grower any compensation at the end, or on termination, of this Agreement, including for any structures and plant and equipment remaining on the relevant Existing Citruslots that become the absolute property of Timbercorp Securities in accordance with paragraph 4.2(b).
- (d) Timbercorp Securities has no obligation to pay the Participant Grower any compensation at the end, or on termination, of this Agreement, including for any structures and plant and equipment remaining on the relevant Existing Citruslots that become the absolute property of Timbercorp Securities in accordance with paragraph 4.2(b).

## 5. TIMBERCORP SECURITIES' OBLIGATIONS AND RIGHTS

### 5.1 Obligations

Timbercorp Securities must:

- (a) maintain for the Term of the Project all local, State and Commonwealth government approvals, licences or permits required for the establishment and ownership of all the Existing Citruslots;
- (b) allow the Participant Grower to use the Existing Citruslots without any interruption by Timbercorp Securities or any person claiming through or under Timbercorp Securities for the purpose of the Citruslot Operations; GROWER  
PRIORITY
- (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) comply with the provisions of the Existing Orchard Sub-Lease;
- (e) not create any encumbrances over the Solara Estate or the Existing Citruslots or any part of the Solara Estate or the Existing Citruslots ranking in priority to the interests of the Participant Growers under this Agreement other than the agreement referred to in clause 6.1 or where required to do so by an Authority;

- 
- (f) take all necessary measures to ensure that any fires which may occur or be lit on any neighbouring land owned or occupied by Timbercorp Securities are properly controlled and supervised;
  - (g) comply with all laws and regulations relating to the use and occupancy of any neighbouring land occupied by Timbercorp Securities; and
  - (h) duly and punctually pay or cause to be paid all rates, taxes and other charges levied by any government or competent Authority in respect of all Existing Citruslots.

## 5.2 Rights

Timbercorp Securities:

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

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## 6. CONDITIONS PRECEDENT

### 6.1 Conditions Precedent

This Agreement is subject to and conditional on:

- (a) ~~the Participant Grower entering into the Citruslot Management Agreement, with Timbercorp Securities; and~~
- (b) ~~Timbercorp Securities entering into valid and subsisting Existing Orchard Sub-Lease and New Orchard Sub-lease with Timbercorp; and~~
- (c) ~~the contemporaneous execution of the New Orchard Licence Agreement,~~

on or before the Commencement Date.



### 6.2 Reasonable Endeavours

Each of Timbercorp Securities and the Participant Grower will use all reasonable endeavours to ensure that the conditions specified in clause 6.1 are satisfied as soon as is reasonably practicable, and where required will keep each other fully informed as to progress towards satisfaction of the conditions.

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## 7. LICENCE FEES

### 7.1 Licence Fees

- (a) Where the Participant Grower is an **Early Grower**, the Participant Grower must pay to Timbercorp Securities the following licence fees per Citruslot:

- 
- (i) for the period from the Commencement Date until 30 June 2005, nil per annum;
  - (ii) for each of the financial years ending 30 June 2006, 2007 and 2008 \$700 multiplied by the Existing Orchard Proportion, payable on 31 October 2005, 2006 and 2007 respectively;
  - (iii) for each of the financial years ending 30 June 2009 and 2010, \$1,363.64 multiplied by the Existing Orchard Proportion, payable on 31 October 2008 and 2009, respectively;
  - (iv) for the Financial Year ending 30 June 2011, \$1636.36 multiplied by the Existing Orchard Proportion, payable on 31 October 2010; and
  - (v) thereafter, the Participant Grower must pay an annual licence fee calculated in accordance with clause 7.2 on 31 October of each subsequent year during the Term in respect of that Financial Year, commencing on 31 October 2011.
- (b) Where the Participant Grower is a **Post 30 June Grower**, the Participant Grower must pay to Timbercorp Securities the following licence fees per Citruslot:
- (i) for each of the financial years ending 30 June 2006, 2007 and 2008 \$700 multiplied by the Existing Orchard Proportion, payable on 31 October 2005, 2006 and 2007 respectively;
  - (ii) for each of the financial years ending 30 June 2009 and 2010, \$1,363.64 multiplied by the Existing Orchard Proportion, payable on 31 October 2008 and 2009, respectively;
  - (iii) for the financial year ending 30 June 2011, \$1636.36 multiplied by the Existing Orchard Proportion, payable on 31 October 2010; and
  - (iv) thereafter, the Participant Grower must pay an annual licence fee calculated in accordance with clause 7.2 on 31 October of each subsequent year during the Term in respect of that Financial Year, commencing on 31 October 2011.

## **7.2 Adjustments to Licence Fees**

The licence fee payable by the Participant Grower under paragraphs 7.1(a)(v) and 7.1(b)(iv) is the licence fee payable in respect of the previous Financial Year, Indexed, with 1 July being the Base Date and 30 June being the Adjustment Date in each Financial Year.

## **7.3 Discontinuance or suspension of CPI**

- (a) If the Consumer Price Index (All Groups) Weighted Average of Eight Capital Cities is discontinued or suspended, such other index number that most closely reflects changes in the cost of living for the eight capital cities of Australia as is mutually agreed between Timbercorp Securities and the Participant Grower 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 7.3 must be borne equally between Timbercorp Securities and the Participant Grower.



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## 7.4 Capacity

All Licence Fees and other amounts paid to Timbercorp Securities under this Agreement are paid to Timbercorp Securities in its personal capacity.

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## 8. GROWER'S OBLIGATIONS

### 8.1 Permitted use

The Participant Grower must only use the Existing Citruslots solely for the purpose of the Citruslot Operations.

### 8.2 Grower's duties

The Participant Grower must, at its expense:

- (a) undertake the Citruslot Operations on the relevant Existing Citruslots;
- (b) use the relevant Existing Citruslots solely for the purpose of Citruslot ~~CAUTION~~ Operations;
- (c) comply with Best Horticultural Practice;
- (d) comply with all laws and regulations relating to the use and occupancy of the relevant Existing Citruslots;
- (e) take all reasonable steps to avoid interfering with the activities carried out on any neighbouring land by the owner or occupier of that land;
- (f) maintain the relevant Existing Citruslots in accordance with Best Horticultural Practice, including using soil management technique methods to reduce erosion and maintain soil quality;
- (g) permit Timbercorp Securities and its employees, agents and contractors to enter upon the relevant Existing Citruslots from time to time with or without equipment for the purposes of observing the state of the relevant Existing Citruslots;
- (h) permit Timbercorp Securities and its employees, agents and contractors to enter upon the relevant Existing Citruslots from time to time with or without equipment for the purpose of performing its obligations under this Agreement and the Citruslot Management Agreement;
- (i) permit the Land Owner and its employees, agents and contractors to enter upon the relevant Existing Citruslots from time to time with or without equipment for the purpose of performing its obligations under this Agreement;
- (j) comply or procure compliance with the provisions of the Citruslot Management Agreement; and
- (k) give such rights of way and free access to the occupiers of any other Citruslots adjoining the relevant Existing Citruslots and their agents and contractors, as are necessary for their proper use and enjoyment of their Citruslots, but such rights of access are limited to the unimpeded use of any existing access roads, pathways or fire-breaks on or about the relevant Existing Citruslots.

### 8.3 Delegation by the Participant Grower

The Participant Grower may, for the better performance of its obligations under this Agreement, engage any person as an agent and all rights granted and obligations imposed on the Participant Grower under this Agreement may be enjoyed by the Participant Grower's agent.

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#### 8.4 Delegation does not limit Grower's liability

Any delegation by the Participant Grower under clause 8.3 does not release the Participant Grower from liability under this Agreement.

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### 9. RIGHTS OF THE LAND OWNER AND TIMBERCORP

#### 9.1 Rights of the Land Owner

The Participant Grower agrees and acknowledges that 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 Existing Orchard Parent Lease with or without vehicles to the Existing Citruslots along any road or track or any neighbouring land owned or occupied by Timbercorp Securities, the Land Owner, Timbercorp, other Participant Growers or any other person which gives access to the Existing Citruslots;
- (b) is entitled to full and free access with or without vehicles to the relevant Existing Citruslots for the purpose of accessing neighbouring land owned or occupied by Timbercorp Securities, the Land Owner, Timbercorp, other Participant Growers or any other person.

#### 9.2 Rights of Timbercorp

The Participant Grower agrees and acknowledges that Timbercorp:

- (a) is entitled to full and free access for the purposes of carrying out its obligations and exercising its rights under the Existing Orchard Sub-Lease with or without vehicles to the Existing Citruslots along any road or track or any neighbouring land owned or occupied by Timbercorp Securities, the Land Owner, Timbercorp, other Participant Growers or any other person which gives access to the Existing Citruslots;
- (b) is entitled to full and free access with or without vehicles to the relevant Existing Citruslots for the purpose of accessing neighbouring land owned or occupied by Timbercorp Securities, the Land Owner, Timbercorp, other Participant Growers or any other person.

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### 10. TERMINATION OF AGREEMENT

#### 10.1 Termination of Agreement by the Participant Grower

The Participant Grower may ~~terminate this Agreement~~ by notice in writing to Timbercorp Securities immediately, if:

- (a) Timbercorp Securities 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 Timbercorp Securities or any part of its undertaking;
- (b) Timbercorp Securities ceases to carry on business;
- (c) Timbercorp Securities ~~fails or neglects to pay any moneys due to the Participant Grower, or is in default of any material obligation under this Agreement and such default continues for a period of 3 months after receipt by Timbercorp Securities of written notice from the Participant Grower specifying the default and requesting that the default be remedied, except~~ *he doesn't issue invoices*

where Timbercorp Securities has advised the Participant Grower of a plan of remedial action to satisfy any such duty and has substantially completed such plan; or

- (d) the Participant Grower is entitled to terminate the Participant Grower's New Orchard Licence Agreement, other than under clause 10.3 or clause 10.4 of the New Orchard Licence Agreement.

#### 10.1A Deemed termination

This Agreement will terminate with immediate effect if the Participant Grower's New Orchard Licence Agreement is terminated, other than under clause 10.3 or 10.4 of the New Orchard Licence Agreement.

#### 10.2 Termination of Agreement by Timbercorp Securities

- (a) Subject to paragraph 10.2(b) and without prejudice to Timbercorp Securities rights under clause 12, Timbercorp Securities may terminate this Agreement in respect of all the Existing Citruslots of the Participant Grower, with immediate effect, if:
- (i) the Participant Grower ~~falls to make a payment within the time after required~~ under this Agreement in relation to any Existing Citruslot of ~~invoice~~ <sup>the Participant Grower or the Constitution or commits a material</sup> ~~breach of this Agreement in relation to any Existing Citruslot of the Participant Grower or the Constitution and fails to remedy the breach~~ <sup>issued</sup> ~~or make reasonable compensation in money within 30 days after~~ <sup>for no</sup> ~~Timbercorp Securities has served a written notice on the Participant~~ <sup>invoice</sup> ~~Grower requiring the Participant Grower to remedy the breach; or~~ <sup>issued</sup>
- (ii) Timbercorp Securities is entitled to terminate the Participant Grower's New Orchard Licence Agreement.
- (b) The written notice referred to in paragraph 10.2(a) must specify the breach <sup>None</sup> and request the breach to be remedied.
- (c) The Agreement will terminate if Timbercorp Securities exercises its rights under clause 12.

#### 10.3 Damage to Existing Citruslots

If, in respect of the relevant Existing Citruslots:

- (a) the whole or a substantial part of the relevant Existing Citruslots is damaged or destroyed whether by fire or any other cause whatsoever; or
- (b) ~~an independent horticultural consultant jointly commissioned by the Participant Grower and Timbercorp Securities reasonably determines that the whole or a substantial part of the relevant Existing Citruslots is no longer commercially viable,~~ <sup>never done</sup>

the Participant Grower may terminate this Agreement in respect of the relevant Existing Citruslots by giving not less than 4 months' prior written notice of such termination to Timbercorp Securities. Termination under this clause takes effect on and from the 30 June next following the expiration of the period of notice.

#### 10.4 Reduction of Existing Citruslots

If, in respect of the relevant Existing Citruslots:

- (a) part of the relevant Existing Citruslots is damaged or destroyed whether by fire or any other cause whatsoever; or
- (b) an independent horticultural consultant jointly commissioned by the Participant Grower and Timbercorp Securities reasonably determines that part of the

relevant Existing Citruslots is no longer commercially viable,

the Participant Grower may terminate this Agreement in respect of that part of the relevant Existing Citruslots which is damaged or destroyed, by giving not less than 4 months' prior written notice of such termination to Timbercorp Securities. Termination under this clause takes effect on and from the 30 June next following the expiration of the period of notice.

#### 10.5 Effect of Termination

- (a) Termination of this Agreement under clauses 10.1, 10.1A, 10.2 or 10.3 or reduction of the relevant Existing Citruslots under clause 10.4 is without prejudice to any rights and obligations that may have accrued prior to the date of termination.
- (b) Termination of this Agreement in respect of any number of all of the relevant Existing Citruslots or ~~part of the relevant Existing Citruslots under this clause~~ *could be partial* 10 does not affect the rights or obligations of the parties in respect of any other Existing Citruslots or any other part of the reduced relevant Existing Citruslots. *could terminate area of grooves + keep other*
- (c) If this Agreement is terminated under clause 10.2 in relation to all of the Existing Citruslots of the Participant Grower, and the Participant Grower's New Orchard Licence Agreement is terminated under clause 10.2 of that agreement in relation to all of the New Citruslots of the Participant Grower, the Participant Grower loses all rights and interest as a participant in the Project, and the procedures for consequences of default and termination as set out in the Constitution and, if applicable, clause 12 of this Agreement may be followed.
- (d) The termination of this Agreement will terminate the rights and obligations of the parties under this Agreement except to the extent that those rights and obligations are expressed to survive termination.

#### 10.6 Termination of Existing Orchard Sub-Lease

If the Existing Orchard Sub-Lease ~~terminates before it would otherwise have expired by the effluxion of time, then the following provisions apply:~~

- (a) ~~the Land Owner and the Participant Grower agree that this Agreement will continue with all necessary modifications as if the Land Owner were named as the licensor in lieu of Timbercorp Securities from the termination of the Existing Orchard Sub-Lease;~~ *Bypass*
- (b) In the event that the Participant Grower pays Licence Fees to Timbercorp Securities rather than the Land Owner, then Timbercorp Securities must pay to the Land Owner all Licence Fees so paid under this Agreement (on a GST exclusive basis) within 30 days after receiving the Licence Fees from the Participant Grower;
- (c) To the extent that the amount paid to the Land Owner under paragraph (b) and the Existing Orchard Sub-Lease is less than the rent that the Land Owner would have otherwise received from Timbercorp under the Existing Orchard Parent Lease for each anniversary from the commencement date of the Existing Orchard Parent Lease, Timbercorp must pay to the Land Owner the shortfall within 30 days after the Land Owner gives Timbercorp notice in writing requesting such payment to be made; and
- (d) To the extent that at any given time the amount paid by Timbercorp Securities to the Land Owner under paragraph (b) and the Existing Orchard Sub-Lease is more than the rent which the Land Owner would have otherwise received from Timbercorp under the Existing Orchard Parent Lease for each anniversary from

the commencement date of the Existing Orchard Parent Lease at that time, the Land Owner must refund the excess to Timbercorp Securities within 30 days.

#### 10.7 Land Owner's liability

Timbercorp Securities, Timbercorp and the Participant Grower agree and acknowledge that:

- (a) the Land Owner will not be liable for any loss or damage incurred by them arising out of, or in connection with, this Agreement, 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 licensor under this Agreement in accordance with clause 10.6;
- (b) OIM #2 will in no circumstances be required to satisfy any liability owed to any party or to any person claiming through a party for breach of any obligation pursuant to, or in respect of, this Agreement out of any funds, property or assets other than the assets held as the trustee under the Timbercorp Orchard Trust #2 constitution under OIM #2's control and in its possession and available to be properly resorted to by OIM #2, except that the limitation contained in this paragraph (b) does not apply in the case of any fraud or breach of trust on the part of OIM #2.

### 11. EXCUSES FOR NON PERFORMANCE

#### 11.1 Force Majeure

Timbercorp Securities will not have any obligation to observe or comply with the terms of this Agreement to the extent that the observance of, or compliance with, those terms is prevented by Force Majeure.

#### 11.2 Lack or unavailability of funds

Performance or fulfilment of an obligation is not to be taken to be prevented by Force Majeure if it is prevented by lack of funds or by inability to use available funds resulting from Force Majeure.

#### 11.3 Liability

Timbercorp Securities' failure to observe or comply with the terms of this Agreement will not give rise to any liability to any party for any direct or indirect consequential or special loss or damage of any kind to the extent that the failure to observe or comply with those terms is attributable to Force Majeure.

### 12. LICENCE FEES AND EXPENSES

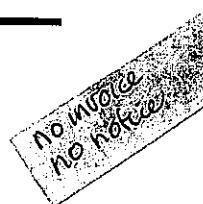
#### 12.1 Failure to Pay

If the Participant Grower fails or neglects to pay:

- (a) the Licence Fees payable under this Agreement; or
- (b) any amount due and payable by the Participant Grower under the Citruslot Management Agreement; or
- (c) any amount due and payable by the Participant Grower under the Constitution in respect of the Citruslots,

by the due date, Timbercorp Securities may, after giving the Participant Grower 30 days' prior written notice, terminate this Agreement under clause 10.2 and exercise

*no invoice & no notice ever given*



either of the remedies set out in clauses 12.2 and 12.3 (in addition to and without prejudice to any other rights of Timbercorp Securities).

#### **12.2 Timbercorp Securities may pay on Behalf of Defaulting Grower**

If the Participant Grower fails or neglects to make payment of any amount under clause 12.1, Timbercorp Securities may pay on behalf of the Participant Grower, from its own funds, any such expense owing by the Participant Grower and Timbercorp Securities will be entitled to be reimbursed out of any Proceeds to which the Participant Grower is entitled, the amount of such payment together with interest at a rate of interest for the time being fixed under section 2 of the Penalty Interest Rates Act 1983 (Victoria), calculated from the date that the payment fell due until Timbercorp Securities has been reimbursed in full.

#### **12.3 Defaulting Participant Grower's Interest may be dealt with under the Constitution**

*Defaulting  
Grower*

If the Participant Grower fails or neglects to make payment of any amount under clause 12.1 then Timbercorp Securities may deal with the interest of the Participant Grower by exercising any of its powers and rights under the Constitution.

### **13. ASSIGNMENT**

#### **13.1 Assignment by Timbercorp Securities**

Subject to clause 13.2, Timbercorp Securities may freely assign any of its rights and interests under this Agreement so long as Timbercorp Securities does not assign its interest in this Agreement in any way without first entering a deed with the person with whom Timbercorp Securities is dealing ("the Grantee"). The deed must contain a covenant by the Grantee in favour of the Participant Grower to observe and perform all or any of the covenants:

- (a) contained or implied in this Agreement, the New Orchard Licence Agreement and the Citruslot Management Agreement; and
- (b) required to be observed or performed by Timbercorp Securities.

#### **13.2 Agreements with Contractors**

Timbercorp Securities may only assign its rights and interests in this Agreement to the Grantee if, at the same time, it assigns to the Grantee all its rights and interests in any contract under which it has delegated some or all of its obligations under this Agreement, and for this purpose, Timbercorp Securities has obtained the written consent to the assignment from the contractor.

#### **13.3 Timbercorp Securities or Grantee to pay for deed**

The cost of any deed required under clause 13.1 must be paid by Timbercorp Securities or the Grantee, but not the Participant Grower. A copy of any deed required under clause 13.1 must be given to the Land Owner within 14 days of its execution.

#### **13.4 Assignment by the Participant Grower**

- (a) Subject to the requirements of the Constitution, the Participant Grower may only assign its rights under this Agreement if the Participant Grower:
  - (i) first obtains a deed of covenant signed by the proposed assignee in favour of Timbercorp Securities and the Responsible Entity stating that the assignee will at all times during the remainder of the Term observe and perform all and any of the terms and conditions of this

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Agreement, the New Orchard Licence Agreement, the Constitution and the Citruslot Management Agreement applying to the Participant Grower's Existing Citruslots being assigned;

- (ii) contemporaneously assigns its rights under the New Orchard Licence Agreement and the Citruslot Management Agreement to the same grantee; and
  - (iii) is not in default of any of its obligations under this Agreement, the New Orchard Licence Agreement, the Constitution and the Citruslot Management Agreement applying to the relevant Existing Citruslots or any other agreement to which the Participant Grower is a party in respect of the Project.
- (b) The proposed assignee is deemed to have entered into a Citruslot Management Agreement, this Agreement and the New Orchard Licence Agreement, with the same terms and conditions as those applying to the Citruslots being assigned to it by the Participant Grower immediately before the date of the assignment, on and from the date of the assignment.

### **13.5 Release of liability of Grower**

Once the Participant Grower has perfected an assignment of its interest in this Agreement in accordance with clause 13.4, the Participant Grower no longer remains liable under this Agreement in respect of any act done or omitted to be done after the assignment is effected in respect of the Existing Citruslots assigned.

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## **14. GOODS AND SERVICES TAX**

- (a) If any supply made by a party ("**Supplier**") to the other ("**Recipient**") under this Agreement 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 Agreement, 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 14(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 Agreement.
- (d) The right of a Supplier to payment under this clause 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 a claim under or in connection with this Agreement, 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 14(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 Agreement, 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

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order is made.

- (g) If a party has a claim under or in connection with this Agreement 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 Agreement 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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## **15. LIMITATION OF LIABILITY OF GROWER**

Subject to clause 12.2, in no circumstances will the Participant Grower be obliged to incur any liability under this Agreement in excess of the annual Licence Fees payable under this Agreement, the fees and expenses payable by the Participant Grower under the Citruslot Management Agreement in relation to the relevant Existing Citruslots and its Participating Interest in the Proceeds.

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## **16. NOTICE**

### **16.1 Form of Notice**

Any notice to be given under or in connection with this Agreement 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.

### **16.2 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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## **17. PROPER LAW**

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

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## 18. AMENDMENTS

- (a) This Agreement may be amended by another document in writing and duly signed by the parties to this Agreement.
- (b) Subject to paragraph 18(c), Timbercorp Securities, may amend the provisions of this Agreement to such extent as may be required to:
  - (i) satisfy the requirements of any statute, ordinance, rule, regulation or by-law which may be passed and which affects the Project;
  - (ii) comply with the effect of any judicial decision; or
  - (iii) enable the provisions of this Agreement, or the Project, to be more conveniently, advantageously, profitably or economically administered or managed.
- (c) Before Timbercorp Securities may amend the Agreement as provided under paragraph 18(b), the Responsible Entity must be reasonably satisfied that the amendment does not adversely affect the rights of all the Participant Growers.
- (d) Subject to the Corporations Act, Timbercorp Securities may make the amendments on behalf of itself and the Responsible Entity, on behalf of the Participant Grower. To give effect to this clause, the Participant Grower appoints the Responsible Entity as its attorney to make amendments to this Agreement.
- (e) If the Responsible Entity cannot be satisfied that it can consent to the amendments in accordance with paragraph 18(c), then amendments may only be made in accordance with paragraph (a).

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## 19. DISPUTE RESOLUTION

### 19.1 Referral by the Participant Grower

- (a) Any dispute or difference whatsoever in connection with this Agreement must be dealt with by the Participant Grower as follows in the event that the dispute or difference is unable to be resolved by Timbercorp Securities to the Participant Grower's satisfaction:
  - (i) if the dispute or difference falls within the rules of the Financial Industry Complaints Service (**FICS**) or Insurance Brokers Disputes Limited (**IBD**), the Participant Grower may refer the dispute or difference to FICS or IBD, for determination in accordance with FICS' or IBD's rules, as the case requires; or
  - (ii) if:
    - (A) the dispute or difference does not fall within the rules of FICS or IBD; or
    - (B) the Participant Grower does not wish to refer the dispute or difference to FICS or IBD in accordance with paragraph 19.1(a)(i),the dispute or difference must be submitted by the Participant Grower to arbitration in accordance with, and subject to, the Institute of Arbitrators and Mediators of Australia Expedited Commercial Arbitration Rules, and to the extent permitted under those rules:
    - (C) the Arbitrator will be a person recommended by the Victorian Chapter of the Institute of Arbitrators and Mediators of Australia; and
    - (D) the arbitration will be conducted in Melbourne, Victoria.

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- (b) The Participant Grower and Timbercorp Securities:
    - (i) subject to any right of appeal contained in the rules of FICS or IBD, agree to accept the determination of FICS, IBD or the arbitrator, as the case requires, in accordance with paragraph 19.1(a) as final and binding; and
    - (ii) submit to the non-exclusive jurisdiction of the Courts in Victoria for the enforcement of any such determination.

## **19.2 Timbercorp Securities**

- (a) Clause 19.1 is for the benefit of Timbercorp Securities only, and it does not prevent Timbercorp Securities from:
  - (i) commencing proceedings against the Participant Grower in any relevant jurisdiction;
  - (ii) submitting any dispute or difference whatsoever with a Participant Grower in connection with this Agreement to arbitration in accordance with, and subject to, the Institute of Arbitrators and Mediators of Australia Expedited Commercial Arbitration Rules, and to the extent permitted under those rules:
    - (A) the Arbitrator will be a person recommended by the Victorian Chapter of the Institute of Arbitrators and Mediators of Australia; and
    - (B) the arbitration will be conducted in Melbourne, Victoria.
- (b) The Participant Grower and Timbercorp Securities:
  - (i) agree to accept the determination of the arbitrator in relation to any dispute or difference referred to arbitration in accordance with paragraph 19.2(a), as final and binding; and
  - (ii) submit to the non-exclusive jurisdiction of the Courts in Victoria for the enforcement of any such determination.
- (c) Timbercorp Securities must ensure that it has an internal complaints handling procedure that conforms where reasonably possible to the procedure set out in clauses 25.2, 25.3 and 25.4 of the Constitution.

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## **20. CONSTITUTION**

The rights and obligations of the parties under this Agreement are subject to the terms and conditions of the Constitution.

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## **21. STATUTORY PROVISIONS**

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

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## **22. INSURANCE**

Each party agrees that it will not do or permit or suffer to be done any act, manner or thing which may prejudice or render void or voidable any insurances in respect of the Existing Citruslots or the Citrus Trees taken out by Timbercorp Securities, the Land Owner, Timbercorp or any Participant Grower or result in the premiums for such insurances being increased.

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## 23. 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 Agreement.

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## 24. SEVERABILITY

If any provision of this Agreement is or becomes void or unenforceable, that provision will be severed from this Agreement to the intent that the remaining provisions of this Agreement will continue in full force and effect.


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## Executed as an Agreement

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

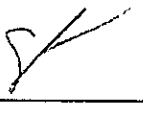
  
\_\_\_\_\_  
Signature Sol Fabinowicz

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

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

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

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

  
\_\_\_\_\_  
Signature Sol Fabinowicz

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


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

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

EXECUTED by TIMBERCORP )  
SECURITIES LIMITED as agent )  
and attorney for and on behalf of )  
each several Participant Grower 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 LTD as )  
trustee for THE TIMBERCORP )  
ORCHARD TRUST #2 in )  
accordance with section 127 of )  
the Corporations Act: )

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


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

  
\_\_\_\_\_  
Signature Michael Emery  
\_\_\_\_\_  
Full Name  
Director/ Secretary

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

---

## **SCHEDULE**

### **Participant Growers' Details**

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

This is the exhibit marked "exhibit CJA-M" 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-M**

**Memorandum of transfer  
Number T9759032**

LANDS TITLES REGISTRATION  
OFFICE  
SOUTH AUSTRALIA

Orig. T 9759032



11:55 31-Dec-2003

2 of 5

Fees: \$168,908.00

MEMORANDUM OF TRANSFER

FORM APPROVED BY THE REGISTRAR GENERAL

BELOW THIS LINE FOR AGENT USE ONLY

CERTIFIED CORRECT FOR THE PURPOSES  
OF THE REAL PROPERTY ACT 1986

Solicitor/Registered Conveyancer/Transferee

Anthony Ludwik Sucha

AGENT CODE

Lodged by: *JWSL*

Correction to: TOWNSENDS 91 HALIFAX STREET ADELAIDE

TOWN

BELOW THIS LINE FOR OFFICE USE ONLY

Date	Time	
FEES		
R.G.O.	POSTAGE	NEW C.T.
168908		

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

*2219*  
CORRECTION

15.1.2004

PASSED

*KS*

REGISTERED

23 MAR 2004

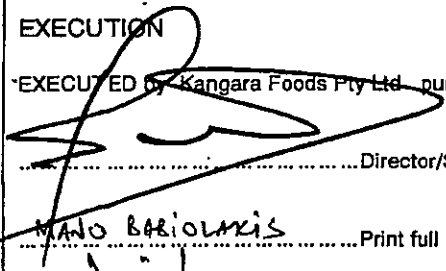
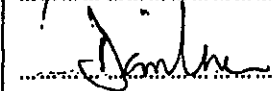
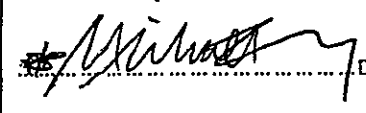
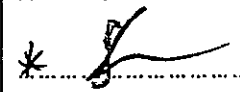
*[Signature]*  
pro



REGISTRAR-GENERAL

1781330  
Form T1

# MEMORANDUM OF TRANSFER

<b>LAND DESCRIPTION</b> The whole of the land comprised in Certificates of Title Register Books Volume 5171 Folio 743, Volume 5097 Folios 564, 565, 566 and 567, Volume 5131 Folio 62 and Volume 5509 Folios 65 and 66	
<b>ESTATE AND INTEREST</b> In fee simple	<b>ENCUMBRANCES</b> Nil
<b>TRANSFEROR (Full Name and Address)</b> Kangara Foods Pty. Ltd. ACN 093 583 049 of Level 4, 691 Burke Road Camberwell Vic 3124	
<b>CONSIDERATION (Words and Figures)</b> Thirty Two Million Five Hundred Thousand Dollars (\$32,500,000.00)	<b>COMMISSIONER OF STATE TAXATION</b> S.A. STAMP DUTY PAID \$1781330.00 ADJUDGED DULY STAMPED ORIGINAL WITH 0 COPIES 29/12/2003 15:56:54 687843.1 The 1613 St Kilda Road CONVEYANCE OF LAND
<b>TRANSFeree (Full Name, Address and Mode of Holding)</b> Orchard Investments Management Limited ACN 105 684 231 of Level 4, 1613 St Kilda Road Melbourne Vic 3000	
<b>THE TRANSFEROR ACKNOWLEDGING RECEIPT OF THE ABOVE CONSIDERATION TRANSFERS TO THE TRANSFeree THE ESTATE AND INTEREST SPECIFIED IN THE LAND ABOVE DESCRIBED SUBJECT TO THE ABOVE ENCUMBRANCES.</b>  DATED <u>23/12/2003</u>	
<b>EXECUTION</b>  EXECUTED by Kangara Foods Pty Ltd pursuant to the Corporations Act by authority of the director(s)   ..... Director/Sole Director and Sole Secretary  MANOLIS BABIOLAKIS ..... Print full name   ..... *Director/Secretary  DAVID GREEN ..... Print full name  (*please delete the inapplicable title) Note: Please affix common seal if required by the Company's Constitution	
<b>EXECUTED by Orchard Investments Management Ltd pursuant to the Corporations Act by authority of the director(s)</b>   ..... Director/Sole Director and Sole Secretary  MICHAEL EMERY ..... Print full name   ..... *Director/Secretary  SOX RABINOWICZ ..... Print full name  (*please delete the inapplicable title) Note: Please affix common seal if required by the Company's Constitution	

\* NB A penalty of up to \$2000 or 6 months imprisonment applies for improper witnessing



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-N" 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-N**

**Memorandum of mortgage**

# MEMORANDUM OF MORTGAGE

## LAND DESCRIPTION

The whole of the land comprised in Certificates of Title Register Books Volume 5171 Folio 743, Volume 5097 Folios 564, 565, 566 and 567, Volume 5131 Folio 62, Volume 5509 Folios 65 and 66.

## ESTATE AND INTEREST

In fee simple

## ENCUMBRANCES

Memorandum of  
lease dated 16 October 2003  
between Orchard Investments  
Management Ltd. and Kangaroo Foods Pty Ltd  
and lodged contemporaneously herewith as  
records of 5171/743, 5097/564-567, 5131/62 & CT's 5509/65 & 66

## MORTGAGOR (Full Name and Address)

Orchard Investments Management Limited ACN 105 684 231 of Level 2, 613 St Kilda Road,  
Melbourne, Vic 3000

COMMISSIONER OF STATE TAXATION

S.A. STAMP DUTY

ADJUDGED DUTY STAMPED

DOCUMENT 1 of 1

## MORTGAGEE (Full Name and Address and Mode of Holding)

Permanent Nominees (Aust.) Limited ACN 000 154 441 of Level 4, 35 Clarence Street, Sydney, NSW 2000

Security to the extent of (value of) (0)

COLLATERAL DOCUMENT

## CONSIDERATION AND TERMS OF REPAYMENT

As security for the Mortgagor's obligations to the Mortgagee under the Debenture Trust Deed, including the debentures with a face value of \$37,553,000 being repaid in full on or before the 15<sup>th</sup> day of December 2010.

M 9759035



11:55 31-Dec-2003

Single Copy Only

5 of 5

Fees: \$94.00

548

Series No.	Prefix
5	M

**BELOW THIS LINE FOR OFFICE USE ONLY**

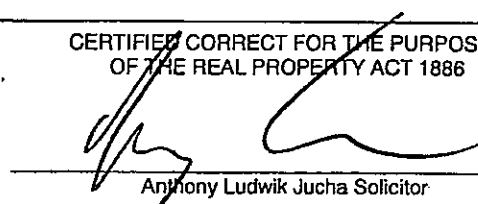
Date	Time	
FEES		
R.G.O.	POSTAGE	NEW C.T.
7.		

LANDS TITLES REGISTRATION  
OFFICE  
SOUTH AUSTRALIA

**MEMORANDUM OF MORTGAGE**

FORM APPROVED BY THE REGISTRAR GENERAL

**BELOW THIS LINE FOR AGENT USE ONLY**

CERTIFIED CORRECT FOR THE PURPOSES OF THE REAL PROPERTY ACT 1886
 Anthony Ludwik Jucha Solicitor

AGENT CODE

Lodged by:

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 2219 15.1.2004	PASSED KS
------------------------------	--------------

REGISTERED 23 MAR 2004  pro  REGISTRAR-GENERAL
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**DELIVERY INSTRUCTIONS** (Agent to complete)  
PLEASE DELIVER THE FOLLOWING ITEM(S) TO THE  
UNDERMENTIONED AGENT(S)

ITEM(S)	AGENT CODE

## COVENANTS

The Mortgagor gives the following mortgage to the Mortgagee as security for the Mortgagor's obligations to the Mortgagee under the Debenture Trust Deed.

## 1. UNDERSTANDING THIS MORTGAGE

### 1.1. Special meanings of some words and expressions

In this Mortgage, the following words and expressions have the following special meanings. (The fact that a word or expression in this Mortgage begins with a capital letter usually means that it has a special meaning which is found in this clause):

**"Building Work"** means any work to construct, complete or alter an improvement on the Land.

**"Citrus Crops"** means the products, rights, benefits or credits derived from the citrus trees on the Citrus Land.

**"Citrus Land"** means the land described in this Mortgage which is used for the cultivation of citrus orchards as at the date of this Mortgage and includes all capital works, trees, Water Licences and improvements, including irrigation works but does not include the Citrus Crops or Other Crops derived from other Projects.

**"Collateral Security"** means any loan agreement or mortgage (other than this Mortgage), guarantee or other security held by the Mortgagee as security for the Secured Money.

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

**"Debenture Holder"** means a holder from time to time of a debenture issued pursuant to the Debenture Trust Deed.

**"Debenture Trust Deed"** means the Timbercorp Orchard Trust Debenture Trust Deed (including schedules) as originally executed by the Mortgagor and the Mortgagee on 17 October 2003, as it may from time to time be amended in accordance with its terms and conditions.

**"Disclosure Document"** means:

- (a) a "disclosure document" as defined in section 9 of the Corporations Act;
- (b) a "product disclosure statement" as defined in section 9 of the Corporations Act;
- (c) any other offer document by which interests in the Projects are offered.

**"Environmental Law"** means any law which has as one of its purposes or effects protection of the environment.

**"Event of Default"** means any one of the events listed in clause 12.1 of the Debenture Trust Deed.

**"Fixed and Floating Charge"** means the fixed and floating charge created under the Debenture Trust Deed and granted by the Mortgagor in favour of the Mortgagee over the assets of the Timbercorp Orchard Trust.

**"GST"** means a tax, levy, duty, charge or deduction, together with any related additional tax, interest, penalty, fine or other charge, imposed by or under a GST Law.

**"GST Law"** means the same as in the A New Tax System (Goods and Services Tax) Act 1999.

**"GST Rate"** means the rate of GST under the GST Law.

**"Insolvent"** means a corporation that is an externally administered corporation within the meaning of the Corporations Act.

**"Land"** means the Citrus Land, Wine Grape Land and Vacant Land described in this Mortgage and includes all capital works, trees, Water Licences and improvements, including irrigation works but does not include the Citrus Crops, Wine Grapes or Other Crops derived from the Projects.

**"Mortgage"** means this mortgage; including this annexure.

**"The Mortgagee"** means Permanent Nominees (Aust.) Limited (ACN 000 154 441) only in its capacity as trustee of the Debenture Holders under the Debenture Trust Deed and any of its successors or assigns.

**"Mortgage of Contractual Rights"** means the mortgage granted by the Mortgagor in favour of the Mortgagee over the lease of approximately 131 hectares of the land described in Lot 4378 Plan 767245 and Lot 1 in Deposited Plan 1046695 in New South Wales and known as "Bella Vista";

**"The Mortgagor"** means Orchard Investments Management Limited (ACN 105 684 231) in its capacity as responsible entity of the Timbercorp Orchard Trust (ARSN 106 557 297) and any of its successors or assigns.

**"NSW Mortgage"** means the mortgage, including the annexures, granted by the Mortgagor to the Mortgagee on or about the date of this Mortgage over the table grape land and adjacent vacant land in New South Wales of which the Mortgagor is, or will be, the registered proprietor.

**"Occupancy Agreement"** means any lease, licence or other occupancy agreement entered into by the Mortgagor in respect of the Land.

**"Officer"** means any person authorised by the Mortgagee to act as its Officer for the purpose of this Mortgage.

**"Other Crops"** means crops, products, rights, benefits or credits derived from horticultural, viticultural, silvicultural or other agricultural activities undertaken on the Land.

**"Projects"** means the Timbercorp Citrus and Wine Grape Projects and such other projects undertaken by the Timbercorp Group of a horticultural, viticultural, silvicultural or other agricultural nature on the Land.

**"Secured Money"** means all moneys (whether present or future, actual or contingent, ascertained or unascertained, as principal or surety) owing by the Mortgagor to the Mortgagee in all its capacities pursuant to the Transaction Documents.

**"Specified Office"** means the registered office of the Mortgagor or such other office advised by the Mortgagor to the Mortgagee from time to time.

**"Timbercorp"** means Timbercorp Limited (ACN 055 185 067).

**"Timbercorp Citrus Projects"** means the citrus projects, interests in which will be offered by Timbercorp Securities or another Timbercorp Group entity under a Disclosure Document.

**"Timbercorp Group"** means Timbercorp and its controlled entities as defined in Accounting Standard AASB1024 "Consolidated Accounts".

**"Timbercorp Wine Grape Projects"** means the wine grape projects, interests in which will be offered by Timbercorp Securities or another Timbercorp Group entity under a Disclosure Document.

**"Timbercorp Orchard Trust"** means the Timbercorp Orchard Trust (ARSN 106 557 297).

**"Timbercorp Orchard Trust Constitution"** means the constitution of the Timbercorp Orchard Trust, as amended from time to time.

**"Timbercorp Securities"** means Timbercorp Securities Limited (ACN 092 311 469).

**"Title Documents"** means all Certificates of Title and other documents regarded as proof of ownership of the Land by the Mortgagor.

**"Transaction Documents"** means:

- (a) the Debenture Trust Deed (including the Fixed and Floating Charge);
- (b) the NSW Mortgage and the Mortgage of Contractual Rights;
- (c) this Mortgage;
- (d) any document which amends, restates or replaces any of the documents referred to in paragraphs (a), (b) and (c); and

(e) any other document which the parties so agree in writing.

**"Vacant Land"** means the land described in this Mortgage which is vacant land as at the date of this Mortgage and includes all capital works, trees, vines, Water Licences and improvements, including irrigation works attributed to the vacant land but does not include Citrus Crops, Wine Grapes or Other Crops derived from the Projects.

**"Water Licences"** means the permanent water licences attributable to all or part of the Land for the purposes of the Projects (whether acquired before or subsequent to the date of this Mortgage).

**"Wine Grapes"** means the products, rights, benefits or credits derived from the grapevines on the Wine Grape Land.

**"Wine Grape Land"** means the land described in this Mortgage which is used for the cultivation of wine grape vineyards as at the date of this Mortgage and includes all capital works, vines, Water Licences and improvements, including irrigation works but does not include the Wine Grapes or Other Crops derived from the Projects.

## **1.2 Understanding this Mortgage generally**

- (a) Words indicating the singular also indicate the plural and vice versa and words indicating any gender also indicate all other genders.
- (b) Headings are for convenience and do not affect the interpretation of this Mortgage.
- (c) A reference in this Mortgage to any thing also means any part of that thing.
- (d) A reference to the Mortgagee includes its successors and assigns and any person to whom the Mortgagee transfers its interest in the Land.
- (e) Where an example is given of something, this does not limit what else might be included.
- (f) Where this Mortgage says that the Mortgagee must not take any action, this means that the Mortgagee must also not enter into any agreement to take that action and it also means that the Mortgagee must not encourage or permit anyone else to take that action.

## **1.3 Where there is more than one Mortgagor**

When there is more than one Mortgagor, each Mortgagor is individually liable for the whole of the Secured Money and for all other obligations under this Mortgage and if any one or more Mortgagor ceases to be liable at any time, the others will continue to be liable.

## **1.4 What if part of Mortgage invalid**

If a part of this Mortgage is or becomes invalid or unenforceable, that part will be read down (interpreted) if possible to make it valid and enforceable, but if this is not possible, the Mortgage will take effect as if it did not include that part.

## **2. LEGISLATION**

### **2.1 References to legislation**

A reference in this Mortgage to any particular legislation is a reference to that legislation and any other regulations or rules made under it and any legislation, regulation or other rule which replaces any of them in force for the time being.

### **2.2 Effect of legislation**

Any part of any legislation having the effect of limiting the Mortgagee's rights or powers, or requiring the Mortgagee to give notices or to take any other action does not apply, unless the Mortgagee is prevented by law from excluding its application. Any part of any legislation that gives rights or protection to the Mortgagee, or imposes obligations on the Mortgagor, will apply except to the extent that it is inconsistent with any part of this Mortgage.

## **3. PAYMENT AND OTHER OBLIGATIONS**

### **3.1 Payment under agreement**

The Mortgagor will pay the Secured Money to the Mortgagee in accordance with Transaction Documents.

### **3.2 Insurance**

The Mortgagor must insure the improvements on the Land, on a replacement and reinstatement basis, but is not required to insure the Citrus Crops, Wine Grapes and Other Crops derived from the Projects. The Mortgagor must also maintain insurance cover for public risk in the sum of ten million dollars. The Mortgagor will be required to produce evidence of the requisite cover to the Mortgagee within 21 days of the end of each financial year of the Mortgagor.

### **3.3 Leases**

The Mortgagor must not, and must not agree or attempt to

- (a) dispose of, assign or transfer, (in whole or in part);
- (b) encumber or grant any interest over; and / or
- (c) amend, terminate, waive or fail to enforce,

any of its material rights and obligations under leases, sub-leases or licences existing over the whole or any part of the Land, without the consent of the Mortgagee which will not unreasonably be withheld, except in accordance with the rights of the Mortgagor under clause 6.8.

### **3.5 Other obligations**

The Mortgagor will perform all of the Mortgagor's obligations under any Collateral Security in force from time to time between the Mortgagor and the Mortgagee.

## **4. WHAT THIS MORTGAGE SECURES**

### **4.1 Secured Money**

This Mortgage is granted to, and may be held by, the Mortgagee as security for due and punctual payment to the Mortgagee of the Secured Money and performance by the Mortgagor of all of the Mortgagor's other obligations under this Mortgage.

## **5. TITLE TO LAND**

### **5.1 Title**

The Mortgagor represents and warrants that to the best of its knowledge:

- (a) except for any separate interests which may be noted on the Certificate of Title for the Land and the Citrus Crops, Wine Grapes or Other Crops derived from the Projects, the Mortgagor is the owner of the interest in the Land as responsible entity of the Timbercorp Orchard Trust which the Mortgagor is mortgaging to the Mortgagee, and nobody else has, or claims, any rights in relation to the Land inconsistent with the rights of the Mortgagor in the Land and the rights of the Mortgagee under this Mortgage, except as disclosed in clause 5.2;
- (b) the Mortgagor has told the Mortgagee about all rights that affect the Land (or are likely to do so) such as rights to compulsorily acquire the Land or any part or parts of it;
- (c) the Mortgagor does not breach any law or any obligation to any other person by signing this Mortgage; and that
- (d) all information the Mortgagor has given to the Mortgagee is correct and is not misleading.

### **5.2 Agreements, Acknowledgements and Consents**

- (a) The Mortgagee acknowledges that the Land does not include the Citrus Crops, Wine Grapes and Other Crops derived from Projects, as they remain the property of:
  - (i) the growers in the Projects;
  - (ii) the responsible entities and managers of the Projects and their nominees;

- (iii) any lessee or licensee of a person specified in paragraph 5.2(a)(ii); or
- (iv) any other person who derives title to the Citrus Crops, Wine Grapes or Other Crops derived from the Projects, through any of the persons described in paragraphs 5.2(a)(i) to (iii).

(b) The Mortgagee acknowledges and agrees that all rights and interests of:

- (i) the responsible entities and managers of the Projects and their nominees;
  - (ii) any lessee or licensee of a person specified in paragraph 5.2(b)(i);
  - (iii) the participants in a Project; and
  - (iv) anyone claiming through the persons specified in paragraphs 5.2(b)(i) to (iii),
- to use the Land under the terms of any Occupancy Agreements, lease, sub-lease, licence and other rights of occupancy granted for the purpose of the Projects, whether those rights exist at the date of this Mortgage, the Debenture Trust Deed or the Fixed and Floating Charge or arise subsequently, have priority over the rights of the Mortgagee and consents to the rights of the persons described in paragraphs 5.2(b)(i) to (iv) having such priority.

(c) The Mortgagee consents to:

- (i) leases, sub-leases, licences and other rights of occupancy granted for the purpose of the Projects, of any Land and Improvements or part thereof to the persons described in paragraphs 5.2(b)(i) to (iv);
  - (ii) Occupancy Agreements granted for the purpose of the Projects,
- whether those Occupancy Agreements, leases, sub-leases, licences and other rights of occupancy exist at the date of this Mortgage, the Debenture Trust Deed or the Fixed and Floating Charge or arise subsequently.

(d) The Mortgagee consents to the Mortgagor as responsible entity of the Timbercorp Orchard Trust:

- (i) entering into Occupancy Agreements with Timbercorp in relation to the Land which will form part of the assets of the Timbercorp Orchard Trust on or about 31 December 2003 on terms and conditions consistent with those set out in the Prospectus;
- (ii) granting a first-ranking mortgage to Kangara Foods Pty Limited (ACN 093 583 049) (**Kangara**) in relation to the Land being purchased from Kangara described in Allotment 9/ FP 106444 on Certificate of Title 5171/743 to secure the payment of the purchase price deferred under the contract of sale in relation to that Land;
- (iii) entering into a 99-year lease agreement with Kangara in relation to approximately 2 hectares of the Land which is part of the Land described in Certificate of Title Register Book Volume 5097 Folio 567,

and agrees and acknowledges that this Mortgage, the Debenture Trust Deed or the Fixed and Floating Charge are granted subject to the rights and interests described in paragraphs 5.2(d)(i) to (iii), whether those rights and interests exist at the date of this Mortgage, the Debenture Trust Deed or the Fixed and Floating Charge or arise subsequently.

(e) The Mortgagee agrees and acknowledges that the Mortgagor must not at any time following the purchase of the Land from Kangara described in Certificate of Title Register Book Volume 5171 Folio 743 and Certificates of Title Volume 5097 Folios 564, 565, 566 and 567, Volume 5131 Folio 62 and Volume 5509 Folios 65 and 66 (**Kangara Property**), sell the Kangara Property to a third party without first offering to Kangara the Kangara Property at the same price and on the same terms and conditions as those upon which Mortgagor proposes to sell the Kangara Property to a third party.



## **6. THE MORTGAGOR'S OBLIGATIONS IN RELATION TO THE LAND**

### **6.1 Maintain the Land**

The Mortgagor must keep the Land in good condition and make sure that any Building Work on the Land is completed properly.

### **6.2 Alterations**

The Mortgagor may at any time and from time to time develop and re-develop the Land as it sees fit, and to create rights in other persons similar to those created in growers in Timbercorp Citrus Projects, Timbercorp Wine Grape Projects and other Projects, which will have priority over the rights of the Mortgagee. The Mortgagee acknowledges that the Citrus Crops, Wine Grapes or Other Crops derived from the Projects may be removed by the Timbercorp Group, any grower in the Projects, any lessee of a company in the Timbercorp Group or any other person who derives title to the Citrus Crops, Wine Grapes or crops derived from other Projects through any of them, as the case may be.

### **6.3 Compliance with laws and government requirements**

- (a) The Mortgagor must comply with all laws and the requirements of all councils and other government bodies in relation to the Land and with the requirements of any Title Documents.
- (b) The Mortgagor must give the Mortgagee a copy of any order or notice from any authority concerning the use or condition of the Land as soon as the Mortgagor becomes aware of it.

### **6.4 Environmental Laws**

- (a) The Mortgagor must promptly remedy any breach of Environmental Laws affecting the Land.
- (b) The Mortgagor must tell the Mortgagee if the Land is contaminated, defective or seriously damaged as soon as the Mortgagor becomes aware of it.

### **6.5 The Mortgagee may inspect the Land**

The Mortgagor will allow the Mortgagee and the Mortgagee's officers to enter the Land on reasonable notice for the purpose of inspecting it.

### **6.6 Compulsory acquisition of the Land**

If the Mortgagor becomes aware that the Land is or may be compulsorily acquired or resumed by any competent authority, the Mortgagor must promptly notify the Mortgagee in writing, and keep the Mortgagee fully informed in writing of all steps taken in relation to such resumption or acquisition. The Mortgagor must promptly comply with any directions that the Mortgagee may give in relation to any such resumption or acquisition, and take all steps reasonably required to ensure that appropriate compensation, if applicable, is paid and that any compensation moneys are paid to the Mortgagee to be dealt with in accordance with this Mortgage. The Mortgagee may conduct any negotiations with the government in relation to such resumption or acquisition.

### **6.7 Rates and taxes**

The Mortgagor must pay, by the due dates for payment, any amounts payable in relation to the Land, including all rates and taxes in relation to the Land.

### **6.8 Dealing with the Land**

- (a) The Mortgagor may encumber the Land as security for the payment of any borrowings, or deal with the Land, as described in clause 5.2, and the Mortgagee consents to such encumbrances and dealings.
- (b) The Mortgagor may encumber the Land as security for the payment of any borrowings, and the Mortgagee consents to such encumbrance provided that:
  - (i) such encumbrance ranks in priority below the Mortgage; and

- (ii) the encumbrance is subject to such terms and conditions that the Mortgagee considers reasonably necessary or desirable to protect the interests of the debenture holders and the Mortgagee under this Mortgage and the Debenture Trust Deed.

- (c) The Mortgagor may subdivide the Land with the Mortgagee's consent, which must not be unreasonably withheld. The Mortgagee consents to the Mortgagor subdividing the Land for the purposes of transferring to the previous owner, the Land on which the Chiquita processing and packing plants and general administration buildings are situated.
- (d) The Mortgagor may, in its absolute discretion, lease, assign or licence the Water Licences to a third party subject to the lease, assignment or licence being for a term of not greater than 12 months and for market value.

#### **6.9 Protection of the Mortgagee's interest in the Land**

- (a) If the Mortgagee asks the Mortgagor to, the Mortgagor will promptly sign all such documents and take all such other steps as may be reasonably required on its part to ensure that the Mortgagee has a proper and enforceable mortgage over the Land, to overcome any problems with this Mortgage or to enable the Mortgagee to better exercise the Mortgagee's rights under this Mortgage. The Mortgagor will make sure that anyone else who claims to have an interest in the Land does the same.
- (b) The Mortgagor must do everything necessary to remove any caveat placed on the title to the Land without the Mortgagee's consent except for caveats placed on the title to the Land by the Timbercorp Group and by growers in the Projects which the Mortgagee agrees may be placed on and may remain on the title to the Land.

#### **6.10 Encroachments**

If the Mortgagee asks, the Mortgagor must have any encroachment on the Land from adjoining land promptly removed. If any part of a structure on the Land encroaches on adjoining land, the Mortgagor must promptly, if the Mortgagee asks:

- (a) correct the encroachment; or
- (b) obtain an easement or other permission acceptable to the Mortgagee to allow it to continue; or
- (c) become the owner of the encroached land and mortgage it to the Mortgagee on terms no less favourable than this Mortgage.

#### **6.11 Rural land**

If any of the Land is used for agricultural or horticulture purposes, the Mortgagor must:

- (a) manage and preserve it properly and efficiently, including by taking reasonable action to keep it free from pests and harmful vegetation; and
- (b) obtain the Mortgagee's consent before doing anything which could cause a licence to be forfeited or cancelled.

### **7. BUILDING WORK**

#### **7.1 If Building Work is carried out on the Land**

- (a) If Building Work is carried out on the Land, the Mortgagor must ensure that it:
  - (i) is done to a reasonable standard;
  - (ii) is completed within a timely manner; and
  - (iii) is done in a good and workmanlike manner and in a way that complies with all appropriate legislation and the requirements of government agencies.
- (b) The Mortgagor must give to the Mortgagee all certificates needed to show that:
  - (i) any Building Work does comply with all these things; and

- (ii) the Land may lawfully be used for its particular purpose.

## **8. DEFAULT**

### **8.1 What amounts to default?**

The Mortgagor will be in default if:

- (a) there is an Event of Default; or
- (b) the Mortgagor does not pay any part of the Secured Money when it is due for payment; or
- (c) the Mortgagor breaches any other provision of this Mortgage; or
- (d) the Mortgagor gives the Mortgagee incorrect or misleading information in connection with this Mortgage; or
- (e) the Mortgagee reasonably believes that the Mortgagor acted fraudulently in connection with this Mortgage; or
- (f) the Mortgagor becomes Insolvent.

### **8.2 The Mortgagee to give notice**

- (a) The Mortgagee must do the following things before the Mortgagee can take any action to enforce this Mortgage:
  - (i) the Mortgagee must give the Mortgagor notice that the Mortgagor is in default, and specify the default;
  - (ii) if the Mortgagee believes on reasonable grounds that the default is not capable of being remedied, the Mortgagee must not begin to enforce this Mortgage until after a period of at least one month from the date of the notice;
  - (iii) if the default is capable of being remedied, the Mortgagee must give a period of one month from the date of the notice to remedy the default and the default must not have been remedied within that period before the Mortgagee can take any action to enforce this Mortgage.
- (b) The Mortgagee may be required by other laws to give notice before exercising some of the Mortgagee's rights under this Mortgage, and may have obligations imposed on the Mortgagee about what the Mortgagee must do when exercising such rights. To the maximum extent allowed by law, those requirements are excluded. However, to the extent that the law does not permit them to be excluded, the Mortgagee must comply with them.

### **8.3 The Mortgagee's rights on default**

Subject to any obligation that the Mortgagee may have to give the Mortgagor prior notice and to any rights of persons described in clause 5.2, including without limitation, Timbercorp, Timbercorp Securities and the growers in the Projects, if the Mortgagor defaults, the Mortgagee may do any of the following things, either in the Mortgagor's name or in the Mortgagee's name:

- (a) exercise any rights set out in this Mortgage;
- (b) exercise any other right that the law gives to a mortgagee in the circumstances;
- (c) take any action in relation to the Land that the Mortgagor could take if the Land were not mortgaged;
- (d) anything that the Mortgagee believes is necessary or desirable for any of these purposes; and
- (e) ask the Mortgagor to pay the Secured Money.

### **8.4 The Mortgagee's right to enter and take possession**

- (a) Subject to any obligation that the Mortgagee may have to give the Mortgagor prior notice and to any rights of persons described in clause 5.2, including without limitation,

Timbercorp, Timbercorp Securities and the growers in the Projects, if the Mortgagor is in default under this Mortgage, the Mortgagee may take possession of all or any part of the Land by physically taking possession of that part or by doing anything else that the law regards as equivalent to actually entering into possession.

- (b) If the Mortgagee does enter into possession of the Land or any part, the Mortgagee can withdraw from possession later.

#### **8.5 The Mortgagee's right to sell**

- (a) Subject to any obligation that the Mortgagee may have to give the Mortgagor notice, if the Mortgagor is in default the Mortgagee can sell all or part of the Land subject to any rights of persons described in clause 5.2, including without limitation, Timbercorp, Timbercorp Securities and the growers in the Projects.
- (b) The Mortgagee has all of the same powers in relation to a sale of the Land that the Mortgagor would have if the Land was not mortgaged, and such powers extend to all arrangements that the Mortgagee considers to be incidental to any such sale.

#### **8.6 Removal of items from Land**

- (a) Subject to any obligation that the Mortgagee may have to give the Mortgagor notice, if the Mortgagor is in default the Mortgagor must remove from the Land anything that is not subject to this Mortgage if the Mortgagee asks the Mortgagor to, except for the Citrus Crops, Wine Grapes or Other Crops derived from the Projects which must remain.
- (b) If the Mortgagor does not remove the things the Mortgagee asked the Mortgagor to remove within 7 days of being asked the Mortgagor will have no further claim to such things, and the Mortgagee may sell them or otherwise dispose of them in any way that the Mortgagee wishes, and retain the proceeds of any sale of such things and apply such proceeds in the same way as any other moneys received under this Mortgage.

#### **8.7 The Mortgagor does not lose rights**

The Mortgagee may exercise any of the Mortgagee's rights under this Mortgage even if the Mortgagee has received money from the Mortgagor after the Mortgagor's default (if such money is not sufficient to remedy the default), or the Mortgagee has negotiated with the Mortgagor after the default but has not agreed to postpone the exercise of the Mortgagee's rights, or the Mortgagee holds any other security in relation to the Secured Money, or any other such circumstances may have arisen.

### **9. MISCELLANEOUS**

#### **9.1 Payments to the Mortgagee**

- (a) The Mortgagor must make all payments due to the Mortgagee without any deduction or withholding for tax.
- (b) The Mortgagor agrees that the Mortgagee will only be taken to have received any payment when the Mortgagee actually receives the amount of the payment in cash or cleared funds.
- (c) The Mortgagee may apply any money that the Mortgagee receives in relation to this Mortgage first to pay the balance of the Secured Money and secondly to pay any money claimed to be owing to the holder of any later mortgage or charge which is apparently recorded on the title to the Land in the order of priority appearing on the title. The Mortgagee may only then pay any remaining money to the Mortgagor, or into a bank account in the name of the Mortgagor and in either case will have no further liability in relation to the money. In applying any money towards the Secured Money, the Mortgagee can apply the money to any part of the Secured Money that the Mortgagee chooses. However, if money received represents proceeds of an insurance claim, the Mortgagee must deal with the money in accordance with clause 7.4(d) of the Debenture Trust Deed.

#### **9.2 The Mortgagee may carry out the Mortgagor's obligations**

If the Mortgagor breaches this Mortgage, the Mortgagee may rectify that breach and the Mortgagor must reimburse the expenses incurred by the Mortgagee in rectifying that breach.

### **9.3 Government charges**

The Mortgagor must pay all government charges including stamp duty, financial institutions duty and debits tax and other taxes and duties on this Mortgage and payments and receipts under it.

### **9.4 Exercise of the Mortgagee's rights**

The Mortgagee can do anything under this Mortgage immediately, or after a time, or on more than one occasion. The fact that the Mortgagee does not do something does not mean that the Mortgagee has given up the right to do that thing later.

### **9.5 Power of Attorney**

- (a) The Mortgagor appoints the Mortgagee and each Officer (on the basis that any one can act without the others) when the Mortgagor has defaulted as the Mortgagor's attorney with power to execute any deed, sign any document and do any other thing that the attorney believes on reasonable grounds is necessary or desirable to make sure that this Mortgage is as effective as possible, to do anything that the Mortgagor can do or ought to have done under this Mortgage and to represent the Mortgagor at any meeting involving the Land.
- (b) If requested to do so the Mortgagor will confirm in writing that anything done by the attorney is binding on the Mortgagor.

### **9.6 Who can exercise the Mortgagee's rights?**

The Mortgagee's rights and powers under this Mortgage may be exercised by any Officer.

### **9.7 The Mortgagee may certify matters**

The Mortgagee may make a written statement about any matter in relation to this Mortgage, for example the amount of the Secured Money at any particular time, debits, credits and balances of any of any accounts at any particular date, relevant rates of interest and whether or not any particular thing has happened. The matters stated in any such certificate will be regarded as correct unless the Mortgagor proves them to be incorrect.

### **9.8 The Mortgagee to hold Title Documents**

- (a) The Mortgagor must cause and permit the Title Documents to be delivered to the Mortgagee.
- (b) The Mortgagee may have possession and control of those Title Documents until the Mortgagee is obliged to discharge this Mortgage.
- (c) The rights of the Mortgagee under this clause 9.8 are subject to any requirement under the Corporations Act or imposed by the Australian Securities and Investments Commission for the responsible entity or custodian of the Projects to have possession or custody of any Title Document because it is "scheme property" as that term is defined in section 9 of the Corporations Act.

### **9.9 The Mortgagee may transfer this Mortgage**

The Mortgagee may only transfer this Mortgage and the obligations of the Mortgagor under it if the Mortgagee is retiring or is being replaced as trustee under the terms of the Debenture Trust Deed.

### **9.10 Supply of information to the Mortgagee**

The Mortgagor must keep the Mortgagee informed of all matters which are likely to significantly affect the Land, or its value, or the Mortgagor's ability to carry out the Mortgagor's obligations under this Mortgage. In addition, the Mortgagor will give to the Mortgagee whatever information the Mortgagee requests from time to time in relation to the Land or the Mortgagor's obligations under this Mortgage.

### **9.11 Releases do not affect the Mortgagor's liability to the Mortgagee**

The fact that the Mortgagee may release any other person who may be liable to the Mortgagee in respect of the Secured Money will not affect the Mortgagor's liability to the Mortgagee, and the Mortgagee does not have to obtain the Mortgagor's consent before releasing any such other person. In this clause, release from liability includes any compromise agreement in relation to that liability.

#### **9.12 Void or unenforceable transactions**

If any payment, security or other transaction in favour of the Mortgagee in relation to the Secured Money is subsequently found to be void or unenforceable or is liable to be cancelled then the Mortgagee will have the same rights under this Mortgage as if that transaction had never taken place, and if the Mortgagee has given a discharge of this Mortgage on the basis of that transaction, then that discharge will be treated as having no effect and the Mortgagor will if requested to do so grant a fresh mortgage in favour of the Mortgagee to replace the discharged mortgage.

#### **9.13 Mortgage to remain binding despite changes**

This mortgage is to continue until it is finally discharged by the Mortgagee, and will not be regarded as affected or discharged by matters such as any payments or credits towards the Secured Money, or the receivership, administration, or liquidation of the Mortgagor or (if the Mortgagor has entered into this Mortgage as trustee) the replacement of the Mortgagor as trustee.

#### **9.14 Relationship to other documents**

Unless the Mortgagee agrees in writing to the contrary, nothing that the Mortgagee does in connection with any Collateral Security will affect the Mortgagee's rights under this Mortgage, and nothing that the Mortgagee does under or in connection with this Mortgage will affect the Mortgagee's rights under any Collateral Security.

#### **9.15 No reliance on the Mortgagee**

The Mortgagor agrees that any inspection of the Land carried out by the Mortgagee or on the Mortgagee's behalf and any valuation or other report obtained by the Mortgagee in relation to the Land is made or obtained for the Mortgagee's own purposes and not for the Mortgagor, and that the Mortgagor should therefore not rely on it in any way.

#### **9.16 Set off**

- (a) If the Mortgagor has any money in an account with the Mortgagee, the Mortgagee may use that money to make payments due from the Mortgagor under this Mortgage, but is not obliged to do so.
- (b) Except to the extent that the Mortgagor has a right of set off granted by law which cannot be excluded by agreement, the Mortgagor must pay the Secured Money in full without setting off amounts the Mortgagor believes that the Mortgagee owe to the Mortgagor and without counterclaiming amounts from the Mortgagee.

#### **9.17 The Mortgagor is a responsible entity**

- (a) The Mortgagor and Mortgagee acknowledge that:
  - (i) the Mortgagor has entered into this Agreement in its capacity as responsible entity under the Timbercorp Orchard Trust Constitution; and
  - (ii) the Mortgagor has full, complete and valid authority and power to enter into this Agreement under the terms of the Timbercorp Orchard Trust Constitution.
- (b) The Mortgagor and Mortgagee acknowledge and agree that every agreement and condition in this Mortgage for the benefit of the Mortgagor, benefits the Mortgagor personally and in its capacity as responsible entity under the Timbercorp Orchard Trust Constitution.
- (c) The Mortgagor and Mortgagee agree that the Mortgagor will in no circumstances be required to satisfy any liability owed to the Mortgagee or to any party claiming through the Mortgagee for breach of any obligation pursuant to, or in respect of, this Mortgage.

the Debenture Trust Deed, the NSW Mortgage, the Mortgage of Contractual Rights, the Fixed and Floating Charge and any Collateral Security out of any funds, property or assets other than the assets held as the responsible entity under the Timbercorp Orchard Trust Constitution under the Mortgagor's control and in its possession and available to be properly resorted to by the Mortgagor, except that the limitation contained in this clause 9.17(c) does not apply in the case of any fraud or breach of trust on the part of the Mortgagor.

#### **9.18 The Mortgagee's liability**

- (a) The Mortgagee enters into this Mortgage only in its capacity as trustee for the Debenture Holders and in no other capacity. A liability arising under or in connection with this Mortgage or a Transaction Document is limited to and can be enforced against the Mortgagee only to the extent to which the Mortgagee is actually indemnified for the liability. This limitation of the Mortgagee's liability applies despite any other provision of this Mortgage or any other Transaction Document and extends to all liabilities and obligations of the Mortgagee in any way connected with any representation, warranty, conduct, omission, deed or transaction related to this Mortgage or any other Transaction Document.
- (b) The parties other than the Mortgagee may not sue the Mortgagee personally or seek the appointment of a liquidator, administrator, receiver or similar person to the Mortgagee or prove in any liquidation, administration or arrangement of or affecting the Mortgagee.
- (c) The provisions of this clause 9.18 do not apply to any obligation or liability of the Mortgagee to the extent that it is not satisfied because under the Debenture Trust Deed or by operation of law there is a reduction in the extent of the Mortgagee's indemnification out of the assets subject to the Debenture Trust Deed, as a result of the Mortgagee's failure to show the degree of care and diligence required of a trustee by the Corporations Act.
- (d) No attorney, agent, receiver or receiver and manager appointed in accordance with this Mortgage or any other Transaction Document or otherwise has authority to act on behalf of the Mortgagee in a way which exposes the Mortgagee to any personal liability and no act or omission of any such person, other than a person appointed by the Mortgagee itself, will be considered failure to show the degree of care and diligence required of a trustee by the Corporations Act for the purpose of clause 19.8(c).
- (e) The Mortgagee is not obliged to do or refrain from doing anything under this Mortgage or any other Transaction Document (including incur any liability) unless the Mortgagee's liability is limited in a manner satisfactory to the Mortgagee in its absolute discretion.
- (f) A failure by the Mortgagee to comply with or a breach by the Mortgagee of any of its obligations under any Transaction Document will not be considered to be a failure to show the degree of care and diligence required of a trustee by the Corporations Act if the relevant failure or breach:
  - (i) arose as a result of a breach by a person other than the Mortgagee of a Transaction Document where the performance of the action, the non performance of which gave rise to such breach, is a precondition to the Mortgagee performing the said obligation;
  - (ii) was in accordance with a lawful court order or direction or otherwise required by law; or
  - (iii) was in accordance with an instruction or direction of the Debenture Holders given at a meeting of Debenture Holders duly convened and held in accordance with the Debenture Trust Deed or the written consent or authority of Debenture Holders given in accordance with the Debenture Trust Deed.
- (g) All of the terms, clauses and conditions of this Mortgage and any other Transaction

Document are subject to this clause 19.8.

## **10. NOTICES GIVEN BY THE MORTGAGEE TO THE MORTGAGOR**

### **10.1 How to give notices**

The Mortgagee may give any notice to the Mortgagor in respect of this Mortgage in writing by:

- (a) leaving it at the Mortgagor's Specified Office with one of the Mortgagor's officers; or by
- (b) sending it by post, facsimile or similar facility to the Mortgagor's Specified Office.

### **10.2 When are notices given**

A notice to the Mortgagor in respect of this Mortgage is taken to be given:

- (a) if given personally, on the date on the notice or the date it is received by the Mortgagor, whichever is the later;
- (b) if sent by post, on the date on the notice or on the date it would have been delivered in the ordinary course of post whichever is the later; or
- (c) if sent by facsimile or other electronic means, on the date on the notice or the date the transmitting machine reports that the notice was sent, whichever is the later.

## **11. NOTICES GIVEN BY THE MORTGAGOR TO THE MORTGAGEE**

### **11.1 How to give notices**

The Mortgagor must give the Mortgagee any notice in respect of this Mortgage in writing in one of the following ways:

- (a) by leaving it at the Mortgagee's registered office with one of the Mortgagee's officers; or by
- (b) sending it by post, facsimile or similar facility to the Mortgagee's registered office.

### **11.2 When are notices given**

A notice that the Mortgagor gives the Mortgagee in respect of this Mortgage is taken to be given:

- (a) if given personally, on the date on the notice or the date it is received by the Mortgagor, whichever is the later;
- (b) if sent by post, on the date on the notice or on the date it would have been delivered in the ordinary course of post whichever is the later; or
- (c) if sent by facsimile or other electronic means, on the date on the notice or the date the transmitting machine reports that the notice was sent, whichever is the later.

## **12. DISCHARGE**

When the Mortgagee is satisfied that all the Secured Money has been paid in full, and the Mortgagor has fulfilled all of its obligations under this Mortgage, the Debenture Trust Deed, the NSW Mortgage, the Mortgage of Contractual Rights, the Fixed and Floating Charge and any Collateral Security, the Mortgagee must if requested to do so by the Mortgagor sign such documents as the Mortgagor may reasonably require to discharge this Mortgage. The Mortgagor must pay the Mortgagee's reasonable expenses in relation to such discharge. The provision of the discharge does not, of itself, constitute a release of the Mortgagor's obligations under this Mortgage, the Debenture Trust Deed, the NSW Mortgage, the Mortgage of Contractual Rights, the Fixed and Floating Charge and any Collateral Security.

## **13. INDEMNITIES**

### **13.1 General**

The Mortgagor indemnifies the Mortgagee against any liability, loss, cost or expense:

- (a) caused or contributed to by, or incurred in connection with, any Event of Default; and
- (b) caused or contributed to by, or incurred in connection with, the exercise or attempted exercise of any right by the Mortgagee under this Mortgage;



- (c) incurred in connection with the Land or any Transaction Document.

### 13.2 Receivers and Purchasers

The Mortgagor must indemnify:

- (a) each receiver and their respective representatives and the representatives of the Mortgagee; and
- (b) any purchaser of the Land,

against any liability, loss, cost and expense caused or contributed to by, or incurred in connection with, anything the Mortgagee is indemnified against under clause 13.1 and the Mortgagee holds the benefit of this clause 13.2 upon trust for those persons.

### 13.3 Currency conversion

- (a) If a judgment, order or proof of debt for an amount in connection with any Transaction Document is expressed in a currency other than the currency in which the amount is due under any Transaction Document, then the Mortgagor indemnifies the Mortgagee against:
  - (i) any difference arising from converting the other currency if the rate of exchange used by the Mortgagee for converting currency when it receives a payment in the other currency is less favourable to the Mortgagee than the rate of exchange used for the purpose of the judgment, order or acceptance of proof of debt; and
  - (ii) the costs and expense of conversion.
- (b) The Mortgagor agrees to pay amounts under this indemnity on demand from the Mortgagee.

### 13.4 Independence and Survival

Each indemnity in this document is a continuing obligation, separate and independent from the other obligations of the Mortgagor and survives the termination of this Mortgage.

## 14. THE CUSTODIAN

### 14.1 ~~Custodian acts as agent of the Mortgagor~~

- (a) The Mortgagor has appointed Trust Company of Australia Limited (ABN 59 004 027 749) (TCA) as its agent to hold the assets of the Timbercorp Orchard Trust on behalf of the Mortgagor in accordance with a custody agreement dated 15 October 2003 between TCA and the Mortgagor (the **Custody Agreement**).
- (b) The parties agree that:
  - (i) any reference to TCA in this Mortgage means TCA in its capacity as custodian of assets of the Timbercorp Orchard Trust and as agent for the Mortgagor; and
  - (ii) any act or omission of TCA in respect of this Mortgage in its capacity as agent for the Mortgagor is taken to have been done (or failed to have been done) by the Mortgagor.
- (c) ~~The Mortgagor agrees that it will properly instruct TCA under the Custody Agreement.~~

### 14.2 The Title Documents

- (a) ~~The Mortgagor must cause the Title Documents to be delivered immediately to the Mortgagee upon registration of the Mortgagor as registered proprietor of the Land.~~
- (b) The Mortgagor irrevocably directs the Mortgagee to:
  - (i) deliver to TCA all Title Documents; and
  - (ii) transfer the Land to TCA as agent for the Mortgagor upon request by TCA, upon discharge of this Mortgage.
- (c) ~~The Mortgagee agrees that it will not consent or agree to any dealing in relation to the~~

Land by the Mortgagor, nor make the Title Documents available to the Mortgagor, without first obtaining TCA's written consent.

#### 14.3 The Custodian's liability

- (a) This clause 14 is for the benefit of TCA only in its capacity as custodian of assets of the Timbercorp Orchard Trust and as agent of the Mortgagor, and subject to the terms and conditions of this Mortgage. TCA can only act in accordance with the terms of the Custody Agreement under which it is appointed as the Mortgagor's agent and is not liable under any circumstances to any party under this Mortgage except as expressly provided for under paragraph 14.3(c). This limitation of TCA's liability applies despite any other provision of this Mortgage other than paragraph 14.3(c).
- (b) TCA is not obliged to do or refrain from doing anything under this Mortgage (including, with limitation, incur liability) unless TCA's liability is limited in the same manner as set out in clause 14.3(a).
- (c) Nothing in this clause 14.3 limits the liability of TCA in respect of any loss, cost, damage or expense suffered or incurred by the Mortgagee to the extent that it arises from:
  - (i) any fraud, default or negligence of TCA;
  - (ii) TCA acting or refraining from acting in breach of the Custody Agreement; or
  - (iii) any breach of any warranty or representation contained in the Custody Agreement which is given or deemed to be given by TCA personally in respect of itself.

#### 15. GST

- (a) If any supply made by a party ("**Supplier**") to the other ("**Recipient**") under this Mortgage 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 Sum**") and not the Price for that taxable supply.
- (b) In addition to the GST Exclusive Sum for a taxable supply under this Mortgage, 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 Sum multiplied by the GST Rate.
- (c) Any GST payable under paragraph 15(b) must be 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 Sum is payable by the Recipient under this Mortgage.
- (d) The Supplier must, in respect of a taxable supply made by it under this Mortgage, issue to the Recipient a valid tax invoice in the prescribed form, for the amount of GST referable to that taxable supply, so that the Recipient may obtain an input tax credit for the amount of GST payable on the taxable supply.
- (e) If a payment to satisfy a claim or a right to claim under or in connection with this Mortgage, for example, a claim for damages for breach of contract, gives rise to a liability to pay GST, the payment is the GST Exclusive Sum and an additional amount must be paid to the Supplier in accordance with paragraph 15(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 Mortgage, 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 for, or the right to recover, under or in connection with this Mortgage, a cost or expense on which that party must pay GST, the claim is for the cost or expense plus all GST, except any GST for which that party is entitled to an input tax credit.
- (h) This clause takes precedence over any other term of this Mortgage to the extent of any

inconsistency.

**15. GST**

- (i) If any supply made by a party ("**Supplier**") to the other ("**Recipient**") under this Mortgage 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 Sum**") and not the Price for that taxable supply.
- (j) In addition to the GST Exclusive Sum for a taxable supply under this Mortgage, 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 Sum multiplied by the GST Rate.
- (k) Any GST payable under paragraph 15(b) must be 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 Sum is payable by the Recipient under this Mortgage.
- (l) The Supplier must, in respect of a taxable supply made by it under this Mortgage, issue to the Recipient a valid tax invoice in the prescribed form, for the amount of GST referable to that taxable supply, so that the Recipient may obtain an input tax credit for the amount of GST payable on the taxable supply.
- (m) If a payment to satisfy a claim or a right to claim under or in connection with this Mortgage, for example, a claim for damages for breach of contract, gives rise to a liability to pay GST, the payment is the GST Exclusive Sum and an additional amount must be paid to the Supplier in accordance with paragraph 15(b).
- (n) If a decision making body orders that a payment be made to a party to satisfy a claim under or in connection with this Mortgage, 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.
- (o) If a party has a claim for, or the right to recover, under or in connection with this Mortgage, a cost or expense on which that party must pay GST, the claim is for the cost or expense plus all GST, except any GST for which that party is entitled to an input tax credit.
- (p) This clause takes precedence over any other term of this Mortgage to the extent of any inconsistency.

For the consideration expressed herein and for the better securing to the Mortgagee the payment of the monies hereby secured the MORTGAGOR MORTGAGES TO THE MORTGAGEE the estate and interest herein specified in the land above described, subject to the encumbrances and other interests set out above and to be held by the mortgagee in the mode specified herein and COVENANTS WITH THE MORTGAGEE in accordance with the terms and conditions expressed <sup>(a)</sup> herein / in Memorandum No. \_\_\_\_\_ subject to such exclusions and amendments specified herein


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

DATED..... 15 December 2003 .....


# EXECUTION

EXECUTED by Orchard Investments Management Limited ACN 105 684 231

In accordance with the Corporation Act 2001

 ..... 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

006

PERMANENT NOMINEES (AUST.) LIMITED ACN 000 154 441	
by its Attorneys who state that they have no notice of revocation of the Power of Attorney dated 2nd June 1993, whereby they execute this deed document or instrument. Registered Number: 7517377	
Group A Attorney Signature..... Name.....	Group A Attorney Signature..... Name.....

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

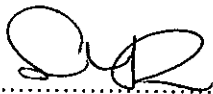
Date of document:  
Filed on behalf of:  
Prepared by:  
Clarendon Lawyers  
Level 17, Rialto North Tower  
525 Collins Street  
MELBOURNE VIC 3000

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-O" 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-O**

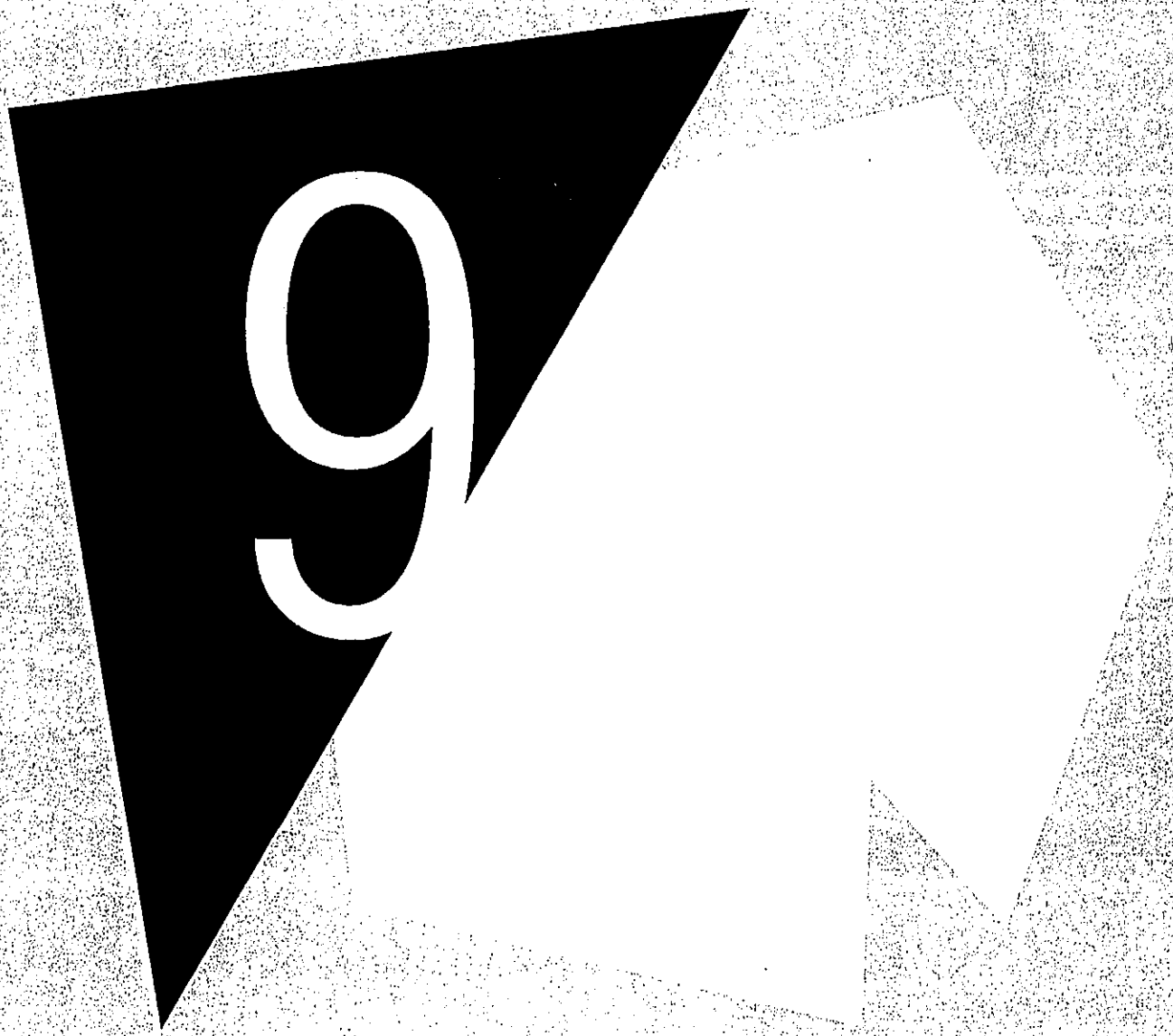
**Timbercorp Orchard Trust  
Debenture prospectus No. 2**

ADVERTISING: 01203 311111

# ADVENTURE PROSPECTUS

NO. 2

THE ADVENTURE PROSPECTUS IS A FREE PUBLICATION



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ABRAMO Morgans

Austock



ADVERTISING: 01203 311111

## **Important Information**

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This prospectus is dated 5 May 2005 and a copy of this prospectus was lodged with ASIC on that date. Neither ASIC nor the ASX takes responsibility for the contents of this prospectus.

No Debentures will be allotted or issued on the basis of this prospectus later than 13 months after the date of this prospectus.

No person is authorised to give information or to make representations concerning this Issue. Any information or representation concerning this Issue that is not contained in this prospectus should not be relied upon as having been authorised by Orchard Investments Management Limited (ACN 105 684 231) ("OIML") or its Directors.

This prospectus is issued under section 713 of the *Corporations Act 2001 (Cth)* ("**Corporations Act**"). This prospectus is therefore intended to be read in conjunction with publicly available information which OIML has notified to the ASX.

The prospectus does not take into account the investment objectives, financial situation or particular needs of investors. The prospectus does not constitute a recommendation or opinion that an investment in the Debentures is appropriate for you. This document is important and should be read in its entirety. If, after reading this prospectus, you have any questions about the Issue, then you should consult your stockbroker, accountant or other professional adviser without delay.

The Trustee and the Custodian have not authorised or caused the issue of this prospectus. Neither the Trustee or the Custodian, nor any member of the Trust Company Group, makes any representations as to the truth or accuracy of the contents of this prospectus other than references to its name. The Trustee and the Custodian have relied upon OIML for the accuracy of the content of this prospectus. The Trustee and the Custodian do not make any representation regarding, or accept any responsibility for, any statements or omissions in or from any other parts of this prospectus. Neither the Trustee or the Custodian, nor any member of the Trust Company Group, makes any representations as to the performance of the Debenture issue, the maintenance of capital or any particular rate of return.

No person, firm or corporation associated with the issue of this prospectus or the Trustee guarantees, warrants or underwrites the performance of the Debentures, the repayment of principal moneys, or the payment of interest, except where express provision is made in this prospectus.

This prospectus does not constitute an invitation or offer in any jurisdiction in which, or to any person to whom, it would not be lawful to make such an invitation or offer. Any person who comes into possession of this prospectus should observe any restrictions that are applicable to them. The distribution of this prospectus in places outside Australia may be restricted by law and persons who obtain this prospectus should seek advice on and observe those restrictions. Any failure to comply with those restrictions may violate applicable securities laws.

## **Electronic Prospectus**

Orchard Investments Management Limited proposes to make available this prospectus on the website of ABN AMRO Morgans Limited ([www.abnamromorgans.com.au](http://www.abnamromorgans.com.au)). Any person accessing the electronic version of this document for the purpose of subscribing for the Debentures must be an Australian resident and must only access the information from within Australia. Debentures will only be issued under the electronic version of the prospectus on receipt of an Application Form issued together with the electronic version of the prospectus.

## **Glossary**

Certain words and terms used in this prospectus have defined meanings, which appear in the Glossary in section 9.

## Corporate Directory

Responsible Entity	Registry	Contents	Page No.
<b>Orchard Investments Management Limited</b> (ABN 34 105 684 231) Registered Office Level 6, 505 St Kilda Road Melbourne, Victoria 3004	<b>Computershare Investor Services Pty Limited</b> (ABN 48 078 279 277) Yarra Falls 452 Johnston Street Abbotsford, Victoria 3067	Chairman's Letter	2
<b>Directors</b> Trevor Moyle (Chairman) Michael Emery Sol Rabinowicz Richard O'Bryan	<b>Auditor to the Trust</b> <b>Horwath Melbourne</b> (ABN 43 774 280 973) 600 St Kilda Road Melbourne, Victoria 3004	1. Details of the Issue	5
<b>Lead Manager</b> <b>ABN AMRO Morgans Limited</b> AFS Licence No: 235410 (ABN 49 010 669 726) Registered Office Level 29, 123 Eagle Street Brisbane, Queensland 4000 Melbourne Office Level 27, 367 Collins Street Melbourne, Victoria 3000 Internet site: www.abnamromorgans.com.au	<b>Asset Manager</b> <b>Timbercorp Asset Management Pty Limited</b> (ABN 19 105 888 364) Level 8, 461 Bourke Street Melbourne, Victoria 3000	2. About the Trust	11
<b>Co-Manager</b> <b>Austock Limited</b> AFS Licence No: 244410 (ABN 51 053 513 438) Level 1, 350 Collins Street Melbourne, Victoria 3000	<b>Trustee for Debenture Holders</b> <b>Permanent Nominees (Aust) Limited</b> AFS Licence No: 235140 (ACN 000 154 441) Level 3, 151 Rathdowne Street Carlton, Victoria 3053	3. The Raising	18
<b>Co-Manager</b> <b>Shadforths Limited</b> AFS Licence No: 233761 (ABN 77 009 549 697) Level 3, 111 Macquarie Street Hobart, Tasmania 7000	<b>Lawyers to the Responsible Entity</b> <b>Baker &amp; McKenzie</b> Level 39, Rialto Towers 525 Collins Street Melbourne, Victoria 3000	4. Financial Information, Investigating Accountant's Report and Financial Services Guide	24
<b>Investigating Accountants to the Issue</b> <b>Nexia Alexander &amp; Spencer Pty Limited</b> Holder of Investment Advisers AFS Licence No: 247262 (ACN 052 362 348) Level 12A, 440 Collins Street Melbourne, Victoria 3000	<b>Custodian</b> <b>Trust Company of Australia Limited</b> AFS Licence No: 235148 (ABN 59 004 027 749) 151 Rathdowne Street Carlton, Victoria 3053	5. Taxation Implications	36
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5 May 2005

Dear Investor

**Chairman's Letter**

Orchard Investments Management Limited ("OIML"), as responsible entity of the Timbercorp Orchard Trust, is pleased to offer you the opportunity to apply for a new issue of Debentures under this prospectus.

OIML's initial Debenture prospectus opened on 31 October 2003 and closed fully subscribed on 4 December 2003, following which the Debentures were listed (ASX code: TODHA). The first issue raised \$37.553 million with 375,530 fully paid debentures being issued at a face value of \$100.00.

I am pleased to advise that the new issue of Debentures being offered under this prospectus will be issued at the same \$100.00 face value and carry the same interest rate as the initial issue.

A total amount of \$23.9 million in new Debentures is being sought and application will be made to list the Debentures on the ASX.

The new Debentures will pay the same fixed interest rate of 9.0% per annum until 15 December 2008, at which time the interest rate will be reset to the two year bank bill swap rate, plus a margin of 3.5%. The maturity date of all debentures remains 15 December 2010 on which date the face value (\$100.00) of each debenture will be repaid.

A limited priority will be given to existing Debenture holders and, as interest at 9.0% per annum will accrue from the date Application Moneys are received as cleared funds, I urge all intending investors to lodge their Application Form as soon as possible.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Trevor Moyle', with a stylized flourish at the end.

Trevor Moyle  
Chairman

## Summary of the Issue

Issuer	Orchard Investments Management Limited (ABN 34 105 684 231) as responsible entity of the Timbercorp Orchard Trust (ARSN 106 557 297).
Amount to be raised under this prospectus	<p>\$23.9 million in 2 tranches:</p> <ul style="list-style-type: none"> <li>Tranche 1 of the Issue: \$10 million of Debentures (being the minimum subscription for Tranche 1 of the Issue);</li> <li>Tranche 2 of the Issue: \$13.9 million of Debentures (being the minimum subscription for Tranche 2 of the Issue).</li> </ul>
Issue price	\$100.00 per Debenture.
Minimum Investment	\$5,000 and thereafter in multiples of \$1,000.
Interest	9% on the face value of the Debenture, being \$100.00 fixed to 15 December 2008, and thereafter to maturity reset to the Two Year Bank Bill Swap Rate plus 3.5% per annum.
Security	Fixed and floating charge over the Assets of the Orchard Trust and mortgages registered or to be registered over the Land.
Trustee	Permanent Nominees (Aust) Limited.
Term	Expiring on 15 December 2010, at which time the face value of the Debentures, \$100.00 per Debenture, will be repaid.
Ranking	The Debentures issued under this prospectus will rank equally with the Existing Debentures.
Minimum Subscription	<p>Tranche 1 of the Issue requires a minimum subscription of 100,000 Debentures, subscribed for on or before the Closing Date, and the completion of the Tranche 1 Private Raising.</p> <p>Tranche 2 of the Issue requires a minimum subscription of 139,000 Debentures, subscribed for on or before the Closing Date, and the completion of the Tranche 2 Private Raising.</p> <p>If Tranche 2 of the Issue does not proceed, only some of the transactions and developments described in this prospectus will be undertaken, and application moneys in excess of the minimum subscription for Tranche 1 of the Issue will be refunded.</p>

## Indicative Timetable\*

Expected Opening Date	5 May 2005
Priority Allocation Closing Date	5.00 pm AEST on Thursday 19 May 2005
Expected Closing Date	5.00 pm AEST on Tuesday, 31 May 2005 or earlier if fully subscribed before that date
Allotment	6 June 2005
Expected date for quotation of Debentures on the ASX	15 June 2005

\* Please note that these dates are indicative only and are subject to change without notice. The Directors reserve the right to extend the Closing Date or close the Issue early at their discretion without notice.

## **How to apply**

An application for Debentures can only be made by completing and lodging with the Registry, Computershare Investor Services Pty Limited, one of the Application Forms attached to, or accompanying, this prospectus or an electronic copy of this prospectus.

Application Forms must be completed and lodged in accordance with the instructions on the reverse side of the Application Form.

Applications must be for a minimum of 50 Debentures and thereafter in multiples of 10. The Debentures have an issue price of \$100.00 each. The minimum investment is therefore \$5,000 and thereafter in multiples of \$1,000.

Application Forms must be accompanied by a cheque drawn on an Australian bank in Australian currency for an amount of the Debentures for which application is made ("**Application Moneys**").

Cheques should be made payable to "Orchard Investments Management Limited – Debenture Issue" and crossed "not negotiable". Orchard Investments Management Limited will pay any stamp duty payable in respect of the creation and issue of the Debentures.

By completing and returning an Application Form, each Applicant acknowledges having received and read this prospectus in its entirety.

Applicants are encouraged to submit their Application Forms as early as possible as interest will accrue from the date Application Moneys are received as cleared funds following the lodgment of a completed Application Form before the Closing Date.

## **Priority Allocation for Existing Debenture holders**

A priority allocation of up to 30,000 Debentures (\$3 million) will be made available to existing holders of TODHA Debentures until Thursday, 19 May 2005 ("**Priority Allocation Closing Date**") (refer to section 1.4 for further details).

## 1. Details of the Issue

### 1.1 The Issue

The Issue comprises 239,000 Debentures at an issue price of \$100.00 each to raise \$23.9 million before expenses. The terms of the issue of the Debentures are set out below in section 1.3. The Issue is not underwritten.

The Offer under this prospectus is being made in conjunction with a proposed issue of Units in the Orchard Trust to the value of \$7.2 million by OIML under an information memorandum. In conjunction with that raising, Timbercorp Limited ("**Timbercorp**") will also subscribe for additional Units in the Orchard Trust to the value of \$5.9 million. The offer under the information memorandum to "professional" and "wholesale" investors and subscription by Timbercorp is for a total of \$13.1 million ("**Private Raising**").

#### ***Two tranches***

The Issue and the Private Raising will be made in 2 tranches, being:

- the Tranche 1 Raising of \$15 million, comprising \$10 million of Debentures and \$5 million of Units, of which \$2.25 million of Units will be issued to Timbercorp ("**Tranche 1 Raising**"). This is also the minimum subscription for the Tranche 1 Raising;
- the Tranche 2 Raising of \$22 million, comprising \$13.9 million of Debentures and \$8.1 million of Units, of which \$3.65 million of Units will be issued to Timbercorp ("**Tranche 2 Raising**"). This is also the minimum subscription for the Tranche 2 Raising.

No Debentures will be issued under this prospectus unless the minimum subscription for the Tranche 1 Raising is achieved. No Debentures will be issued under the Tranche 2 Raising unless the minimum subscription for the Tranche 2 Raising is achieved.

The Issue and the Private Raising are not underwritten.

#### ***The purpose of the Issue and the Private Raising***

The purpose of the Issue and the Private Raising is to raise funds, after deduction of the expenses of the fundraising, to:

- (a) develop a further 300 hectares of citrus orchard (including the purchase of additional Water Licences) at Kangara Estate on undeveloped land already owned by the Orchard Trust (see section 2.1 for a description of this property), and to upgrade associated irrigation infrastructure;
- (b) acquire 295 hectares of land adjoining the Orchard Trust's existing Bella Vista property and to develop a new table grape vineyard on such land ("**Bella Vista #2**") (including the purchase of additional Water Licences); and
- (c) pay Timbercorp Asset Management Pty Limited ("**TAM**") for irrigation infrastructure improvements made at Bella Vista (see section 2.1 for a description of this property).

The areas to be developed are leased to Timbercorp on long-term leases (refer to sections 2.2, 2.3 and 2.4 for further details).

The Private Raising is due to close on or before the Closing Date of this Offer of Debentures.

The Tranche 1 Raising is independent of the Tranche 2 Raising, and the Tranche 1 Raising will proceed (subject to the minimum subscription for the Tranche 1 Raising being achieved)

even if the minimum subscription for the Tranche 2 Raising is not achieved by the Closing Date. If only the Tranche 1 Raising proceeds, OIML will only undertake the transactions described in paragraphs (a) and (c) above. The contract to purchase Bella #2 ("Bella Vista #2 Contract") is conditional on the Orchard Trust raising \$28 million on or before 31 August 2008. In the event that the Orchard Trust is not able to do so, the Orchard Trust will be entitled to rescind the Bella Vista #2 Contract.

### ***Application for Official Quotation***

Application for Official Quotation with the ASX of the New Debentures will be made within 7 days after the date of this prospectus. If the New Debentures are not admitted to Official Quotation before the expiration of 3 months after the date of issue of this prospectus (or such period as is varied by ASIC), OIML will not issue any New Debentures and will repay all moneys received as soon as practicable, together with interest at 9% per annum up until the date of repayment.

## **1.2 Closing Date**

The Issue will close at 5.00 pm AEST on Tuesday, 31 May 2005, or any earlier or later date the Directors in their absolute discretion determine.

## **1.3 Terms of Issue of the Debentures**

The terms of the Debentures are set out in the table below:

<b>Amount of Issue and Conditions</b>	<p>\$23.9 million in two tranches:</p> <ul style="list-style-type: none"> <li>Tranche 1 of the Issue: \$10 million of Debentures (being the minimum subscription for Tranche 1 of the Issue);</li> <li>Tranche 2 of the Issue: \$13.9 million of Debentures (being the minimum subscription for Tranche 2 of the Issue).</li> </ul> <p>Tranche 1 of the Issue is conditional on the offer of Units in the Orchard Trust to the value of \$2.75 million to wholesale investors being fully subscribed and Timbercorp subscribing for Units in the Orchard Trust to the value of \$2.25 million.</p> <p>Tranche 2 of the Issue is conditional on the offer of additional Units in the Orchard Trust to the value of \$4.45 million to wholesale investors being fully subscribed and Timbercorp subscribing for additional Units in the Orchard Trust to the value of \$3.65 million.</p> <p>(refer to section 3.1.)</p>
<b>Type of security</b>	<p>The Debentures issued under this prospectus will be issued on the same terms and conditions as the Existing Debentures (ASX code TODHA) previously issued by OIML under a prospectus dated 24 October 2003 (subject to the payment of interest for the period to 30 June 2005 being paid to the original subscriber for a TODHB Debenture).</p> <p>The Debentures issued under this prospectus have the same face value of \$100.00, carry the same interest rate, and rank equally, and application will be made to list on the ASX within 7 days after the date of this prospectus as TODHB, and after that date, also as the ASX code TODHA.</p>

<b>Issue Price</b>	<p>The issue price will be \$100.00.</p> <p>The Existing Debentures currently quoted on the ASX were issued at their face value of \$100.00 per debenture and the volume weighted average ASX sale price for the period since 1 January 2005 has been \$102.24.</p>
<b>Timing</b>	<p>Applications for the Debentures under the Priority Allocation will close on 5 pm AEST on Monday, 19 May 2005 or earlier if fully subscribed before that date.</p> <p>Applications for the Debentures will close on 5.00 pm AEST on Tuesday, 31 May 2005 (subject to the right of Directors to extend the Closing Date or close the Issue early).</p>
<b>Interest</b>	<p>The interest rate is fixed at 9% per annum on the face value of \$100.00 until 15 December 2008, and thereafter reset to the Two Year Bank Bill Swap Rate plus 3.5% margin.</p> <p>Interest will accrue on a daily basis from the date Application Moneys are received as cleared funds.</p> <p>The first interest payment date will be for the period to 30 June 2005, with interest paid to the original subscribers no later than 3 Business Days after 30 June 2005.</p> <p>Thereafter interest is paid to Debenture Holders quarterly within 3 Business Days of the end of each quarter in each year during the currency of the Debentures.</p>
<b>Minimum Investment</b>	\$5,000 of Debentures and thereafter in multiples of \$1,000
<b>Maturity</b>	<p>All the Existing Debentures with ASX code TODHA, and the New Debentures issued under this prospectus, mature and will be repaid their face value of \$100.00 on their maturity date of 15 December 2010.</p> <p>There is no right of early repayment, although OIML may redeem Debentures in limited circumstances. For further details on this matter refer to section 7.1.</p>
<b>Trustee</b>	Permanent Nominees (Aust) Limited.
<b>Security</b>	Secured by fixed and floating charge and mortgages registered or to be registered over the Orchard Trust's Assets comprising Land and including all improvements, capital works and Water Licences. See section 2 for details.
<b>Covenants</b>	<p>The Gearing Ratio of the Orchard Trust must not exceed 80%.</p> <p>The Gearing Ratio following the Issue, the Private Raising and the transactions and developments described in this prospectus, based on the pro-forma statement of financial position as at 31 March 2005 (refer to section 4.2), will be 67.38%.</p> <p>The Debenture Gearing Ratio must not exceed 66.667%.</p> <p>The Debenture Gearing Ratio following the Issue, the Private Raising and the transactions and developments described in this prospectus, based on the pro-forma statement of financial position as at 31 March 2005 (refer to section 4.2), will be 61.02%.</p>

## **1.4 Applications**

OIML has the discretion to accept or reject any application.

### ***How will the allocation of Debentures be determined?***

If there is demand for Debentures above the minimum subscription for Tranche 1 of the Issue (but below the Tranche 2 of the Issue) or the Tranche 2 of the Issue, OIML, in consultation with the Lead Manager, will consider scaling back applications. This means that Applicants may be allocated fewer Debentures than they apply for and possibly no Debentures will be allocated to them.

Allocation of the Debentures will also be subject to the Priority Allocation.

### ***The Priority Allocation***

Existing Debenture holders, with an Australian address, on the register as at 5.00pm AEST on Wednesday, 4 May 2005 (the record date for the Priority Allocation), will be eligible to participate in a priority offering of New Debentures. These Debenture holders will be notified in writing. To take advantage of the priority offer, these Debenture holders will need to contact OIML on (03) 8615 1231 to receive a copy of the prospectus, and to pay the application amount and complete and return the Application Form that will be sent to them with the prospectus by the Priority Allocation Closing Date.

In the event that Existing Debenture holders apply for more than 30,000 Debentures, applications under the Priority Allocation will be scaled back in proportion to the number of Debentures applied for by each Existing Debenture holder.

### ***Will Application Moneys be refunded?***

The allocation of Debentures is at OIML's discretion and it may, in consultation with the Lead Manager, accept or reject any application for Debentures wholly or in part.

If your application is not accepted, or is accepted in part only, then the relevant part of the Application Moneys will be refunded to you within seven days after the Closing Date. If Application Moneys are refunded to you, the Orchard Trust will pay interest to you at the rate of 9% per annum, calculated from the date the Application Moneys are received from you as cleared funds together with a completed Application Form.

If the minimum subscription for the Tranche 1 Raising or the Tranche 2 Raising is not reached, then the relevant part of your Application Moneys will also be refunded to you within seven days after the Closing Date, and the Orchard Trust will pay interest to you at the rate of 9.0% per annum, calculated from the date the Application Moneys are received from you as cleared funds together with a completed Application Form.

## **1.5 About the Debentures**

The Debentures constitute a debt obligation of the Orchard Trust to the Debenture Holder. The obligation to repay this debt is secured by a fixed and floating charge over the Assets of the Orchard Trust and mortgages registered or to be registered over the Land owned by the Orchard Trust. The security is held by the Trustee on behalf of the Debenture Holders. If OIML defaults under its obligations under the Trust Deed, the Trustee may call in the security for the benefit of the Debenture Holders.

Produce from the Land (that is, the Citrus Crop, Table Grape Crop, Wine Grape Crop and Other Crops) does not form part of the security, and the Orchard Trust does not own this produce.

The effect of the proposed issue of the Debentures under this prospectus and the proposed Private Raising on the Orchard Trust is described in section 3 and the Investigating Accountant's Report in section 4.

## **1.6 Market prices**

The last traded price for the Existing Debentures before this prospectus was lodged with ASIC was \$102.00 on 2 May 2005. During the three months prior to that date, the Existing Debentures traded on the ASX within a range of \$103.50 to \$101.00.

## **1.7 Taxation Implications**

Section 5 contains a summary of the Australian taxation implications of becoming a Debenture Holder, and is based on the taxation laws as at the date of this prospectus. Each Debenture Holder's tax position will depend on the Holder's individual circumstances. You should seek, and rely on, your own tax advice, as statements in this prospectus are necessarily general in nature.

## **1.8 Investment Risks**

You should read this prospectus in detail and consult your advisors before deciding whether to invest. In addition to the general risks associated with investment in an interest rate linked security, there are certain risks relating to the Orchard Trust, which could affect your investment in the Debentures. You should refer to section 6 for a discussion of these risks.

## **1.9 Continuous Disclosure Obligations**

The Orchard Trust is a "disclosing entity" for the purposes of the Corporations Act. As such, it is subject to regular reporting and disclosure obligations including an obligation under the Listing Rules (subject to permitted exceptions) to disclose to the ASX any information of which it is or becomes aware concerning OIML and which a reasonable person would expect to have a material effect on the price or the value of the Debentures.

This prospectus is a "transaction specific prospectus" and is required to contain information in relation to the effect of the issue of the Debentures on the Orchard Trust and the rights and liabilities attaching to them. It is not necessary to include general information in relation to all of the assets and liabilities, financial position, profits and losses or prospects of the Orchard Trust. Accordingly, information that is already in the public domain as a result of the periodic reporting and continuous disclosure obligations of Orchard Trust has not been included in this prospectus other than those items which are considered necessary to make this prospectus complete.

Copies of documents lodged with ASIC by OIML may be obtained from, or inspected at, an ASIC office.

OIML will provide a copy of each of the following documents, free of charge, to any person on request up to the Closing Date of the Issue (or they can be obtained from the ASX website [www.asx.com.au](http://www.asx.com.au)):

- the prospectus issued by OIML dated 24 October 2003;
- the annual financial report of the Orchard Trust for the financial year ended 30 June 2004 (being the last financial statements for a financial year of Orchard Trust lodged with ASIC);
- any half year financial report in respect of the Orchard Trust lodged with ASIC after the latest annual financial report but before the lodgement of this prospectus with ASIC; and



- any continuous disclosure notices given by OIML in respect of the Orchard Trust after the lodgement of the annual financial report referred to above and before the date of lodgement of the copy of this prospectus with ASIC, details of which are set out below:

<b>Date</b>	<b>Description of Announcement</b>
3 March 2005	Debenture interest payment
29 April 2005	Orchard Trust expansion

If you require any further information in relation to OIML, you should take advantage of the opportunity to inspect or obtain copies of these documents.

#### **1.10 Any Questions?**

If any matter is unclear or you are unsure whether the Debentures are a suitable investment for you, please contact your financial advisor.

If you are unsure as to how to complete the Application Form, contact ABN AMRO Morgans Limited on 1800 658 206.

## 2. About the Trust

### 2.1 Background

The Orchard Trust was established in September 2003 by OIML, the responsible entity. The Orchard Trust raised a total of \$57.663 million in 2003 through the issue of:

- 375,530 Debentures with a face value of \$100.00 to raise \$37.553 million;
- 12.974 million Units in the Orchard Trust at \$1.00 each to raise \$12.974 million; and
- 7.136 million Annuity Bonds at \$1.00 each to raise \$7.136 million.

The Annuity Bonds are unsecured debt obligations of OIML and rank below the Debentures. The trustee for the Annuity Bond holders is Sandhurst Trustees Limited.

Currently there are 46 Unit holders, 43 Annuity Bond holders and 1,499 Debenture holders in the Orchard Trust.

The funds were used by the Orchard Trust to:

- purchase a property called "Costa's Crest" at Euston, New South Wales on which there was an existing table grape vineyard, and to extend the vineyard ("**Costa's Crest**");
- purchase undeveloped land on a property called "Bella Vista" also at Euston, New South Wales, and develop a new 300 acre table grape vineyard on that land ("**Bella Vista**");
- purchase a property called "Kangara Estate" at Murtho in South Australia's Riverland region on which there was an existing citrus orchard and wine grape vineyard ("**Kangara Estate**");
- purchase the land forming part of the Kangara Estate which comprised undeveloped land and 13 hectares of existing wine grape vineyard ("**Kangara Estate Undeveloped Land**");
- acquire additional Water Licences for the above properties;
- pay property acquisition and capital raising costs.

The Custodian, Trust Company of Australia Limited, has been engaged by OIML as its custodian.

The Custodian holds assets as directed by OIML, which are registered in its name on behalf of OIML, and will hold the legal title to the assets on OIML's behalf.

### 2.2 Leases to Timbercorp

The Orchard Trust leases the Land to Timbercorp, which then sub-leases parts of the Land to Timbercorp Securities Limited ("**Timbercorp Securities**") for use in Timbercorp Projects.

~~Under the Timbercorp Projects, Growers pay or will pay licence fees or rent to Timbercorp Securities in each year of the Projects for the use and occupation of lots for which they have subscribed.~~

A summary of the leases in respect of the properties currently owned by the Orchard Trust is contained in section 2.3. A summary of the lease in respect of Bella Vista #2 is contained in sections 2.4 and 7.6.

## 2.3 Summary of leases over existing properties

Property	Lessee	Location	Area under cultivation	Cost (\$) (a)	Annual Rent from 1 January 2005 (b)	Lease Term	Option to renew (by the lessee)	Water Supply	Outgoings
Costa's Crest	Timbercorp Limited	Euston NSW	Table Grape Vineyard (planted 2002 & 2004) – 47 hectares	\$4,658 m	\$0.526 m	Expires on 29 June 2019.	An option to renew the lease for a further term of 6 years.	Fully irrigated. Permanent entitlement to 409.5 megalitres from the Murray River.	Rates, Insurance, Taxes and Charges in relation to the land.
Bella Vista	Timbercorp Limited	Euston NSW	Table Grape Vineyard (planted 2004) – 121 hectares	\$11,959 m	\$1.350m (c)	Expires on 29 June 2019.	An option to renew the lease for a further term of 6 years.	Fully irrigated. Permanent entitlement to 900 megalitres from the Murray River.	Rates, Insurance, Taxes and Charges in relation to the land.
Kangara Estate	Timbercorp Limited	Murtho SA	Citrus orchards (planted 1985-2003) – 355 hectares	\$15,346 m	\$1.732 m (e)	Expires on 30 June 2027.	An option to renew the lease over some or all of Kangara Estate for a further term of 5 years.	Fully irrigated with a sophisticated drip system. Permanent entitlement to 3,187 megalitres from the Murray River.	Rates, Insurance, Taxes and Charges in relation to the land.
Kangara Estate	Timbercorp Limited	Murtho SA	Wine grape vineyards (planted 1997-2000) – 430 hectares	\$20,272 m	\$2,288 m	Expires on 30 June 2027.	An option to renew the lease over some or all of Kangara Estate for a further term of 5 years.	Fully irrigated with a sophisticated drip system. Permanent entitlement to 3,010 megalitres from the Murray River.	Rates, Insurance, Taxes and Charges in relation to the land.
Kangara Estate	Timbercorp Limited	Murtho SA	Undeveloped Land - 510 hectares	\$2,520 m (d)	\$0.127 m (f) (g)	Expires on 30 June 2027.	An option to renew the lease over some or all of Kangara Estate for a further term of 5 years.		Rates, Insurance, Taxes and Charges in relation to the land.

(a) At original purchase cost plus transaction costs and development expenditure.

(b) Adjusted annually on 31 December of each year for movements in the consumer price index.

(c) The rent will be increased by \$0.087 million upon payment of the upgraded irrigation infrastructure at Bella Vista.

(d) The cost in respect of the total Kangara Estate property will increase from \$38.138 million to \$51.604 million following the establishment of the New Citrus Orchard on the undeveloped land.

(e) The rent will be increased by \$0.146 million following the upgrade to the existing Kangara Estate irrigation infrastructure.

(f) The rent is currently reduced by the amount derived from multiplying the unpaid purchase price in relation to the Kangara Estate Undeveloped Land and the existing Wine Grape Vineyard as at the end of each Quarter by a rate agreed by the parties or, failing agreement, at 1% below the 30 day Bank Bill Rate. This reduction will cease after 30 June 2005.

(g) The rent will be increased by \$1.335 million following the establishment of the New Citrus Orchard on the undeveloped land, and the purchase of 2,700 megalitres of permanent water entitlement.

## 2.4 Summary of lease over the Bella Vista #2 property

Property	Lessee	Location	Area under cultivation	Cost (\$)(b)	Annual Rent from date of completion of development (c)	Lease Term	Option to renew (by the lessee)	Water Supply	Outgoings
Bella Vista #2 (a)	Timbercorp Limited	Euston NSW	Table Grape Vineyard – 295 hectares	\$21.620	\$2.378 m	Expiring on 29 June 2020.	An option to renew the lease for a further term of 5 years.	(b)	Rates, Insurance, Taxes and Charges in relation to the land.

(a) This lease will terminate in the event that the Tranche 2 Raising does not proceed, and OIML is unable to otherwise raise the funds to complete the purchase of Bella Vista #2.

(b) At the estimated purchase cost plus transaction costs and development expenditure and the acquisition of 1,800 megalitres of permanent water entitlement.

(c) Will be adjusted annually on 31 December of each year for movements in the consumer price index, commencing on 31 December 2008.

## 2.5 OIML as the responsible entity of the Orchard Trust

### *The Directors of OIML*

Name	Description
Trevor Moyle (Non-executive Chairman)	Mr Moyle is 55 years old, and currently a Non-executive Director and Chairman of Citadel Pooled Development Limited, a registered and ASX listed Pooled Development Fund. He is also a Non-executive Director and Chairman of Clear Objective Pty Ltd and Apogee International Pty Ltd, and an Executive Director of Teralbay Pty Limited, a privately owned corporate finance advisory business. He has extensive expertise in corporate finance advice, corporate governance, capital management, equity capital markets and mergers and acquisitions activity.
Michael Emery (Executive Director and Chief Executive Officer)	Mr Emery is responsible for the general and operational management of OIML. He is also a Director of Emery O'Bryan Pty Limited, a property developer and financier. Mr Emery is 39 years old, and has 15 years experience in property development, of commercial, residential and industrial projects, gained as developer and legal adviser.
Richard O'Bryan (Executive Director)	Mr O'Bryan is responsible for the design and implementation of projects for OIML. He is also a Director of Emery O'Bryan Pty Limited, a property developer and financier. Mr O'Bryan is 41 years old and has substantial expertise in the design, construction and implementation of property developments.
Sol Rabinowicz (Non-Executive Director)	Mr Rabinowicz is 38 years old and an Executive Director of Timbercorp Limited. He oversees Timbercorp's corporate, financial services and marketing functions. He is also the current Chairman of Treefarm Investment Managers Australia (TIMA), the peak industry association of forestry managed investment scheme managers.

### ***Compliance and the Orchard Trust***

OIML is the responsible entity of the Orchard Trust and has a compliance plan, which sets out the methods that OIML will follow to ensure that it is complying with the Corporations Act and the constitution of the Orchard Trust. Horwath Melbourne independently audits the compliance plan.

The compliance committee comprises three members. The role of the compliance committee includes monitoring OIML's compliance with the Orchard Trust's compliance plan and reporting breaches of the Corporations Act and the Orchard Trust's constitution.

As an Australian financial services licensee, OIML has obligations under its licence and the Corporation Act. Those obligations include ensuring that OIML provides its financial services honestly, efficiently and fairly. The Corporations Act also imposes a specific duty on OIML, as an Australian financial services licensee, to manage conflicts of interest. OIML has an internal policy to manage existing and future conflicts of interest.

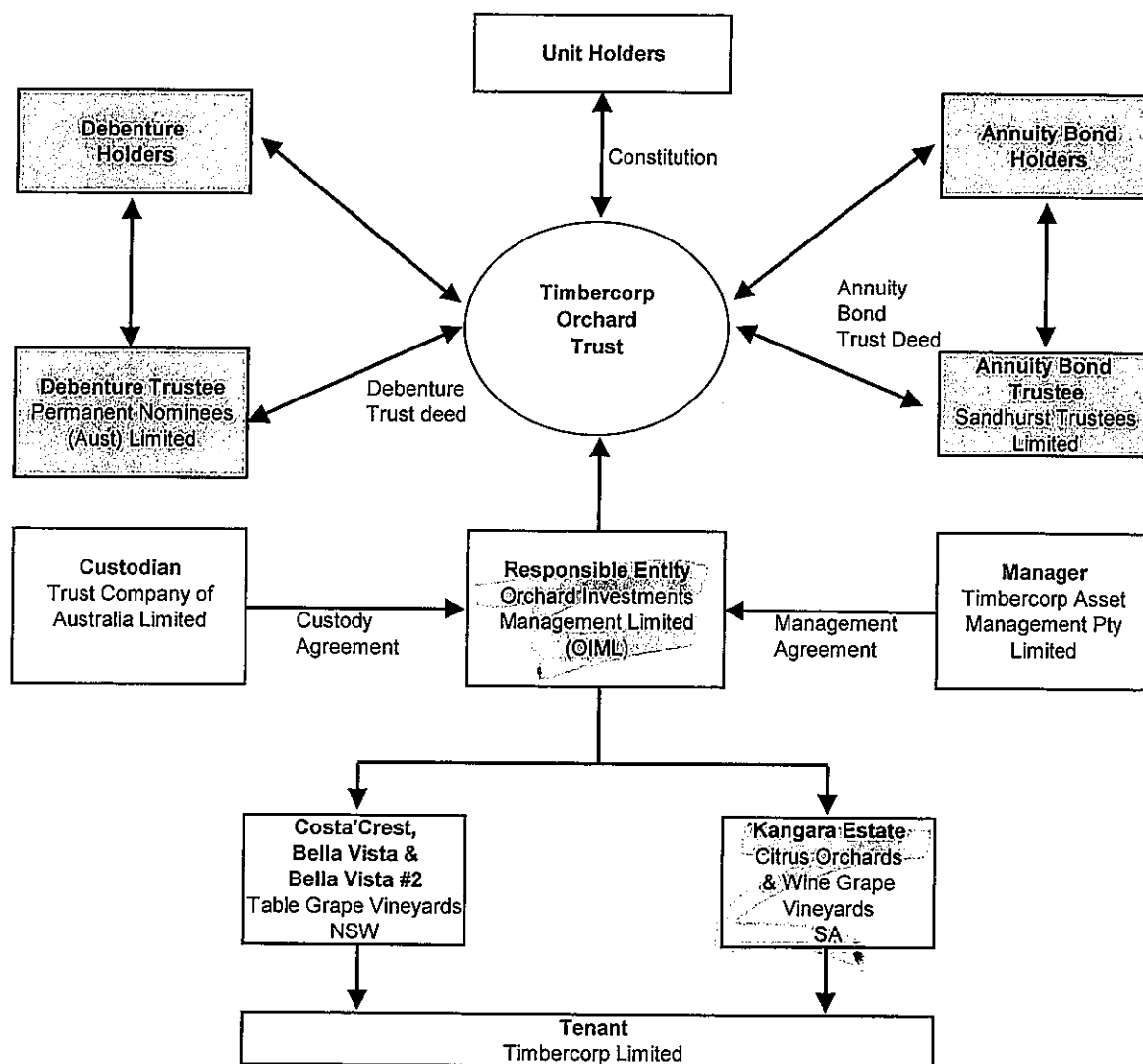
OIML is also required under the Debenture Trust Deed to report periodically to the Debenture Trustee in respect of certain matters, including compliance with the the Debenture Gearing Ratio and the Gearing Ratio.

## 2.6 The Asset Manager

OIML has engaged TAM as the manager of the Orchard Trust's Assets. TAM's role is to undertake improvements to the Orchard Trust's Assets and manage the Assets on a day-to-day basis. This is an essential component of the Orchard Trust's investment activities, and its ability to meet its obligations to Debenture Holders.

TAM is a wholly owned subsidiary of Timbercorp, one of Australia's leading agribusiness investment managers. TAM will draw upon the extensive experience of the Timbercorp Group in establishing and managing large agriculture infrastructure projects, to provide its services to the Orchard Trust. These services are governed by a management agreement.

## 2.7 Structure of the Orchard Trust



## 2.8 Protection of Debenture Holders

The Orchard Trust's obligations to pay interest and repay the principal moneys are secured by a fixed and floating charge over the Orchard Trust's Assets. The Trustee also holds on behalf of Debenture Holders a first ranking mortgage over the Kangara Estate located in South Australia, other than the Kangara Estate Undeveloped Land, and is currently in the process of registering first ranking mortgages over Costa's Crest and Bella Vista in New South Wales.

The Trustee holds a registered second mortgage on behalf of Debenture Holders over the Kangara Estate Undeveloped Land. The registered second mortgage will convert to a registered first mortgage upon the Orchard Trust paying to Chiquita Agribusiness Pty Limited ("**Chiquita Agribusiness**") the final instalment of the purchase price for the Kangara Estate (refer to section 2.11 for further details).

The Trustee on behalf of Debenture Holders will also be granted a first ranking mortgage over Bella Vista #2 in New South Wales upon the Orchard Trust acquiring the property (subject to satisfaction or waiver of the conditions under the Bella Vista #2 Contract).

In the event of the Orchard Trust's liquidation, Debenture Holders will be entitled to receive an amount equal to the face value of their Debentures and the interest accrued over the period from the last interest payment date before winding up until the date of the court order for winding up, before any distribution of assets is made to other creditors and the unitholders of the Orchard Trust. Debenture Holders are not entitled to participate in any distribution of surplus assets.

## ~~2.9 Produce from the Land does not form part of the security~~

It should be noted that the Charge and the Mortgages described in section 2.9 do not or will not extend to:

- ~~the Citrus Crop, being the products, rights, benefits or credits derived from the citrus trees on the Land;~~
- the Table Grape Crop, being the products, rights, benefits or credits derived from the table grape vines on the Land;
- the Wine Grape Crop, being the products, rights, benefits or credits derived from grape vines on the Land; and
- Other Crops derived from any other Projects or other activities conducted on the Land.

The Citrus Crop, Table Grape Crop, Wine Grape Crop and Other Crops derived from any other Projects conducted on the land will remain the property of the Timbercorp Group, a ~~Grower or lessee~~ of a company in the Timbercorp Group or any other person who derives title to the crops through any of them.

## 2.10 Mortgage of land granted to Chiquita Agribusiness

Chiquita Agribusiness, a wholly owned subsidiary of Chiquita Brands South Pacific Limited ("**Chiquita**"), holds a registered first mortgage over the Kangara Estate Undeveloped Land ("**Chiquita Mortgage**"). The Chiquita Mortgage has been granted to secure the balance of the purchase moneys payable to Chiquita Agribusiness under the contract of sale in relation to that part of Kangara Estate. The balance of the purchase moneys is payable by 30 June 2005 and will be paid out of moneys raised as part of the original capital raising in October 2003, which are held in a bank certificate of deposit awaiting settlement.

The Chiquita Mortgage also does not extend to the Citrus Crop, Table-Grape Crop, Wine Grape Crop and Other Crops derived from any other Projects conducted on that Land.

### **2.11 Trustee for the Debenture Holders**

The Trustee for the Debenture Holders is Permanent Nominees (Aust) Limited. Its role is to act in the interests, and for the benefit, of Debenture Holders under this Issue.

Permanent Nominees (Aust) Limited is a member of a group of companies including Trust Company of Australia Limited, following the merger of Permanent Trustee Company Limited and Trust Company of Australia Limited in December 2002. The Trust Company Group was established in Melbourne in 1885 and acts as trustee in varying capacities for individuals, charities, banks, insurance and industrial companies and financial intermediaries.

### **2.12 Register**

The persons whose names are registered as Debenture Holders will be treated as the absolute owners of that Debenture, and no trust or any other equitable or contingent interests will be recognised.

OIML has arranged for a Register of Debenture Holders to be established and maintained by Computershare Investor Services Pty Limited. The Register will be open during business hours for inspection free of charge by Debenture Holders.

Following the issue or transfer of Debentures to successful Applicants or transferees, Debenture Holders will receive a statement which sets out the Holder's Holder Identification Number ("HIN") in the case of a holding on the CHESS sub-register, or Securityholder Reference Number ("SRN") in the case of a holding on the issuer sponsored sub-register. Debenture Holders will be required to quote their HIN or SRN, as applicable, in all dealings with a broker or the Registrar. Holders will also receive subsequent statements if there has been a change to their holding on the Register and as otherwise required under the ASX Listing Rules, ASTC Settlement Rules and the Corporations Act.

Additional or replacement statements may be requested at any other time through the Holder's sponsoring broker in the case of a holding on the CHESS sub-register, or through the Registrar in the case of a holding on the issuer sponsored sub-register. OIML or the Registrar may charge a fee for the additional issuer sponsored statements.

Provisions relating to the transfers of the Debentures are set out in the Trust Deed, and the transfers will be made in accordance with the Trust Deed, the ASX Listing Rules and the ASTC Settlement Rules. The Debenture Holder may transfer all or any of the Debentures that it holds, and upon receipt of a valid transfer the Registrar will forthwith make the necessary entries in the Register.

A person who is entitled to be registered as a Holder as a result of death or bankruptcy of a Debenture Holder must be registered in accordance with all applicable laws upon producing such evidence as required by the Registrar.

### **2.13 Timbercorp Orchard Trust Debenture Trust Deed**

Section 7.1 contains a summary of the key features of the Trust Deed.



### 3. The Raising

#### 3.1 Proposed raising

Orchard Trust proposes to raise \$37 million by way of:

- the issue of Debentures under this prospectus (\$23.9 million); and
- an issue of Units to Timbercorp to raise \$5.9 million and to "professional" and "wholesale" investors to raise \$7.2 million.

The Issue and the Private Raising will be made in 2 tranches, being:

- the Tranche 1 Raising of \$15 million, comprising \$10 million of Debentures and \$5 million of Units, which is also the minimum subscription for the Tranche 1 Raising; and
- the Tranche 2 Raising of \$22 million, comprising \$13.9 million of Debentures and \$8.1 million of Units, which is also the minimum subscription for the Tranche 2 Raising.

The Issue and the Private Raising are not underwritten.

The Orchard Trust will use funds raised through this Issue and the Private Raising as follows, depending on whether Tranche 1 Raising and Tranche 2 Raising are fully subscribed:

	Amount if both the Tranche 1 and Tranche 2 Raisings occur	Amount if only the Tranche 1 Raising occurs
<b>Property purchase</b>		
Undeveloped Land – Bella Vista #2	\$3.360m	-
<b>SUB-TOTAL</b>	<b>\$3.360m</b>	<b>-</b>
<b>Development</b>		
New Citrus Orchard – Kangara Estate	\$8.192m	\$8.192m
Upgrade Infrastructure – Kangara Estate	\$1.327m	\$1.327m
New Table Grape Vineyard – Bella Vista #2	\$15.465m	-
Pay TAM for irrigation infrastructure improvements made at Bella Vista	\$0.793m	\$0.793m
Acquiring additional Water Licences for the New Citrus Orchard (including stamp duty)	\$3.947m	\$3.947m
Acquiring additional Water Licences for the New Table Grape Vineyard	\$2.610m	-
<b>SUB-TOTAL</b>	<b>\$32.334m</b>	<b>\$14.259</b>
<b>Incidental Costs</b>		
Property Transaction Costs (estimated)	\$0.185m	-
Capital Raising Costs (including Private Raising costs) (estimated)	\$1.121m	\$0.741m
<b>SUB-TOTAL</b>	<b>\$1.3067m</b>	<b>\$0.741m</b>
<b>TOTAL</b>	<b>\$37.000m</b>	<b>\$15.000m</b>

\* All of the above amounts are on a GST-exclusive basis. Where GST is payable, the Orchard Trust will receive a credit (which in most cases will be for the full amount of GST) from the Australian Taxation Office.

In the event that the Tranche 2 Raising proceeds, but the purchase of Bella Vista #2 is subsequently not completed, OIML may, subject to the provisions of the Trust Deed and the Management Agreement, use the surplus funds available to acquire and develop alternative agricultural properties and infrastructure.

Alternative property acquisitions and their development will be the subject of investment proposals submitted by TAM that must be approved by the Board of OIML and importantly, must meet other standards and requirements set out in the Management Agreement.

### **3.2 Effect of the Issue on the Orchard Trust**

The statement of financial position for the Trust, both pre and post the Tranche 1 Raising and Tranche 2 Raising is included in section 4 (which also includes the Investigating Accountant's Report).

### **3.3 New Citrus Orchard and irrigation infrastructure upgrade on the Kangara Estate**

The New Citrus Orchard will be established on 300 hectares of undeveloped land forming part of Kangara Estate Undeveloped Land.

#### ***The land and the soils***

The land has been soil tested and surveyed and found to be appropriate for commercial citrus production. The surveys were carried out to determine the most appropriate orchard layout and to ensure optimal irrigation system design. They describe the soils as quite shallow and limey with generally low levels of salinity.

Traditionally shallow and limey soil would have been regarded as marginal for citrus production, however, the potential hazards of shallow soil can be overcome with careful design and management. For example, areas with high lime concentrations will be mounded along the tree rows creating sufficient soil volume and areas with potential drainage hazards will be treated with soil amelioration techniques, a sophisticated drip irrigation management system and other drainage and nutrition management practices. These practices have been carried out elsewhere on similar soils and proved to be appropriate in producing high quality citrus.

#### ***Water Supply and Irrigation***

Water for the New Citrus Orchard will be sourced from the Murray River, at Paringa and at Bookpurnong. Water quality has traditionally been very good, with salinity readings being well within acceptable levels. Good water quality monitoring, irrigation scheduling and in particular the use of drip irrigation on the new orchard will reduce any risk from slugs of salt that can occur in the Murray River from time to time. At full maturity the citrus trees, on average, will require 9 megalitres of water per hectare.

A new dam is being built to supply the New Citrus Orchard, with adequate capacity to hold enough water for 3 days irrigation at full maturity.

The new orchard will be developed with a new irrigation technology called MOHT (see below). These systems generally provide accurate watering to the specific requirements of the crop, and should be able to obtain very high water use efficiency.

### ***Development***

The Orchard Trust has engaged TAM to establish the New Citrus Orchard on the Kangara Estate for a fixed price, subject to any variations in the scope of the works ("**Kangara Estate Fixed Price Contract**"). This contract also provides for the acquisition of all necessary Water Licences on behalf of the Orchard Trust at a provisional sum, which is subject to variation.

TAM will sub-contract Chiquita Agribusiness to perform the capital works required for the establishment of the New Citrus Orchard. Chiquita Agribusiness is a wholly-owned subsidiary of Chiquita.

Timbercorp has guaranteed the obligations of TAM under the Kangara Estate Fixed Price Contract pursuant to the 2005 Kangara Estate Guarantee.

The Kangara Estate Fixed Price Contract and the 2005 Kangara Estate Guarantee are summarised in section 7.

### ***Martinez Open Hydroponics Technology***

Chiquita Agribusiness will adopt a production technique on the new orchard known as the Martinez Open Hydroponics Technology ("**MOHT**"). MOHT was developed by Professor Rafael Martinez, a plant physiologist from Universitas Miguel Hernandez in Spain, and is currently being successfully used in other citrus producing countries, such as South Africa, USA and Spain, to improve yields and fruit quality over traditional citrus production methods.

The emphasis is on restricting the root system, and eliminating the influence of the soil so that the plant physiological processes can be largely manipulated by nutrition and irrigation. Nutritional solutions are applied daily at times of maximum uptake, and irrigation takes place during the hot part of the day promoting improved photosynthesis, leading to a reduction in thinning fruit, foliar applications and ground applications of fertiliser.

### ***Irrigation infrastructure upgrade***

The Orchard Trust has also engaged TAM to upgrade the irrigation infrastructure at Kangara Estate at cost plus a 10% margin. The Orchard Trust has received an estimate from TAM that the total cost to the Orchard Trust for the upgrade will be \$1.327 million (plus GST). The upgrade includes the construction of a new dam to hold additional water for the New Citrus Orchard.

### ***Changes to the Lease in respect of the Kangara Estate***

In return for the Orchard Trust developing a further 300 hectares of citrus orchard on the Kangara Estate Undeveloped Land, including the upgrade of irrigation infrastructure, Timbercorp has agreed to amend the terms of the Kangara Estate lease with OIML to pay an additional amount of rent equal to 11% of the cost of the development.

OIML and Timbercorp have also agreed to vary the lease in respect of Kangara Estate to:

- increase the term of the lease to 30 June 2027;
- give Timbercorp an option to renew the Lease for a further term of 5 years upon expiry of the initial term on 30 June 2027;
- permit Timbercorp, at its cost and expense to undertake capital works (which will subject to OIML's approval), and be reimbursed for them upon expiry or lawful termination by Timbercorp of the lease or upon sale of the property, on the terms set out in the lease agreement.

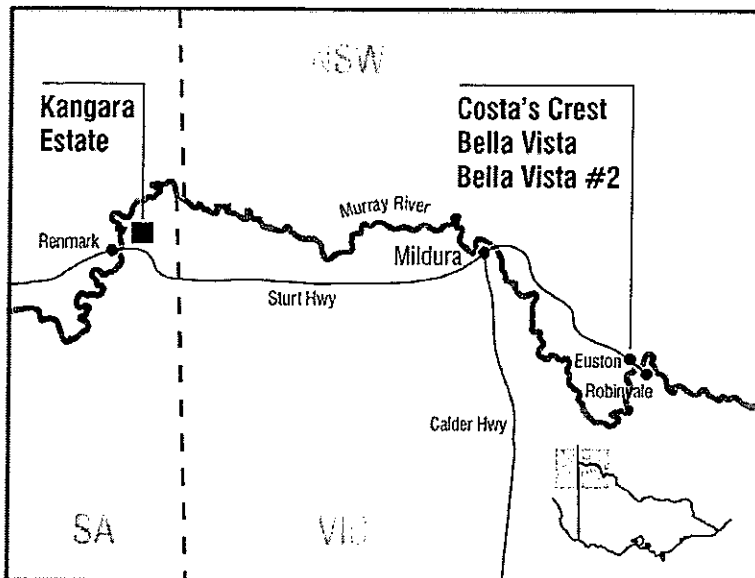
The changes to the lease are summarised in section 7.

### 3.4 Purchase and development of the Bella Vista #2 property

The acquisition and development of Bella Vista #2 by the Orchard Trust will only proceed if the Tranche 2 Raising is fully subscribed.

#### *Property Description*

Bella Vista #2 is located within close proximity to Euston, in southwest NSW and abuts a 131 hectare vineyard developed by the Orchard Trust on Bella Vista for use by the Timbercorp Group for the 2004 Timbercorp Table Grape Project. Euston is the sister city of Robinvale in northwest Victoria. The source of irrigation for Bella Vista #2 will be the Murray River.



#### *The land and the soils*

The land at Bella Vista #2 has been soil tested and surveyed not only to determine the most appropriate layout for the New Table Grape Vineyard, but also to ensure that the irrigation system design is optimised for the vines planted. The tests have shown that Bella Vista #2 is suitable for growing commercial crops of table grapes.

#### *Water Supply and Irrigation*

Growing table grapes requires irrigation water and the establishment of a new vineyard requires extensive planning in the areas of irrigation design, layout, installation and water monitoring in order to achieve optimum yields. At full maturity, the Bella Vista #2 table grape vines will, on average, require approximately 3 megalitres of water per acre.

TAM has procured or will procure for use on Bella Vista #2 1,800 megalitres of Water Licences, being the total estimated annual requirements of 600 acres of planted table grape vines when fully matured. These Water Licences will be acquired by Orchard Trust from funds raised from the Tranche 2 Raising.

#### *Conditional Agreement to purchase Bella Vista #2*

It is proposed that the Orchard Trust will acquire 295 hectares of the land ("Bella Vista #2"), being part of a much larger parcel of 1,959 hectares of undeveloped land ("Vendors' Property") abutting the existing 300 acre Bella Vista table grape vineyard owned by the Orchard Trust.

OIML has entered the Bella Vista #2 Contract to acquire the Bella Vista #2 property on several conditions including the grant of an amendment by the Department of Infrastructure,

Planning and Natural Resources ("**DIPNR**") to allow the land to be used for the growing and irrigation of table grape vineyards and to permit the application of up to 3.5 megalitres of water per acre per annum ("**Change of Use**").

The vendors of Bella Vista #2 are required to procure the Change of Use by 30 June 2005. The vendors' failure to obtain a Change of Use by that date entitles OIML to rescind the Bella Vista #2 Contract.

An application for Change of Use to allow table grapes to be grown on Bella Vista #2 is pending.

In addition, the vendors must also procure the registration of a plan of subdivision severing the area of 295 hectares from the larger 1,959 hectare property ("**Subdivision**").

Until the Subdivision is approved, OIML will lease the whole of the Vendors' Property from the vendors ("**Bella Vista #2 Interim Lease**"). The vendors are granted a licence to use the Vendors' Property, other than the 295 hectares, under the Bella Vista #2 Interim Lease.

If the plan of subdivision is not registered within 30 months after the date of the contract of sale or the Bella Vista #2 Interim Lease is terminated by the vendors, the Orchard Trust will acquire the whole of the Vendors' Property at no additional cost. However, the vendors will be entitled to have the Vendors' Property, less the 295 hectares, transferred back to them for \$1.00 in the event that the vendors subsequently procure the Subdivision, and exercise their right on or before 31 December 2008.

Completion of the Bella Vista #2 contract is also conditional upon:

- the Orchard Trust raising \$28 million on or before 31 August 2008 (if the money is not raised, OIML is entitled to rescind the Bella Vista #2 Contract);
- the consent of the responsible Minister of the Crown to the transfer being obtained; and
- the vendors obtaining on or before 15 May 2005 all necessary permits, licences, consents, authorities and the like from all government departments and landowners which are necessary to be held to permit the lawful extraction and conveyance of water from the Murray River to Bella Vista #2 to irrigate the New Table Grape Vineyard.

### ***Development***

Once the Change of Use and other relevant approvals are obtained, the Orchard Trust proposes to establish a 600 acre New Table Grape Vineyard comprising approximately 270,000 vines. The Orchard Trust intends to complete the development on or before 31 July 2005.

The Orchard Trust has engaged the Manager, TAM, to establish the New Table Grape Vineyard for a fixed price, subject to any variations in the scope of the works ("**Bella Vista #2 Fixed Price Contract**"). This contract also provides for the acquisition of all necessary Water Licences and installation of electrical works on behalf of the Orchard Trust at a provisional sum, which is subject to variation.

Timbercorp has guaranteed the obligations of TAM under the Bella Vista #2 Fixed Price Contract pursuant to the Bella Vista #2 Guarantee.

The Bella Vista #2 Fixed Price Contract and the Bella Vista #2 Guarantee are summarised in section 7.

TAM will sub-contract Costa Management Group Pty Limited ("**Costa Management**") to perform the capital works required for the establishment of the new vineyard. Costa Management is headed by brothers, Charlie and Paul Costa. Charlie and Paul have a

combined experience of 40 years in the horticulture industry. Charlie has been growing table grapes in the Sunraysia district for the last 20 years.

TAM has also commissioned a qualified expert irrigation company to prepare a fully integrated irrigation design and an expert soil surveyor to prepare a drainage management plan for the New Table Vineyard.

The Orchard Trust will own the entire infrastructure and Capital Works on the New Table Vineyard, including the Water Licences and irrigation equipment.

#### ***Table Grape Varieties & Plant Breeders' Rights***

The following table grape varieties will be planted on Bella Vista #2:

- "Red Rob" under licence from Andriske Research Pty Limited (ACN 006 565 260) ("**Andriske**");
- "Stanley Seedless" under licence from Andriske;
- "BW 41/5" under licence from Andriske;
- "Autumn Royal", which is a public variety.

The Orchard Trust has been granted a licence together with Timbercorp to grow the vines and sell the fruit from the vines which are planted on the Costa's Crest and Bella Vista properties ("**Andriske Licence Agreement #1**"). There are two table grape varieties planted on the Costa's Crest and Bella Vista properties, being the white seedless grape cultivar known as "Stanley Seedless" and the red seedless grape cultivar known as "Red Rob".

Except for a small number of pre-existing licences, the licence granted to the Orchard Trust and Timbercorp to plant and grow the vines is exclusive within the defined geographical area.

The licence also permits the Orchard Trust to plant the "Stanley Seedless" and the "Red Rob" table grape varieties on the New Table Grape Vineyard and other developments that may be undertaken by the Orchard Trust.

The Orchard Trust has also been granted a licence together with Timbercorp in respect of the "BW 41/5", a white seeded grape cultivar ("**Andriske Licence Agreement #2**"). The "BW 41/5" grape cultivar, referred to as the "Golden Globe", is a registered trademark of Andriske Table Grapes Pty Ltd (ACN 078 025 420). The Orchard Trust has the right to use the "Golden Globe" name in the marketing of the "BW 41/5" grape cultivar.

The Orchard Trust then sub-licenses its rights to lessees and licensees of the lands.

#### ***The Lease granted to Timbercorp in respect of Bella Vista #2***

A summary of the terms and conditions of the lease that the Orchard Trust has granted to Timbercorp over Bella Vista #2 is contained in sections 2.4 and 7.6.

## 4. Financial Information, Investigating Accountant's Report and Financial Service Guide

### 4.1 Statements of Financial Performance – Timbercorp Orchard Trust

	31 December 2004 Actual <i>Audited</i> \$'000's	31 March 2005 Actual <i>Unaudited</i> \$'000's
Revenue		
Rental Revenue	2,889	4,333
Interest Revenue	274	356
<b>Total Revenue from Ordinary Activities</b>	<b>3,163</b>	<b>4,689</b>
Management and Administrative expenses		
Management Fees	(302)	(453)
Administrative Expenses	(84)	(174)
<b>Total Management and Administrative Expenses</b>	<b>(386)</b>	<b>(627)</b>
Borrowing Expenses		
Interest Paid/Payable	(1,994)	(2,968)
Amortisation of Borrowing Costs	(216)	(321)
<b>Total Borrowing expenses</b>	<b>(2,210)</b>	<b>(3,289)</b>
<b>Total expenses</b>	<b>(2,596)</b>	<b>(3,916)</b>
<b>Profit from ordinary activities</b>	<b>567</b>	<b>773</b>
<b>Total changes in equity other than those resulting from transactions with unitholders as unitholders</b>	<b>567</b>	<b>773</b>
<b>Distributions Paid</b>	<b>360</b>	<b>360</b>

## 4.2 Statements of Financial Position – Timbercorp Orchard Trust

The following are statements of financial position of the Timbercorp Orchard Trust at 31 December 2004 and 31 March 2005 and Proforma at 31 March 2005 showing the effect of the Issue, the Private Raising and completion of the transactions and developments described in section 3.1 of the prospectus ("Transactions") as if they had occurred at that date, assuming that both Tranches 1 and 2 Raisings proceed.

						31 March 2005
						Pro forma Balances
	Notes	31 December 2004 Actual Audited \$'000's	31 March 2005-Actual Unaudited \$'000's	Pro forma Adjustments for Prospectus & Private Raisings (Tranches 1 & 2) and Transactions \$'000's	Assuming both Tranche 1 & 2 Raisings \$'000's	Assuming Tranche 1 Raising only \$'000's
<b>Current Assets</b>						
Cash	1	7,776	2,147	115	2,262	2,393
Receivables		29	50	-	50	50
Other financial assets	3	3,095	3,095	-	3,095	3,095
<b>Total Current Assets</b>		<b>10,900</b>	<b>5,292</b>	<b>115</b>	<b>5,407</b>	<b>5,538</b>
<b>Non-Current Assets</b>						
Other financial assets	3	54,904	55,548	35,086	90,634	69,014
Other	4	2,539	2,433	790	3,223	2,828
<b>Total Non-Current Assets</b>		<b>57,443</b>	<b>57,981</b>	<b>35,856</b>	<b>93,857</b>	<b>71,842</b>
<b>Total Assets</b>		<b>68,343</b>	<b>63,273</b>	<b>35,991</b>	<b>99,264</b>	<b>77,380</b>
<b>Current Liabilities</b>						
Payables	5	6,917	2,113	(793)	1,320	1,320
Interest-bearing Liabilities	6	840	1,384	-	1,384	1,384
Unearned Rent Income		1,444	1,534	-	1,534	1,534
Other	7	3,284	2,924	-	2,924	2,924
<b>Total Current Liabilities</b>		<b>12,485</b>	<b>7,955</b>	<b>(793)</b>	<b>7,162</b>	<b>7,162</b>
<b>Non-Current Liabilities</b>						
Interest-bearing Liabilities	6	43,081	42,334	23,900	66,234	52,334
<b>Total Non-Current Liabilities</b>		<b>43,081</b>	<b>42,334</b>	<b>23,900</b>	<b>66,234</b>	<b>52,334</b>
<b>Total Liabilities</b>		<b>55,566</b>	<b>50,289</b>	<b>23,107</b>	<b>73,396</b>	<b>59,496</b>
<b>Net Assets</b>		<b>12,777</b>	<b>12,984</b>	<b>12,884</b>	<b>25,868</b>	<b>17,884</b>
<b>Unitholders Equity</b>						
Settlement Capital	8	12,570	12,570	12,884	25,454	17,470
Retained profits		207	414	-	414	414
<b>Total Unitholder Equity</b>		<b>12,777</b>	<b>12,984</b>	<b>12,884</b>	<b>25,868</b>	<b>17,884</b>

To be read in conjunction with Notes to the Statements of Financial Position in section 4.3.



#### 4.3 Notes to the Statements of Financial Position – Timbercorp Orchard Trust

1. Transactions contemplated by the Orchard Trust and included in the preparation of the Statements of Financial Position at 31 March 2005 (pro-forma) are more fully described in section 3 of the prospectus. A summary of these Transactions, assuming completion of both Tranches 1 and 2 as set out in section 3.1 of the prospectus are:-
  - Issue of 239,000 Debentures at \$100 each, pursuant to this prospectus, and the payment of approximately \$0.8 million of costs associated with the Issue;
  - Issue of \$7.2 million of fully paid units in the Orchard Trust by way of an Information Memorandum and payment of approximately \$0.21 million of costs associated with the issue of Units;
  - Issue of \$5.9 million of fully paid units in the Orchard Trust to Timbercorp Limited;
  - New 300ha development at Kangara Estate totalling \$8.192 million and upgrade of irrigation totalling \$1.327 million;
  - Acquisition of additional water rights for the citrus orchards and vineyards at Kangara Estate for a total sum of \$3.947 million (including transaction costs);
  - Acquisition of additional land known as Bella Vista #2 and development of a New Table Grape Vineyard on such land, totalling \$19.010 million (including transaction costs);
  - Acquisition of additional water rights for the New Table Grape Vineyard at Bella Vista #2 for a total sum of \$2.610 million; and
  - Paying TAM \$0.793 million for irrigation infrastructure improvements made at Bella Vista.
2. Statement of Significant Accounting Policies

The pro forma Statements of Financial Position are based on unaudited 31 March 2005 financial statements as prepared by the directors. The pro forma Statements of Financial Position do not include full disclosures of the type normally included in an annual financial report.

The following significant accounting policies have been adopted in the preparation of the pro forma Statements of Financial Position. The accounting policies have been consistently applied by the Orchard Trust and are consistent with those applied in the 31 December 2004 financial statements.

(a) Income Tax

The Orchard Trust is not subject to income tax as all unitholders are presently entitled to its taxable income in any one tax year

(b) Borrowing Expenses

Costs incurred in negotiating, obtaining finance and the issue of financial debt instruments are deferred and amortised over the terms of the loans or final maturity of the debt instruments.

(c) Other Financial Assets

(i) Investment Properties

(1) Categorisation

Each orchard or vineyard held for investment purposes is regarded as a composite asset, including the land and any improvement or component thereof (including water facilities, plant and equipment and horticultural plants affixed to the land) and are initially brought to account at cost, comprising the purchase price of each property or improvement or component thereof acquired.

OIML as the responsible entity will undertake revaluations of each investment property in accordance with the requirements of the Debenture Trust Deed and the Corporations Act 2001. Such valuations will take into account any of the interests of any leases granted for use of the property by third parties.

(2) Depreciation

As each property is held for investment purposes, no depreciation is applied for accounting purposes. However, tax allowable depreciation and other capital allowances are taken into account for income tax purposes in calculating the Orchard Trust's taxable income/tax loss in any one year.

(ii) Water Rights & Licences

Water rights and licences acquired by the Orchard Trust, which give the owner access to irrigation water used for agribusiness on an annual basis for as long as the rights are held, are initially recorded at cost. Water rights are not depreciated as they do not have a finite life.

OIML as the responsible entity will regularly undertake a review of the carrying value of the rights and licences in open market conditions.

(d) Financial Instruments Issued by the Orchard Trust

Debt and equity instruments are classified as either liabilities or as equity in accordance with the substance of the contractual arrangement.

Interest and dividends are classified as expenses or as distributions of profit consistent with the balance sheet classification of the related debt or equity instruments.

(e) Issue Costs

Transaction costs incurred in raising equity capital are recognised directly in equity as a reduction of the proceeds of equity.

(f) Income & expenditure

Rental, interest and other income and expenditures are accounted for on an accruals basis.

(g) Receivables

Trust receivables and other receivables are recorded at amounts due less any provision for doubtful debts.

(h) Payables

Payables are recognised when the Orchard Trust becomes obliged to make future payments resulting from the purchase of goods and services.

(i) Goods and services tax (GST)

Revenues, expenses and assets are recognised net of the amount of GST, except where the amount of GST incurred is not recoverable from the Australian Tax Office. In these circumstances the GST is recognised as part of the cost of acquisition of the asset or as part of the item of expense. Receivables and payables in the Statement of Financial Position are shown inclusive of GST.

(j) Adoption of Australian equivalents to international financial reporting standards

Australia recently adopted new Accounting Standards in accordance with International Financial Reporting Standards (IFRS), effective for financial years commencing 1 January 2005. The first reporting period that new standard will apply for the Orchard Trust is for the half year ended 31 December 2005.

OIML's directors have assessed the significance of these changes and are preparing for their implementation.

The directors of OIML are of the opinion that the key differences in the Orchard Trust's accounting policies which will arise from the adoption of IFRS are:

*Investment properties*

Investment properties are currently brought to account at the cost of acquisition. The cost of acquisition includes the purchase consideration plus any incidental costs directly attributable to the acquisition. These properties are currently carried at cost, however they are not depreciated in accordance with AASB 1021 "Depreciation" as they are investment properties.

The introduction of AASB 140 "Investment Property" requires that investment property be measured initially at its cost which includes transaction costs on its acquisition. However after initial recognition a decision must be made by the directors of OIML to record investment property under the fair value or cost methodology.

If the cost methodology is selected all investment property must be measured in accordance with the requirements of AASB 116 "Property, Plant and Equipment", that is at cost less any accumulated depreciation and any accumulated impairment losses (i.e. depreciation is charged to the profit and loss). If the fair value method is selected the fair value of the investment property shall reflect market conditions at reporting date, and a gain or loss arising from a change in fair value of the investment shall be recognised in the profit or loss for the period in which it arises.

The directors of OIML have formed a preliminary view that it is most likely the directors of OIML will apply the 'fair value method' on the implementation of IFRS as this is more closely aligned to the current accounting policy for the investment properties owned by the Orchard Trust. The directors are not yet able to assess what impact a valuation of the properties on the implementation of IFRS will have. However given that a long term lease has been entered into with the tenant of the investment property, guaranteeing set rental streams based upon the acquisition and development costs incurred by the Orchard Trust, it is not currently anticipated that a valuation would not have any significant detrimental effect on the current carrying values of the investment properties.

(k) Working capital deficiency

The Statements of Financial Position show a net working capital deficiency, which is largely the result of current liabilities including a non-cash item relating to rental income received in advance. The Orchard Trust has a \$1.9 million loan facility in place that is fully available to cover any unforeseen expenditure arising. Accordingly, notwithstanding the working capital deficiency, the pro forma Statements of Financial Position have been prepared on a going concern basis as the directors believe the Orchard Trust will generate sufficient cash flow to meet its debts as and when they fall due.

				31 March 2005	
				Pro forma Balances	
	31 December 2004 Actual Audited	31 March 2005 Actual Unaudited	Pro forma Adjustments for Prospectus & Private Raisings (Tranches 1 & 2) and Transactions	Assuming both Tranche 1 & 2 Raisings	Assuming Tranche 1 Raising only
<b>3. Other Financial Assets</b>					
<b>Current</b>					
Negotiable certificates of deposit	3,095	3,095	-	3,095	3,095
<b>Non-Current</b>					
Investment Properties					
Costa's Crest - Table Grape Vineyard	4,240	4,240	-	4,240	4,240
Bella Vista # 1 - Table Grape Vineyard	10,897	11,536	-	11,536	11,536
Bella Vista # 2 - Table Grape Vineyard	-	-	19,010	19,010	-
Kangara Estate - Citrus Orchard	11,174	11,176	1,327	12,503	12,503
Kangara Estate - Wine Grape Vineyard	16,587	16,590	-	16,590	16,590
Kangara Estate - Land/Development 510 Ha	2,520	2,520	8,192	10,712	10,712
Total Investment Properties	45,418	46,062	28,529	74,591	55,581
Water Rights & Licences	9,486	9,486	6,557	16,043	13,433
<b>Total Property, Plant &amp; Equipment</b>	<b>54,904</b>	<b>55,548</b>	<b>35,086</b>	<b>90,634</b>	<b>69,014</b>
<b>4. Other Assets</b>					
<b>Non-Current</b>					
Borrowing Costs (Debentures & Annuity bond) - at cost	2,962	2,962	790	3,752	3,357
Less Accumulated Amortisation	(423)	(529)		(529)	(529)
	2,539	2,433	790	3,223	2,828

			31 March 2005 Pro forma Balances		
			Pro forma Adjustments for Prospectus & Private Raisings (Tranches 1 & 2) and Transactions \$'000's	Assuming both Tranche 1 & 2 Raisings \$'000's	Assuming Tranche 1 Raising only \$'000's
31 December 2004 Actual Audited \$'000's	31 March 2005 Actual Unaudited \$'000's				
<b>5. Payables – Current</b>					
Trade Creditors & Accrued Expenses	521	418	-	418	418
Interest Payable	922	902	-	902	902
Amounts Payable Under Contract					-
- Timbercorp	5,474	793	(793)	-	-
	6,917	2,113	(793)	1,320	1,320
<b>6. Interest-bearing liabilities</b>					
<b>Current</b>					
Annuity Bonds	840	1,384	-	1,384	1,384
<b>Non-Current</b>					
Annuity Bonds	5,528	4,781	-	4,781	4,781
Debentures - Secured	37,553	37,553	23,900	61,453	47,553
	43,081	42,334	23,900	66,234	52,334
<b>7. Other liabilities</b>					
<b>Current</b>					
Non-interest bearing loan secured	2,924	2,924	-	2,924	2,924
Distribution Payable	360		-	-	-
	3,284	2,924	-	2,924	2,924
<b>8. Contributed Equity</b>					
Issued Units	12,974	12,974	13,100	26,074	17,974
Capital raising costs	(404)	(404)	(216)	(620)	(504)
	12,570	12,570	12,884	25,454	17,470

#### 4.4 Statement of Financial Position of Orchard Investments Management Limited

The following is a statement of financial position of OIML (in its personal capacity) as at 31 December 2004 (audited) and 31 March 2005. The Issue pursuant to this the prospectus, the Private Raising and completion of the Transactions will not directly impact on the financial position of OIML in its personal capacity.

	31 December 2004 Actual <i>Audited</i> \$'000's	31 March 2005 Actual <i>Unaudited</i> \$'000's
<b>Current Assets</b>		
Cash	38	163
Receivables	167	-
Other	42	117
<b>Total Current Assets</b>	<b>247</b>	<b>280</b>
<b>Non-Current Assets</b>		
Property, Plant & Equipment	6	6
<b>Total Non-Current Assets</b>	<b>6</b>	<b>6</b>
<b>Total Assets</b>	<b>253</b>	<b>286</b>
<b>Current Liabilities</b>		
Payables	20	24
Current Tax Liabilities	23	31
<b>Total Current Liabilities</b>	<b>43</b>	<b>55</b>
<b>Non-Current Liabilities</b>		
Interest-bearing Liabilities	105	107
<b>Total Non-Current Liabilities</b>	<b>105</b>	<b>107</b>
<b>Total Liabilities</b>	<b>148</b>	<b>162</b>
<b>Net Assets</b>	<b>105</b>	<b>124</b>
<b>Equity</b>		
Contributed Capital	50	50
Retained profits	55	74
<b>Total Equity</b>	<b>105</b>	<b>124</b>

#### **4.5 Investigating Accountant's Report on Financial Information**

5 May 2005

The Directors  
Orchard Investments Management Limited  
Level 6, 505 St Kilda Road,  
Melbourne, Victoria 3004

Dear Sirs,

We have prepared this Investigating Accountant's Report for inclusion in a prospectus dated on or about 5 May 2005 ("Prospectus") relating to the proposed issue of 239,000 Debentures of \$100 each pursuant to the Timbercorp Orchard Trust Debenture Trust Deed between Orchard Investments Management Limited and Permanent Nominees (Aust) Limited.

The Timbercorp Orchard Trust ("Orchard Trust") is registered as a managed investment scheme. Orchard Investments Management Limited ("OIML") is the responsible entity. Details concerning the establishment, operations and objectives of the Orchard Trust are set out in Section 2 of this Prospectus.

Details of the proposed capital raisings are set out in Section 3 of this Prospectus.

It is proposed that application for listing of the debentures issued under this Prospectus will be made to the Australian Stock Exchange.

Expressions defined in the Prospectus have the same meaning in this report.

The nature of this Report is such that it should be given by an entity which holds an Australian Financial Services Licence under the Financial Services Reform Act 2001. Nexia Alexander & Spencer Pty Ltd holds the appropriate Australian Financial Services Licence.

#### **Scope**

You have requested Nexia Alexander & Spencer Pty Ltd to prepare an Investigating Accountant's Report ("Report") covering the following information, set out above in Sections 4.2 to 4.4.

#### **Financial information**

- (a) the unaudited statement of financial performance of the Orchard Trust for the 9 months ended 31 March 2005;
- (b) the unaudited statement of financial position of the Orchard Trust as at 31 March 2005;
- (c) the pro forma statement of financial position of the Orchard Trust as at 31 March 2005 assuming that the Tranche 1 and Tranche 2 Raisings and all the transactions and developments described in section 3.1 of the Prospectus had taken place at that date;

- (d) the pro forma statement of financial position of the Orchard Trust as at 31 March 2005 assuming that only the Tranche 1 Raising and the transactions and developments described in section 3.1 of the Prospectus to be funded by the Tranche 1 Raising had taken place at that date;
  - (e) the unaudited statement of financial position of OIML as at 31 March 2005,
- (collectively, "the Financial Information");

This Report has been prepared for the sole purpose of inclusion in the Prospectus. We disclaim any assumption of responsibility for any reliance on this Report or on the financial information to which it relates for any purpose other than that for which it has been prepared.

### **Scope of Review of Financial Information**

The Directors are responsible for the preparation and presentation of the Financial Information. The statement of financial position of the Orchard Trust as at 31 March 2005 has been extracted from the unaudited management accounts of the Orchard Trust. The Directors have determined that no adjustments are required to be made to this information to make it reflective of the business going forward.

We have conducted our review of the Financial Information in accordance with Australian Auditing and Assurance Standard AUS902 "Review of Financial Reports". We have made such enquiries and performed such procedures as we, in our professional judgement, considered reasonable in the circumstances including:

- (a) review of audited financial statements at 30 June 2004 and 31 December 2004, work papers, accounting records and other documents;
- (b) a review of the assumptions used to compile the pro forma financial position;
- (c) a comparison of consistency in application of the recognition and measurement principles of applicable Accounting Standards, other mandatory professional reporting requirements and the accounting policies adopted by the Orchard Trust; and
- (d) inquiry of Directors and management.

These procedures do not provide all the evidence that would be required in an audit, thus the level of assurance is less than given in an audit. We have not performed an audit and accordingly, we do not express an audit opinion.

### **Review Statement on Financial Information**

Based on our review, which is not an audit, nothing has come to our attention which causes us to believe that:

- (a) the Financial Information does not fairly represent the financial performance of the Orchard Trust for the period ended at 31 March 2005 in accordance with:
  - (i) the accounting policies of the Orchard Trust; and
  - (ii) the recognition and measurement principles prescribed in applicable Accounting Standards and other mandatory professional reporting requirements in Australia;
- (b) the Financial Information does not fairly represent the financial position of the Orchard Trust and OIML as at 31 March 2005 in accordance with:
  - (i) accounting policies of the Orchard Trust or OIML, as the case requires; and
  - (ii) the recognition and measurement principles prescribed in applicable Accounting Standards and other mandatory professional reporting requirements in Australia;



- (c) the pro forma transactions do not form a reasonable basis for the pro forma financial information;
- (d) the pro forma statements of financial position of the Orchard Trust as at 31 March 2005 have not been properly prepared on the basis of the pro forma transactions; or
- (e) the pro forma statements of financial position are not presented fairly in accordance with:
  - (i) the accounting policies of the Orchard Trust; and
  - (ii) the recognition and measurement principles prescribed in applicable Accounting Standards and other mandatory professional reporting requirements in Australia.

### **Subsequent Events**

Having regard to the scope of our Report, to the best of our knowledge and belief, there have been no material items, transactions or events subsequent to 31 March 2005 that are not otherwise disclosed in the Prospectus which require comment on, or adjustment to, the information referred to in this Report or which would cause such information to be misleading or deceptive.

### **Independence and Disclosure of Interests**

Neither Nexia Alexander & Spencer Pty Ltd nor its directors, partners or employees has any interest in the outcome of this Prospectus other than in the preparation of this Report and participation in due diligence procedures and the preparation of an Investigating Accountant's Report for the Information Memorandum relating to the Private Raising for which normal professional fees will be received. Fees are charged on an hourly basis based on personnel undertaking the engagement work. In the preparation of this report our fees are approximately \$7,500 exclusive of GST.

Nexia Alexander & Spencer Pty Ltd also provides taxation and other advisory services to the Orchard Trust.

OIML has agreed to indemnify and hold harmless Nexia Alexander & Spencer Pty Ltd and its employees from any claims arising out of misstatement or omission in any material or information supplied by OIML to Nexia Alexander & Spencer Pty Ltd.

Consent to the inclusion of this Investigating Accountant's Report in the Prospectus in the form and context in which it appears has been given. At the date of this report, this consent has not been withdrawn.

Yours faithfully

**NEXIA ALEXANDER & SPENCER PTY LTD**

Holder of Australian Financial Services Licence No: 247262

**GARY GRACO**

**Authorised Representative**

## **4.6 Nexia Alexander & Spencer Pty Ltd Financial Services Guide**

This Financial Services Guide is dated 5 May 2005.

### **1. About us**

Nexia Alexander & Spencer Pty Ltd (ABN 25 825 209 842, Australian Financial Services Licence no 247262) ("Nexia A&S") has been engaged by Orchard Investments Management Limited ("OIML") in its capacity as responsible entity of the Timbercorp Orchards Trust ("Orchard Trust") to provide a report in the form of an Investigating Accountant's Report (the "Report") for inclusion in the Prospectus to be dated on or about 5 May 2005 for the issue by the OIML of 239,000 Debentures of \$100 each.

You have not engaged us directly but have been provided with a copy of the Report as a retail client because of your connection to the matters set out in the Report.

### **2. This Financial Services Guide**

This Financial Services Guide ("FSG") is designed to assist retail clients in their use of any general financial product advice contained in the Report. This FSG contains information about Nexia A&S generally, the financial services we are licensed to provide, the remuneration we may receive in connection with the preparation of the Report, and how complaints against us will be dealt with.

### **3. Financial services we are licensed to provide**

Our Australian Financial Services Licence allows us to provide general financial product advice in relation to various financial products such as securities, interests in managed investment schemes, and superannuation to retail and wholesale clients.

### **4. General financial product advice**

The Report contains only general financial product advice. It was prepared without taking into account your personal objectives, financial situation or needs. You should consider your own objectives, financial situation and needs when assessing the suitability of the Report to your situation. You may wish to obtain personal financial product advice from the holder of an Australian Financial Services Licence to assist you in this assessment.

### **5. Fees, commissions and other benefits we may receive**

Nexia A&S charges fees to produce reports, including this Report. These fees are negotiated and agreed with the entity who engages Nexia A&S to provide a report. Fees are charged on an hourly basis or as a fixed amount depending on the terms of the agreement with the person who engages us. In the preparation of this Report our fees are approximately \$7,500 excluding GST.

Directors or employees of Nexia A&S, Nexia Alexander & Spencer, or other associated entities, may receive partnership distributions, salary or wages from Nexia A&S.

### **6. Associations with issuers of financial products**

Nexia A&S and its authorised representatives, employees and associates may from time to time have relationships with the issuers of financial products. For example, Nexia Alexander & Spencer may be the auditor of, or provide financial services to, the issuer of a financial product in the ordinary course of its business.

Nexia A&S provides advisory services to OIML, in its capacity as responsible entity of the Orchard Trust, which is involved in issuing this prospectus.

### **7. Complaints**

If you have a complaint, please raise it with us first, using the contact details listed below. We will endeavor to satisfactorily resolve your complaint in a timely manner. In addition, a copy of our internal complaints handling procedure is available upon request.

### **8. Contact Details**

Nexia A&S can be contacted by sending a letter to the following address:

Kevin Mullen

Nexia Alexander & Spencer Pty Ltd

Level 12A, 440 Collins St, Melbourne, Vic, 3000

## **5. Taxation implications**

The following is a summary of Australian income tax implications of an investment in the Debentures and is based on the income tax law as at the date of this prospectus. We recommend that you consult your own professional advisor as the summary contained in this section is necessarily general in nature. Each investor's taxation position will depend on the individual circumstances.

It should be noted that taxation laws can change at any time and such change may have adverse taxation consequences on the investors concerned.

### **5.1 Interest Payments**

Interest paid to a Debenture Holder will be assessable income according to ordinary concepts under the *Income Tax Assessment Act* ("ITAA") 1997. Interest is generally assessable at the time the interest is paid to the Debenture Holder. However, where a Debenture Holder carries on business in which it generally recognises interest income on an accrual basis, the Debenture Holder will normally be required to bring the interest to account on a daily accrual basis, to the extent that the Debentures are held as part of that business.

In the case of a non-Australian resident investor, a withholding tax may be levied on the interest received by the investor. The withholding tax will be a final tax unless interest received is attributable to a business being conducted by the investor at or from a permanent establishment in Australia. You should note that the Federal Government has introduced legislation that proposes to modify aspects of the taxation of non-resident investors with Australian source income. However, these rules will not alter the position with respect to interest payments on Debentures.

### **5.2 Redemption or Disposal of the Debentures**

The Debentures are "traditional securities" as defined under section 26BB(1) of the ITAA 1936, unless an investor holds the Debentures as trading stock of a business, in which case it will receive different taxation treatment under the Act.

Upon the redemption, or disposal through sale of a Debenture to a third party, any gain on the redemption or sale will be assessable income. The gain is the difference between the consideration received on the sale and the face value of the Debenture, or the cost of acquisition if the Debenture is not acquired on the initial issue.

Correspondingly, where the Debenture is sold or redeemed for less than the face value of the Debenture, or cost of acquisition as the case requires, an allowable deduction from assessable income should be available for the Debenture Holder in the income year in which the disposal or redemption occurs.

A capital loss will not arise for a Debenture Holder on a redemption or disposal of a Debenture to the extent that an allowable deduction is available.

It should be noted that in determining the amount of any gain or loss, the Commissioner of Taxation has a discretion to substitute an arm's length consideration where the Commissioner is satisfied that the parties were not dealing with each other at arm's length.

## 6. Risk Factors

The risk factors associated with an investment in the Debentures under this prospectus fall into three broad categories. Those applicable to any listed entity, those applicable to an investment in Debentures and those specific to the Orchard Trust because of the nature of its investment activities.

The principal activities of the Orchard Trust are the acquisition, development and management of agricultural land and infrastructure and associated assets.

The Directors consider that the summary below, which is not exhaustive, represents some of the major risk factors of which potential investors need to be aware.

The Directors recommend that potential investors examine the contents of this prospectus and consult their professional advisors before deciding whether or not to apply for Debentures under this prospectus.

### 6.1 Risks Specific to a Listed Security

There are general risks associated with investing in any security listed on the ASX. The quoted price of the Debentures may rise or fall in response to a number of factors. These include the economic conditions in Australia and elsewhere, political stability, and the performance of the stock market generally. There is also a risk that the market for the Debentures on the ASX may not be liquid.

### 6.2 Risks Specific to the Debentures

The Debentures are an interest rate linked security. Their value could, therefore, be affected by adverse movements in interest rates.

Anything that affects OIML's ability to pay interest on the Debentures constitutes a risk to Debenture Holders. In certain limited circumstances, such as an event of default, the Trustee may require OIML to redeem the Debentures and immediately pay to the Debenture Holders all moneys owing under the Debentures. The ability of OIML to redeem the Debentures in these circumstances constitutes a risk to Debenture Holders. Some of the risks which may affect OIML's ability to redeem the Debentures or its ability to pay interest on the Debentures are discussed below.

#### ***The resale value of the Orchard Trust's assets***

The values of the Orchard Trust's assets are subject to property market conditions. Increased supply or falls in demand in the sector of the property market in which the Orchard Trust is positioned, as well as the risk of vacancy and fluctuation of rentals on re-leasing the Orchard Trust's assets could influence the value of the Orchard Trust's assets and income from the Orchard Trust's assets.

Values of particular assets within the Orchard Trust's portfolio may be affected by the growth rates and the price attained from the sale of the produce grown on the properties. The following factors may affect the price of citrus produce and table and wine grapes, and therefore the value of particular assets within the Orchard Trust's portfolio:

- any adverse movement in foreign currency exchange rates;
- a fall in the level of demand for citrus produce and table and wine grapes and the end-products derived from such produce;
- a rise in competition and increased supply of these products, both in Australia and overseas; and
- the imposition of new levies, imposts or other taxes.

It should be noted that the Orchard Trust's property assets are subject to long-term leases with Timbercorp, an ASX/S&P 200 company, that extend well beyond the maturity date of the Debentures.

OIML will procure independent valuations of each property every three years in accordance with the Australian accounting standards or at such other times as OIML's directors decide.

However, no guarantee is given as to the resale value of the Orchard Trust's assets should they be required to be sold by the Trustee to meet the Orchard Trust's obligations in relation to the Debentures.

### ***Climate, Disease, Poor Management and Natural Disasters***

Adverse climatic conditions, such as drought, flood, wind and frost, as well as pestilence, vermin, disease, land damage and natural disasters, and poor management practices and contractual default by external service providers, may affect the value of the Orchard Trust's assets.

Importantly, the damage or destruction of the Table Grape and Wine Grape Vineyards or Citrus Orchards does not entitle Timbercorp to terminate the relevant Lease Agreement. In fact, Timbercorp's right to terminate is limited to situations where the Orchard Trust has failed to perform its obligations or becomes insolvent.

### ***Water Quality and Quantity***

The quality and quantity of water used in the irrigation of the Orchard Trust's assets may decline owing to increasing levels of salinity. Access to water is also subject to legislation, and the amount of water available for use under a water licence or allocation may be increased or decreased from time to time.

~~Under the Lease Agreements with Timbercorp, the Orchard Trust is required to make available to Timbercorp a specified level of Water Licences.~~ It should be noted however that the authorities may reduce access to the Water Licences in any irrigation season. However, the Orchard Trust is not required to make available additional water should the authorities reduce access to the Water Licences in any irrigation season.

The water access arrangements in a number of states are currently undergoing review. These reviews may result in water access arrangements being changed in such a manner that adversely affects the Water Licences acquired now and in the future by the Orchard Trust.

### ***Native Title Claim***

The area surrounding and including Costa's Crest and the Bella Vista properties is currently the subject of a native title claim. The rights and interests of the vendors of the properties which were sold to the Orchard Trust were attained by way of 2 perpetual leases granted by the Western Lands Authority in New South Wales pursuant to the *Western Lands Act 1901 (NSW)*. The Orchard Trust acquired these rights and interests in the 2 perpetual leases granted by the Western Lands Authority.

Significantly, the impact of perpetual leases granted pursuant to the *Western Lands Act 1901 (NSW)* on native title claims was the subject of a decision of the High Court of Australia in *Wilson v Anderson*. The majority of the High Court of Australia in *Wilson v Anderson* determined that the lease which was the subject of the proceedings ("**Wilson Lease**") conferred upon the lessee a right of exclusive possession, and the grant of the perpetual lease extinguished any native title right in relation to the land covered by the perpetual lease.

The leases pursuant to which the Orchard Trust took possession of Costa's Crest and the Bella Vista properties are of different legislative origin to the Wilson Lease. However, the leases transferred to the Orchard Trust are held in perpetuity, were granted for the same purpose as the Wilson Lease and contain very similar if not entirely identical conditions to the Wilson Lease.

Whilst no absolute assurance can be given, in light of the *Wilson v Anderson* decision it is unlikely that Costa's Crest and the Bella Vista properties will be subject to successful native title claims if they are pursued.

The rights and interests in the Bella Vista #2 property that the Orchard Trust will acquire upon completion of the contract of sale are also in the form of a perpetual Western Land Lease. Accordingly, the comments above also apply to the Bella Vista #2 property.

### ***Development Delays***

The development of the New Citrus Orchard on the Kangara Estate and the New Table Grape Vineyard on Bella Vista #2 may be affected by delays in obtaining planning permits and approvals from governmental authorities.

However, the rent payable by Timbercorp under the amended lease of Kangara Estate in respect of the New Citrus Orchard and the lease in respect of the New Table Grape Vineyard on Bella Vista#2 is based on the budgeted development cost, and accordingly any development delay will not affect the Orchard Trust's cashflows.

### ***Property Expenses***

Under the leases with Timbercorp, Timbercorp is required to pay insurances, rates, taxes and repairs and maintenance in respect of the Land and improvements. However, there may be unforeseen property expenses that Timbercorp does not have to meet out of its own funds, and which the Orchard Trust must pay and which have not been budgeted. This may affect the ability of the Orchard Trust to meet its obligations to the Debenture Holders and other creditors.

### ***Capital Expenditure***

Unforeseen capital expenditure requirements may affect the ability of the Orchard Trust to meet its obligations to the Debenture Holders and other creditors. There is a risk that the Orchard Trust may require some form of unexpected ongoing maintenance or capital expenditure, as well as the risk that changes in government policies with respect to the operations of the Orchard Trust may require additional unbudgeted expenditures to be undertaken. This may affect its ability to meet its obligations to the Debenture Holders.

TAM has agreed to develop the New Citrus Orchard and the New Table Grape Vineyard for the Orchard Trust for fixed prices (subject to any variations in the scope of the works), which will minimise the risk in relation to those developments. The fixed prices do not extend to the acquisition of all necessary Water Licences and installation of electrical works, which are on a provisional sum basis, and are subject to any variations.

TAM may agree with OIML to undertake further developments for the Orchard Trust for fixed prices.

OIML will at all times attempt to maintain \$500,000 in cash reserves to ensure that it is able to meet any unforeseen expenditure requirements. Furthermore, Timbercorp has also agreed to make available to OIML a \$1.9 million stand-by facility on arm's length commercial terms.

It should be noted that the Orchard Trust will be required to spend approximately \$900,000 on or before May 2006 to expand the external irrigation infrastructure that delivers water to Bella Vista, and which will deliver water to Bella Vista #2.

The capacity of the infrastructure needs to be expanded to cater for the water requirements of the table grape vineyards at Bella Vista and Bella Vista #2 upon full maturity. OIML will consider how this additional capital expenditure will be funded in the second half of 2005. Timbercorp, as the lessee, may also undertake the works (which will be subject to OIML's approval), and be reimbursed for them upon expiry or lawful termination by Timbercorp of the lease or upon sale of the property on the terms set out in the relevant lease agreement.

### ***Economic Conditions***

Movement in general economic conditions, bond markets, inflation and interest rates may affect the value of the Orchard Trust's assets. Property values and therefore the level of growth in the value of the Orchard Trust's assets may be affected by these factors. For example, increases in interest rates could have the effect of reducing the value of the Orchard Trust's assets.

This will only be relevant to Debenture Holders should the need arise to sell the Orchard Trust's assets to meet the Orchard Trust's obligations under the Debentures.

### ***Unforeseen Circumstances***

Major unforeseen circumstances, such as major litigation may occur in respect of the Orchard Trust and its assets, which may affect the ability of the Orchard Trust to meet all of its obligations under the Debentures.

### ***Insurance***

Insurance in relation to the Orchard Trust's assets may not cover all events or all claims made. Further, appropriate cover for terrorism and other uninsurable risks may not be available, or the cover that is available may not be adequate or commercially viable.

### ***Regulatory Conditions***

Changes in Government fiscal, monetary and regulatory policies (such as in relation to taxation laws) or statutory changes may affect the Orchard Trust, its assets and their value.

In particular, the Orchard Trust and its lessees may not be able to clear and use the land for the activities proposed to be carried out on the land due to Government action and changes by Government to existing conditions imposed in respect of the land.

### ***Timbercorp as the Lessee***

The ability of the Orchard Trust to meet its obligations to Debenture Holders will be materially affected should the tenant, Timbercorp, be unable to pay the rent due under the Lease Agreements.

Anything that affects the ability of Timbercorp to pay the rent due under the Lease Agreements, will affect the ability of the Orchard Trust to meet its obligations to Debenture Holders.

Any default by Timbercorp, as the sole lessee of the Orchard Trust's properties will have a material adverse impact on the Orchard Trust, particularly if the Trust is unable to find, or is delayed in finding, appropriate substitute lessees. Timbercorp's business may be affected by any adverse changes in:

- taxation laws governing the right of Growers (whether current or future) to claim a tax deduction for the costs of participating in Timbercorp's annual agribusiness projects. These include plantation establishment costs and land rental in the case of the hardwood plantations, and management and rent or licence fees in the case of Timbercorp's horticultural projects. Other costs include insurance and finance costs; and
- other Government regulations, including the Corporations Act, that affect the ability of Timbercorp to offer interests in primary industry based projects, and to efficiently establish and manage these projects and sell their produce.

Timbercorp has advised that it continually monitors these important areas and it is not aware of, nor does it expect, any changes that will have an adverse effect on Timbercorp's business. All projects promoted by Timbercorp carry Australian Taxation Office Product Rulings, which provide Growers with tax certainty so long as the projects are carried out in accordance with the information provided to the Australian Taxation Office and described in the rulings.

The ability of Timbercorp to meet its obligation to the Orchard Trust may also be affected by Growers' failure to pay annual maintenance, management, licence and rental fees when due.

### ***Loss of Key Personnel***

OIML has assembled a key management team, in addition to engaging TAM and its management team, each of whom have a particular expertise in the Orchard Trust's areas of operation and who play an important part in the Orchard Trust's direction and prospects. None of the executive directors of OIML or TAM are employed under service contracts.

### **6.3 Seek Advice**

OIML will not give you any personal financial product advice.

Accordingly, you should consider carefully the purchase of Debentures in the context of your objectives and financial situation and obtain independent financial and legal advice before applying for Debentures.

## **7. Summary of the Material Documents**

Set out below is a summary of some of the material and significant documents that OIML has entered into, and which are material to this Issue. Please note that not all material and significant documents that OIML has entered into have been summarised for the reasons set out in section 1.9. These documents include the leases over the properties described in sections 2.2, 2.3 and 2.4.

Terms or expressions used in this section that are capitalised and are not defined elsewhere in this prospectus have the same meaning as in the relevant document, unless the context implies the contrary. The actual terms of the relevant document will prevail over this summary if there is any inconsistency.

### **7.1 Trust Deed**

Permanent Nominees (Aust) Limited is the trustee for the Debenture Holders under the Trust Deed. This Deed governs the issue of the Debentures, sets out the rights and obligations of various parties and the terms and conditions of this Issue.

OIML has entered into this Deed in its capacity as responsible entity of the Orchard Trust and the obligations and liabilities of whatever kind undertaken or incurred by it are incurred solely in its capacity as responsible entity of the Orchard Trust.

OIML will, in the absence of fraud, gross negligence, breach of trust or breach of duty, not be liable to pay or satisfy any obligations except out of the Assets of the Orchard Trust against which it is entitled to be indemnified in respect of any obligation incurred by it as responsible entity of the Orchard Trust.

#### ***The Trustee***

Under the Trust Deed, the Trustee is the trustee for the Debenture Holder, of the rights of action under the Debentures, the Trust Deed, the Fixed and Floating Charge, conditions of issue of the Debentures described in Schedule 2 of the Trust Deed (Conditions) and the Mortgages and of the proceeds of those rights.

The Trustee will hold the following on trust for the benefit of the Debenture Holders:

- a right to enforce OIML's obligations to repay Debentures under the Trust Deed and the Conditions;
- each Mortgage, the Fixed and Floating Charge or other security interest granted under the terms of the Trust Deed; or
- the right to enforce any other duties of OIML under the Trust Deed, the Mortgages, the Fixed and Floating Charge, a Debenture or the Corporations Act.

#### ***Trustee's Discretion, Powers and Duties***

Subject to certain obligations regarding the application of moneys received by the Trustee, the Trustee has absolute discretion as to the exercise of the powers and discretions vested in it under the Trust Deed. In the absence of a failure to show the degree of care and diligence required of a Trustee under the Corporations Act, the Trustee does not have any responsibility for any loss, costs, damages, expenses or inconvenience that may arise from the exercise or non-exercise of such powers, authorities and discretions.

The Trustee enters into the Trust Deed only in its capacity as trustee of the Debenture Holders and in no other capacity. A liability arising under or in connection with this Deed or a transaction document is limited to and can be enforced against the Trustee only to the extent to which the Trustee is actually indemnified for the liability.

The Trustee is obliged to observe various duties, such as exercising reasonable diligence to ascertain whether the property of OIML will be sufficient to meet the repayment obligations to the Debenture Holders, and doing everything to ensure that OIML remedies any breach known to the



Trustee unless the Trustee is satisfied that the breach will not materially prejudice your interest as a Debenture Holder.

### ***Trustee May Enforce Proceedings***

Upon the occurrence of an event of default, the Trustee may institute such proceedings as it thinks fit to enforce repayment of the Debentures and recover any other moneys owing under the Trust Deed. It may exercise all rights capable of being conferred by the legislation, regulations and other laws of any relevant jurisdiction upon chargees under mortgage and such rights may be exercised by the Trustee immediately upon or any time after any default by OIML.

### ***Trustee's Remuneration***

The Trustee is currently paid a fixed fee of \$20,000 per annum for its services as trustee, to be increased to \$25,000 per annum following the issue of Debentures under this prospectus. The fee is adjusted annually for changes in the consumer price index. It is also entitled to be reimbursed for costs and expenses reasonably and properly incurred in connection with the exercise or attempted exercise of its powers, authorities or discretions. The remuneration will be paid in priority to any claim by Debenture Holders.

### ***Retirement, Removal and Appointment of Trustee***

The Trustee may generally retire or resign upon giving OIML at least 4 months prior written notice. Retirement is only effective when a trustee company has been appointed in its place. OIML may remove the Trustee from office if the Trustee ceases to be a trustee company, or a special resolution of Debenture Holders determines that the Trustee should be removed.

### ***Debenture Issue***

Debentures are issued on the condition that Debentures are issued with a face value of \$100.00 each.

### ***Borrowing Limit***

OIML's ability to incur liabilities is limited while there are any Debentures issued and outstanding. It must not permit the Debenture Gearing Ratio to exceed 66.667% or the Gearing Ratio to exceed 80% whilst there are any Debentures on issue.

### ***Valuation of Land***

OIML must cause valuations of the Land and Improvements to be undertaken at the times and in the manner specified in the Constitution and the Corporations Act by a Valuer.

### ***Early Redemption by OIML***

Where a Tax Event has occurred in respect of OIML and/or the Orchard Trust, and such event cannot be avoided by taking reasonable measures available other than the payment of money, the Debentures may be redeemed at the option of OIML, in whole, but not in part, on giving not less than 20 Business Days notice to the Debenture Holders.

### ***Enforcement***

#### **Charge**

The Debentures constitute obligations of OIML, as responsible entity of the Orchard Trust, which are secured by a fixed and floating charge and registered Mortgages over the Land and Improvements. However, the security does not cover Citrus Crops, Table Grape Crops, Wine Crops or any other crops derived from the Projects, as they remain the property of the participants in the Projects, the responsible entities and managers of the Projects and their nominees, any lessee or licensee of a person of the responsible entities and managers, and any other person who derives title to the Citrus Crops, Grape Crops or Other Crops derived from the Projects through any of them.

The Trustee acknowledges the grant of the Occupancy Agreements for the purpose of the Projects, and the leases, sub-leases, licences and other rights of occupancy for the purpose of the Projects, of

any Land and Improvements or part thereof to and by the responsible entities and managers of Projects and their nominees, the participants in the Projects and anyone claiming through any of them whether those Occupancy Agreements, leases, sub-leases, licences and other rights of occupancy exist at the date of this Deed, the Fixed and Floating Charge or the Mortgages or arise subsequently.

OIML must not create any encumbrance in relation to the Assets unless the encumbrance is acknowledged by the Trustee as described above, or ranks in priority below the Fixed and Floating Charge and the Mortgages or has been disclosed to and approved by the Trustee.

### Events of Default

The "Events of Default" are set out in clause 12.1 of the Trust Deed, and they are briefly summarised as follows:

- if OIML does not repay or otherwise redeem any Debentures within 14 days after the day upon which such repayment or redemption becomes due;
- if OIML does not pay any interest or other moneys (except principal moneys) which become due and payable pursuant to the Trust Deed, in the case of interest, within 14 days after it becomes due for payment and in the case of any such other moneys, within 14 days after demand is made upon it;
- if OIML allows the Debenture Gearing Ratio to exceed 66.667% or the Gearing Ratio to exceed 80% whilst there are Debentures on issue. Where the breach has occurred, OIML must remedy the breach within 30 days of receiving notice of the breach from the Trustee;
- if OIML becomes insolvent;
- if the Transaction Documents are terminated or it becomes unlawful for OIML to perform its material obligations under those documents;
- if a receiver, administrator or controller is appointed to any substantial part of the Orchard Trust Assets;
- if a representation, warranty or statement made or deemed to be made by OIML in a Transaction Document is untrue or misleading in a material respect;
- if the Debentures cease to be listed for quotation on the ASX as a direct consequence of the action of OIML;
- if without the Trustee's prior written consent, any alteration is made to the terms and conditions of the Constitution which might, in the Trustee's opinion, detrimentally affect the Debenture Holder's position under this Deed.

Upon the happening of any one or more of the Events of Default, the Trustee may institute proceedings against OIML to enforce the performance of the provisions of the Trust Deed.

### **Covenants**

#### Acknowledgement of Indebtedness

OIML, as responsible entity of the Orchard Trust acknowledges its indebtedness to the Trustee in respect of the principal moneys represented by the Debentures and the interest payable thereon. OIML agrees to pay to the Trustee the principal moneys represented by the Debentures or, as the case may be, such part of the Debentures as ought to be redeemed on the date due for repayment and will, in the meantime and until the whole of the Debentures have been redeemed, pay to the Trustee interest on the principal moneys represented by the Debentures.

### OIML's Covenants

OIML has covenanted with the Trustee that it will:

- not permit the Debenture Gearing Ratio to exceed 66.667% or the Gearing Ratio to exceed 80% whilst there are any Debentures on issue;
- strive to carry on and conduct its business in a proper and efficient manner;
- provide to the Trustee audited financial statements, a directors' report and auditor's report for OIML and the Orchard Trust as at the end of each financial year;
- make available for inspection by the Trustee, or any registered company auditor appointed by the Trustee, OIML's and Orchard Trust's financial and other records;
- if so requisitioned by Debenture Holders holding not less than 10% of the amount of Outstanding Debentures, convene a meeting of Debenture Holders for the purpose of considering the most recent financial statements of the Orchard Trust and OIML, or to give to the Trustee directions in relation to the exercise of its powers;
- duly comply with all applicable requirements of the Corporations Act and with all statutory requirements with respect to the filing of reports and statements and registration of mortgages and charges and the keeping open of registers for inspection and all other like matters;
- use its best endeavours to ensure that all authorisations required for the validity and enforceability of its obligations under the Trust Deed and the effectiveness of the Transaction Documents are obtained;
- comply with and observe each and every covenant, obligation, provision and condition of the Trust Deed and the conditions of issue of all Debentures;
- cause insurance to be taken out in the names of the Trustee and itself and to insure their respective insurable interests in the Land and Improvements, keep the Land and Improvements in good repair and comply with all laws applicable to it;
- not encumber the Land, Improvements or horticultural or viticultural assets as security for payment of any borrowings unless such encumbrance ranks in priority below the Mortgages and the Fixed and Floating Charge and is subject to terms and conditions the Trustee considers reasonably necessary to protect the interests of Debenture Holders unless such encumbrance has been disclosed to the Trustee in clause 4.11 of the Deed;
- apply for admission of the Debentures to quotation on the official list of the ASX within 7 days after the date of the prospectus and to repay all Moneys Owed to Debenture Holders if the Debentures are not admitted to quotation within 3 months after the date of the prospectus.

### ***Meeting of Debenture Holders***

The third Schedule to the Trust Deed contains rules governing any meeting of Debenture Holders.

### ***Variation of the Trust Deed***

OIML and the Trustee have power to amend the Trust Deed:

- to correct manifest errors;
- to make technical amendments;
- to enable the Debentures to be listed for quotation on the ASX and if the amendment is otherwise not considered by the Trustee to be materially prejudicial to the interests of Debenture Holders;
- in any way authorised by a special resolution of Debenture Holders;
- to comply with the law or requirements of statutory authorities.

**Definitions used in the Trust Deed**

<b>Cash:</b>	at any time the aggregate amount, as disclosed by the statement of financial position which is at the relevant date the Last Statement of Financial Position, of all cash and cash equivalents of the Orchard Trust, including: (a) deposits at call; and (b) short-term money market securities;
<b>Cost:</b>	for the purposes of Condition 6.3, means the aggregate of: (a) the purchase price of the Land; (b) all costs, fees and duties associated with the acquisition of the Land; and (c) all capital expenditure incurred or to be incurred in the development of a citrus orchard, vineyard (table and wine grapes) and any other horticultural and viticultural assets, including any other infrastructure on the Land, where applicable;
<b>Debenture Gearing Ratio:</b>	at any time as disclosed by the statement of financial position which is at the relevant date the Last Statement of Financial Position, the ratio calculated in accordance with the following formula: $A = [B - C] / [D - C]$ where: A = the Debenture Gearing Ratio; B = Debenture Liabilities (expressed as a positive); C = Cash; D = at any time the aggregate amount, as disclosed by the statement of financial position which is at the relevant date the Last Statement of Financial Position, of all Assets of the Orchard Trust;
<b>Debenture Liability:</b>	at any time the aggregate amount, as disclosed by the statement of financial position which is at the relevant date the Last Statement of Financial Position, of all liabilities to Debenture Holders, in that capacity, under the Trust Deed;
<b>Debt:</b>	at any time the aggregate amount, as disclosed by the statement of financial position which is at the relevant date the Last Statement of Financial Position, of all Liabilities of the Orchard Trust, excluding: (a) all Liabilities which are non-interest bearing; (b) the amount of all hybrid Units and instruments convertible to ordinary Units; (c) all Subordinated Member Loans;
<b>Gearing Ratio:</b>	at any time as disclosed by the statement of financial position which is at the relevant date the Last Statement of Financial Position, the ratio calculated in accordance with the following formula: $A = [B - C] / [D - C]$ where: A = the Gearing Ratio; B = Debt (expressed as a positive);

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C = Cash;

D = at any time the aggregate amount, as disclosed by the statement of financial position which is at the relevant date the Last Statement of Financial Position, of all Assets of the Orchard Trust;

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**Improvements:** all capital works, trees, Water Licences attributed to the Land and other improvements forming part of the Orchard Trust Assets, including irrigation works;

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**Land:** the real property forming part of the Orchard Trust Assets that becomes subject to a Mortgage or a lease encumbered under the Mortgage of Contractual Rights, and the Trust Deed;

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**Last Statement of Financial Position:**

(a) until the first occasion on which a consolidated statement of financial position of the Orchard Trust is delivered to the Trustee under paragraphs 7.2(d) or 7.2(e), the consolidated statement of financial position of the Orchard Trust as at 30 September 2003;

(b) on that first occasion and any time after that first occasion, the consolidated statement of financial position of the Orchard Trust then most recently delivered by OIML to the Trustee under paragraphs 7.2(d) or 7.2(e);

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**Market Value:** the value of the Land and Improvements as determined by the Valuer in accordance with Condition 6.3;

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**Moneys Owning:** the principal moneys and interest from time to time payable in respect of the Debentures to the Trustee or to any Debenture Holder under or pursuant to this Deed or the terms of issue of any of the Debentures and all other moneys from time to time payable under or by virtue of the Trust Deed;

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**Occupancy Agreements:** ~~any lease, licence or other occupancy agreement entered into by OIML in~~ respect of the Land and Improvements;

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**Subordinated Member Loans:** (a) the aggregate of all moneys advanced to OIML as responsible entity of the Orchard Trust and Orchard Trust's Related Corporations by persons who at the time of their advance are unit holders of the Orchard Trust or any of the Orchard Trust's Related Corporations the repayment of which is postponed until all of the interest bearing Liabilities of OIML as responsible entity of the Orchard Trust and Orchard Trust's Related Corporations (other than Liabilities in respect of other debts which are Subordinated Member Loans or in respect of debts to which a condition similar in substance to this definition applies) are paid, redeemed or satisfied in full and in respect of which the relevant creditor is not entitled to prove in Liquidation in the event of any one or more of OIML as responsible entity of the Orchard Trust and Orchard Trust's Related Corporations going into Liquidation until those interest bearing Liabilities of OIML as responsible entity of the Orchard Trust and Orchard Trust's Related Corporations (other than Liabilities in respect of other debts which are Subordinated Member Loans or in respect of debts to which a condition similar in substance to this definition applies) have been paid, redeemed or satisfied in full.

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**Transaction Documents include:** (a) the Trust Deed, any deed subsequently amending or replacing the Deed, any other document or documents which are used in or assist in the carrying out of any act or obligation under the Deed (including the Fixed and Floating Charge);

(b) the Mortgages; and

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	(c) any other documents agreed by OIML and the Trustee to be Transaction Documents;
<b>Trustee Company:</b>	a body corporate which would be entitled to act as a trustee for the holders of debentures (as defined in section 9 of the Corporations Act) under section 283AC(1) of the Corporations Act;
<b>Valuer:</b>	a person: <ul style="list-style-type: none"> <li>(a) who has at least five years experience in assessment of rural properties in such area where the Land and Improvements are situated;</li> <li>(b) being a member or members of Australian Property Institute Incorporated or its successor; and</li> <li>(c) who has no pecuniary interest that could reasonably be regarded as being capable of affecting his or her ability to give an unbiased opinion.</li> </ul>

## 7.2 Mortgages granted by OIML to the Trustee

The Debentures issued by OIML, as responsible entity of the Orchard Trust are secured by registered Mortgages over the Orchard Trust's Land in favour of the Trustee ("**Mortgagee**").

OIML has entered into the existing Mortgages in its capacity as responsible entity of the Orchard Trust under the Constitution of the Orchard Trust. The general terms and conditions of the Mortgages are set out below, noting that there are variations between the Mortgages.

It is also proposed that a registered first mortgage will be granted over Bella Vista #2 should it be acquired by the Orchard Trust, on similar terms and conditions.

### ***What do the Mortgages Secure?***

The Mortgages are granted to the Mortgagee as security for the due and punctual payment of all moneys (whether present or future, actual or contingent, secured or unsecured, as principal or surety) owing by OIML to the Mortgagee in all its capacities pursuant to the Transaction Documents ("**Secured Money**").

The Mortgages over the Land do not extend to:

- ~~the Citrus Crops, being the products, rights, benefits or credits derived from the citrus trees on the Land;~~
- the Table Grapes, being the products, rights, benefits or credits derived from the grapevines on the Land;
- the Wine Grapes, being the products, rights, benefits or credits that are derived from the grapevines on the Land; and
- Other Crops derived from the Projects.

### ***Dealing with the Land***

The Mortgagee acknowledges and agrees that all rights and interests of:

- ~~the responsible entities and managers of the Projects and their nominees;~~
- ~~the participants in a Project; and~~

- anyone claiming through the persons specified above,

to use the Land under the terms of any Occupancy Agreements, lease, sub-lease, licence and other rights of occupancy granted for the purpose of the Projects, whether those rights exist at the date of the relevant Mortgage, the Debenture Trust Deed or the Fixed and Floating Charge or arise subsequently, have priority over the rights of the Mortgagee, and the Mortgagee consents to the rights of the persons described above having such priority.

The Mortgagee also consents to:

- leases, sub-leases, licences and other rights of occupancy granted for the purpose of the Projects, of any Land and Improvements or part thereof to the persons described in the preceding paragraph;
- Occupancy Agreements granted for the purpose of the Projects,

whether those Occupancy Agreements, leases, sub-leases, licences and other rights of occupancy exist at the date of the relevant Mortgage, the Debenture Trust Deed or the Fixed and Floating Charge or arise subsequently.

The Mortgagee has consented to OIML as responsible entity of the Orchard Trust:

- entering into Occupancy Agreements with Timbercorp in relation to the Land which currently forms part of the Assets of the Orchard Trust;
- granting a first-ranking mortgage to Chiquita Agribusiness in relation to the Kangara Estate Undeveloped Land being purchased from Chiquita Agribusiness to secure the payment of the purchase price deferred under the contract of sale in relation to that Land;
- entering into a 99-year lease agreement with Chiquita Agribusiness in relation to approximately 2 hectares of the Land which is part of the Land described in Certificate of Title Register Book Volume 5097 Folio 567,

and agrees and acknowledges that the relevant Mortgage, the Debenture Trust Deed or the Fixed and Floating Charge are granted subject to the rights and interests described above, whether those rights and interests exist at the date of the relevant Mortgage, the Debenture Trust Deed or the Fixed and Floating Charge or arise subsequently.

The Mortgagee also agrees and acknowledges that OIML must not at any time following the purchase of the Land from Chiquita Agribusiness described in Certificate of Title Register Book Volume 5171 Folio 743 and Certificates of Title Volume 5097 Folios 564, 565, 566 and 567, Volume 5131 Folio 62 and Volume 5509 Folios 65 and 66 ("Kangara Property"), sell the Kangara Property to a third party without first offering to Chiquita Agribusiness the Kangara Property at the same price and on the same terms and conditions as those upon which OIML proposes to sell the Kangara Property to a third party.

OIML may subdivide the Land with the Mortgagee's consent, which must not be unreasonably withheld.

OIML may, in its absolute discretion, lease, assign or licence the Water Licences to a third party subject to the lease, assignment or licence being for a term of not greater than 12 months and for market value.

### ***Payment and Other Obligations***

OIML must pay all Secured Money to the Mortgagee in accordance with the terms of the Debenture Trust Deed, the Mortgage of Contractual Rights and the Mortgages. Other obligations of OIML include (but are not limited to) the following:

- insuring the improvements on the Land on a replacement and reinstatement basis, but it is not required to insure the Citrus Crops, Table Grapes, Wine Grapes and Other Crops derived from the Projects. OIML must also maintain public risk insurance to the sum of \$10 million;

- keeping the Land in good condition and ensuring that any Building Work on the Land is completed properly;
- ensuring that any Building Work carried out on the Land is done to a reasonable standard and in a timely and workmanlike manner and in a way that complies with all appropriate legislation and the requirements of government agencies;
- complying with all laws and the requirements of councils and other government bodies in relation to the Land, and notifying the Mortgagee as soon as it becomes aware of any notice or order from any authority in relation to the use or condition of the Land;
- paying all rates, taxes and other amounts payable in relation to the Land by the due dates for payments;
- not to dispose of, encumber or grant any interest over any of its material rights and obligations under leases, sub-leases or licences existing over the whole or any part of the Land without the Mortgagee's consent, which will not be unreasonably withheld. OIML may only encumber the Land with the Mortgagee's consent, provided that such encumbrances rank in priority below the Mortgages, and on terms and conditions that the Mortgagee considers reasonably necessary or desirable to protect its interests and the interests of the Debenture Holders under the Debenture Trust Deed and the Mortgages;
- notifying the Mortgagee in writing if it becomes aware that the Land is or may be compulsorily acquired or resumed by any government, and keeping the Mortgagee fully informed of all steps taken in relation to such resumption or acquisition;
- allowing the Mortgagee and the Mortgagee's officers to enter the Land on reasonable notice for the purpose of inspecting it;
- keeping the Mortgagee informed of all matters which are likely to significantly affect the Land, or its value, or OIML's ability to carry out its obligations under the Mortgages;
- taking all such other steps as may be reasonably required to ensure that the Mortgagee has proper and enforceable mortgages over the Land.

#### ***What amounts to Default?***

OIML will be in default if:

- there is an Event of Default;
- if it does not pay any part of the Secured Money when it is due for payment;
- it breaches any other provisions of the Mortgages;
- incorrect or misleading information is given to the Mortgagee in connection with the Mortgages;
- the Mortgagee reasonably believes that OIML acted fraudulently in connection with the Mortgages;
- it become insolvent.

#### ***What happens in the Event of a Default?***

Subject to the giving of one month's notice, and the opportunity to remedy any breaches if they are capable of being remedied, and the rights of growers, other members of the Timbercorp Group and the persons described above under the heading "Dealing with the Land", to use the Land, the Mortgagee may exercise its rights under the Mortgages and any applicable law to do any of the acts below. The Mortgagee may:

- enter the Land and take physical possession of all or any part of it;
- sell all or any part of the Land;



- order the removal of all items on the Land not subject to the Mortgages;
- demand the payment of Secured Money from OIML;
- rectify that breach at the Mortgagor's cost;
- take any action in relation to the Land that the Mortgagor could take if the Land were not mortgaged;
- do anything it believes is necessary or desirable for any of the above purposes.

### ***Discharge of Mortgages***

The Mortgages will be discharged when the Mortgagor has fulfilled all of the obligations under the Debenture Trust Deed, the Mortgages, the Mortgage of Contractual Rights and any Collateral Security and when the Mortgagee is satisfied that all Secured Money has been paid in full.

### **7.3 Mortgage of Contractual Rights**

The Debenture Trustee will also hold on behalf of Debenture Holders a mortgage over:

- the Bella Vista #2 Interim Lease pending the Subdivision; and
- the Bella Vista #2 Contract.

The rights of the Trustee under the Mortgage of Contractual Rights are subject to the rights of participants in the Timbercorp Table Grape Projects conducted on Bella Vista #2.

The Orchard Trust is restricted in dealing with any of the contractual rights described above. However, the Orchard Trust may cause or permit the Bella Vista #2 Interim Lease to be terminated upon the transfer of part or all of the Bella Vista #2 property to the Orchard Trust, where such transfer is in accordance with the terms of the contract of sale as at the date of the Mortgage of Contractual Rights.

Upon the transfer of part or all of the Bella Vista #2 property, the Orchard Trust must promptly grant a registrable first mortgage over the Bella Vista #2 property to the Debenture Trustee on substantially the same terms as the other Mortgages.

It should be noted that all of the Vendors' Property will be transferred to the Orchard Trust should the Subdivision not proceed by 28 October 2008.

### **7.4 Deed of Variation to the Lease Agreement for Kangara Estate**

OIML and Timbercorp have entered into a deed of variation to amend the lease granted over the existing citrus orchard at Kangara Estate and the Kangara Estate Undeveloped Land in order to:

- extend the term by 1 year to 30 June 2027;
- increase the rent payable to the Orchard Trust to take into account the New Citrus Orchard being developed on the Kangara Estate;
- permit Timbercorp, at its cost and expense to undertake capital works on Kangara Estate (which will be subject to OIML's approval), and be reimbursed for them upon expiry or lawful termination by Timbercorp of the lease or upon sale of the property, on the terms set out in the lease agreement;
- give Timbercorp an option to renew the lease for a further term of 5 years.

### **7.5 Deed of Variation to the Lease Agreement for Bella Vista**

OIML and Timbercorp have entered into a deed of variation to amend the lease granted for the Bella Vista property in order to:

- increase the rent payable to the Orchard Trust to take into account the payments made to TAM for irrigation infrastructure improvements at Bella Vista;

- permit Timbercorp, at its cost and expense to undertake capital works on Bella Vista (which will be subject to OIML's approval), and be reimbursed for them upon expiry or lawful termination by Timbercorp of the lease or upon sale of the property on the terms set out in the lease agreement;
- give Timbercorp an option to renew the lease for a further term of 6 years.

## 7.6 Lease Agreement for Bella Vista #2

Under the Lease Agreement for Bella Vista #2 between OIML, Timbercorp and Timbercorp Securities:

- the Orchard Trust has a number of obligations in relation to the proposed table grape developments;
- Timbercorp has an option to renew the Lease for a further term of 5 years upon expiry of the initial term on 29 June 2020;
- the Orchard Trust is required to establish the New Table Grape Vineyard on or before 31 July 2005;
- the Orchard Trust acknowledges and agrees that during the term of the Lease Agreement, the table grapes and all rights, benefits and credits derived from the table grapes will be and will remain the property of Timbercorp, Timbercorp Securities or the Growers (or any other person or entity deriving title to the table grapes through Timbercorp, Timbercorp Securities or the Growers);
- a number of cultivation and maintenance obligations and other duties in relation to the New Table Grape Vineyard are imposed on Timbercorp;
- the Orchard Trust must make available the required Water Licences;
- Timbercorp must only use the land in accordance with the Lease Agreement, including:
  - harvesting and processing the table grapes;
  - removing and selling or otherwise dealing in the table grapes and retaining all income from such sale or dealing;
  - entering into sub-lease agreements with Timbercorp Securities in relation to the table grape managed investment project to be established by Timbercorp Securities;
  - Timbercorp Securities entering into sub-leasing, licensing and other occupancy arrangements with Growers in the table grape managed investment project to be established by Timbercorp Securities;
  - it and Timbercorp Securities granting sub-leases, licences or other occupancy rights to any other person over the land in their absolute discretion;
- Timbercorp need not carry out structural work unless the work is required because of the negligence or default of:
  - Timbercorp;
  - Timbercorp Securities;
  - Timbercorp's officers, employees, agents, contractors or invitees;
  - Timbercorp Securities' officers, employees, agents, contractors or invitees; or
  - the Growers and their agents, contractors or invitees;
- Timbercorp must maintain certain types of insurance approved by OIML in the names of Timbercorp, OIML and any other person named by OIML and Timbercorp;

- OIML must not enforce, conduct, settle or compromise claims under any insurance policy, even if that policy also covers other property, if Timbercorp gives OIML a notice that it wishes to do these things;
- OIML and Timbercorp deal with any insurance proceeds as set out in the Lease Agreement;
- OIML consents to:
  - Timbercorp entering into sub-lease agreements with TSL for the purposes of Projects in its absolute discretion;
  - TSL entering into agreements with Growers in its absolute discretion; and
  - Timbercorp and TSL granting sub-leases, licences or other occupancy rights to any other person over the land in their absolute discretion,

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

- on default by Timbercorp, OIML's rights to re-enter and take possession of Bella Vista #2 are subject to the rights granted by Timbercorp or Timbercorp Securities to the Growers under the Occupancy Agreements;
- plant breeders' rights (as described in section 3.4) are licensed to Timbercorp, and Timbercorp must pay turnover rent on the fruit sold off the "Stanley Seedless", the "Red Rob" and the "BW 41/5" table grape vines on the New Table Grape Vineyard;
- permit Timbercorp, at its cost and expense to undertake capital works on Bella Vista #2 (which will be subject to OIML's approval), and be reimbursed for them upon expiry or lawful termination by Timbercorp of the lease or upon sale of the property on the terms set out in the lease agreement;
- the rights of both parties to terminate the Lease Agreement are outlined;
- Timbercorp must pay when due all taxes, charges and assessments levied upon Bella Vista #2.

## 7.7 Summary of Andriske Licence Agreement #1

OIML and Timbercorp have each severally entered into a licence agreement with Andriske dated 9 October 2003 (as varied by a deed of variation on 12 November 2004) under which the Orchard Trust has been granted an exclusive licence to plant the "Stanley Seedless" and the "Red Rob" table grape varieties in certain geographical areas and a non-exclusive licence to sell the fruit from the "Stanley Seedless" and the "Red Rob" table grape vines which are planted on the table grape vineyards.

Andriske Licence Agreement #1 allows the Orchard Trust to plant the "Stanley Seedless" and the "Red Rob" table grape varieties on Bella Vista #2.

Andriske Licence Agreement #1 is more fully described in the prospectus dated 24 October 2003 lodged with both the ASX and ASIC.

OIML, Timbercorp and Andriske agreed to vary Andriske Licence Agreement #1 on 12 November 2004 to:

- increase the licence fee paid to Andriske from \$2.00 per vine to \$9.00 plus GST per vine;
- reduce the royalty rate paid on the sales of the fruit from 8% to 3%;
- limit the term of the licence granted to plant and grow the vines and sell the fruit of the "Stanley Seedless" variety to the date of expiry of the "Stanley Seedless" plant variety rights, which is 24 May 2027); and
- limit the term of the licence granted to plant and grow the vines and sell the fruit of the "Red Rob" variety to the date of expiry of the "Red Rob" plant variety rights, which is 20 June 2028.

Andriske also grants OIML and Timbercorp pursuant to the deed of variation a non-exclusive licence to use any of Andriske's trade marks used in connection with the production and sale of the "Stanley Seedless" and the "Red Rob" grapes and vines.

#### **7.8 Summary of the Andriske Licence Agreement #2**

The Orchard Trust and Timbercorp have each severally entered into a licence agreement with Andriske dated 12 November 2004 under which the Orchard Trust has been granted a non-exclusive licence to plant and grow the "BW 41/5" table grape variety and to process and sell the fruit from the "BW 41/5" table grape vines in Australia and around the world.

Andriske Licence Agreement #2 allows the Orchard Trust to plant the "BW 41/5" table grape variety on Bella Vista #2.

The Orchard Trust must pay royalties in relation to the "BW 41/5" table grape fruit sold from the New Table Grape Vineyard. It will recover such royalties to the maximum extent possible from Timbercorp as additional rent.

The Orchard Trust must also pay a licence fee in respect of all "BW 41/5" vines planted or to be planted on the New Table Grape Vineyard at \$9.00 per vine within 30 days of the planting of that vine.

The term of the licence to plant and grow the vines and sell the fruit of the "BW 41/5" variety ends on the expiry of Andriske's plant breeders' rights to the "BW 41/5" variety, which will occur on 27 March 2027.

#### **7.9 Summary of the 2005 Kangara Estate Fixed Price Contract**

The Orchard Trust has engaged the Manager, TAM, under the 2005 Kangara Estate Fixed Price Contract to establish the New Citrus Orchard for a fixed price of \$8.192 million, plus GST (subject to any variations in the scope of the works). The fixed price does not include the acquisition of all necessary Water Licences and upgrade of irrigation infrastructure, which are to be acquired on a provisional sum basis, estimated at \$3.645 million plus stamp duty and \$1.327 million respectively.

#### **7.10 Summary of the Bella Vista #2 Fixed Price Contract**

The Orchard Trust has engaged the Manager, TAM, under the Bella Vista #2 Fixed Price Contract to develop the New Table Grape Vineyard for a fixed price of \$15.250 million, plus GST (subject to any variations in the scope of the works). The fixed price does not include the acquisition of all necessary Water Licences and the installation of electrical works, which are to be acquired on a provisional sum basis, estimated to be \$2.610 million and \$0.215 million respectively.

#### **7.11 Summary of the 2005 Kangara Estate Guarantee and the Bella Vista #2 Guarantee**

Timbercorp pursuant to the 2005 Kangara Estate Guarantee and the Bella Vista #2 Guarantee:

- unconditionally and irrevocably guarantees to the Orchard Trust the performance by TAM of TAM's obligations in accordance with the terms of the 2005 Kangara Estate Fixed Price Contract or the Bella Vista #2 Fixed Price Contract (as the case requires);
- agrees to perform TAM's obligations immediately on demand should TAM default in the punctual performance of its obligations in accordance with the terms of the 2005 Kangara Estate Fixed Price Contract or the Bella Vista #2 Fixed Price Contract (as the case requires).

#### **7.12 2005 Facility Agreement**

Timbercorp has made available to OIML a facility of up to \$1.9 million to ensure that the Orchard Trust can meet any unforeseen expenditures. This facility has been made available on an unsecured basis, and replaced an existing \$3 million subordinated facility agreement.

#### **7.13 Other documents**

Other documents relevant to the operation of the Orchard Trust have been fully described in the prospectus dated 24 October 2003 lodged with both the ASX and ASIC.

## **8 Additional Information**

### **8.1 Expenses of or connected with the Orchard Trust and the Debenture Issue**

#### ***Management Fee to OIML***

OIML receives a fee of 0.25% per half year (0.5% per annum) of the market value of the Assets of the Orchard Trust at the end of each half year, subject to it receiving a minimum fee of \$152,000 each half year. The minimum fee of \$152,000 each half year is indexed for changes in the consumer price index as at 31 December of each year, beginning on 31 December 2004.

The management fee above is exclusive of GST and OIML will receive a further amount for any GST payable in relation to the management fee.

Orchard Investments Management Limited has received management fees of \$334,000 (including GST) from the Orchard Trust since the Orchard Trust's establishment in September 2003.

#### ***Management Fee and other amounts to the Asset Manager***

TAM receives a fee of 0.25% per half year (0.50% per annum) of the market value of the Assets of the Orchard Trust at the end of each half year, subject to it receiving a minimum fee of \$137,500 each half year. The minimum fee of \$137,500 each half year is indexed for changes in the consumer price index as at 31 December of each year, beginning on 31 December 2004.

The management fee above is exclusive of GST and TAM will receive a further amount for any GST payable in relation to the management fee.

TAM has received management fees of \$316,095 (including GST) and been paid amounts of \$15,923,116 (including GST) for capital works and water entitlements from the Orchard Trust since the Orchard Trust's establishment in September 2003.

TAM is also entitled to receive the amounts under the fixed price contracts described in section 7.9 and 7.10, the amount of \$871,917.20 for irrigation infrastructure improvements made at Bella Vista and an estimated \$1,327,012 for the irrigation infrastructure upgrade at Kangara Estate.

#### ***Trustee's Fee***

The Trustee is currently paid a fixed fee of \$20,000 per annum for its services as trustee, to be increased to \$25,000 per annum following the issue of Debentures under this prospectus. The fee is adjusted annually for changes in the consumer price index. The Trustee is also entitled to be reimbursed for costs and expenses reasonably and properly incurred in connection with the performance of its incidental duties from time to time. The remuneration will be paid in priority to any claim by Debenture Holders.

The Trustee has received fees of \$22,000 (including GST) from the Orchard Trust since the Orchard Trust's establishment in September 2003.

#### ***Lead Manager's Fee***

The Lead Manager will receive a total of 3.0% of the total amount raised by the Issue, comprising a management fee of 1.0% and a selling fee of 2.0%. In addition, OIML will pay the GST payable on such fees and commissions where applicable. The Lead Manager, at its discretion, may pay away all or part of the selling fee.

The Lead Manager has received \$163,555 (including GST) from the Orchard Trust since the Orchard Trust's establishment in September 2003.

### ***The Co-Managers' Fee***

Each Co-Manager will receive 2.0% of the total amount raised by them from the Lead Manager. The Co-Managers, at their discretion, may pay away all or part of their selling fee.

Austock Limited has received \$140,998 (including GST) from the Orchard Trust since the Orchard Trust's establishment in September 2003.

Shadforths Limited has received \$Nil from the Orchard Trust since the Orchard Trust's establishment in September 2003.

### ***Custody Fee***

The Custodian currently receives a fee of \$15,000 per annum payable on 30 June and 31 December of each year. The Custodian will also receive \$300 per hour for services in connection with the Custody Agreement that are outside the usual or ordinary custodial services provided by the Custodian. The fee is indexed for changes in the consumer price index on 31 December of each year. It is also entitled to be reimbursed for costs and expenses it incurs in connection with the performance of its duties under the Custody Agreement.

The custody fees are exclusive of GST and increased to cover any GST payable by the Custodian.

The Custodian has received fees of \$19,258 (including GST) from the Orchard Trust since the Orchard Trust's establishment in September 2003.

### ***Nexia Alexander and Spencer Pty Limited's Fee***

Nexia Alexander & Spencer is entitled to be paid a fee of \$11,500 (plus GST and disbursements) for the preparation of the pro-forma accounts and the Investigating Accountant's Report for OIML, included in this prospectus and the Information Memorandum supporting the Private Raising.

Nexia Alexander & Spencer has received fees of \$69,943 (including GST and disbursements) from the Orchard Trust since the Orchard Trust's establishment in September 2003.

### ***Baker & McKenzie, Lawyers' Fee***

Baker & McKenzie, Lawyers have acted and continue to act as OIML's lawyers in connection with this prospectus. Baker & McKenzie is entitled to receive fees of \$65,000 plus GST and disbursements for those services and further amounts for any future services in accordance with their usual time-based charges.

Baker & McKenzie has received fees of \$199,961 from the Orchard Trust since the Orchard Trust's establishment in September 2003.

### ***Debenture Registry***

Computershare Investor Services Pty Limited has been engaged to maintain the Register for the Debentures.

### ***Annuity Bond Trustee's Fee***

Sandhurst Trustees Limited, the trustee for Annuity Bond holders currently receives an annual fee of \$12,500. The fee is adjusted each year for changes in the consumer price index. It is also entitled to be reimbursed for costs and expenses reasonably and properly incurred in connection with the performance of its incidental duties from time to time. The remuneration will be paid in priority to any claim by Annuity Bond holders.

### ***Expenses***

In addition to the fees and commissions referred to above, other costs, charges and expenses can be paid out of the Orchard Trust including:

- administration and custody costs;
- auditing, accounting and legal fees;
- costs incurred in the acquisition, holding and disposal of investments;
- the costs of the Orchard Trust's compliance committee;
- all taxes and duties payable in respect of the Orchard Trust;
- costs of preparing reports and statements to Debenture Holders and the costs of postage and printing of all cheques, accounts, statements, notices, confirmation and all other documents required to be posted or given to all or any Debenture Holders by the Corporations Act or the constitution of the Orchard Trust; and
- the costs of convening and holding meetings of Debenture Holders.

The costs of preparing this prospectus will be paid out of the moneys raised.

## 8.2 Benefits & Interests of Directors

Except as set out in this prospectus:

- no Director has, or had within two years before lodgement of this prospectus with ASIC, any interest in the promotion or formation of the Orchard Trust, property acquired or proposed to be acquired in connection with its promotion or formation of the Orchard Trust, or the Issue under this prospectus; and
- no amounts have been paid or agreed to be paid and no benefits have been given or agreed to be given to any Director to induce the Director to become or to qualify as a Director or for services rendered by him or her in connection with the formation or promotion of the Orchard Trust or the Issue under this prospectus.

The Board has determined that for each financial year, commencing with the financial year ending 30 June 2004, the Chairman will be paid \$31,000 (indexed for changes in the consumer price index ), each executive Director will be paid \$25,000 (indexed for changes in the consumer price index ) and non executive Directors will not be paid a director's fee.

The Directors have received the following directors' fees in the past two years up to 31 March 2005:

Directors	Directors' Fees (\$)
Trevor Moyle (Chairman)	52,750
Michael Emery (Executive Director)	44,000
Richard O'Bryan (Executive Director)	44,000
Sol Rabinowicz (Non-executive Director)	Nil

As at the date of this prospectus, no Director is a party to an executive agreement and no amount has been agreed to be paid as a bonus.

## 8.3 Consents and Liability Statements

The following persons have given, and have not before the date of this prospectus withdrawn, their written consent to be named in this prospectus in the form and context in which they are named:

- ABN AMRO Morgans Limited, as Lead Manager to the Issue;
- Austock Limited as Co-Manager to the Issue;
- Shadforths Limited as Co-Manager to the Issue;
- Nexia Alexander & Spencer Pty Limited as the Investigating Accountants;
- Permanent Nominees (Aust) Limited as the Debenture Trustee;
- Horwath Melbourne as the Auditor of the Orchard Trust and the Orchard Trust's compliance plan;
- Trust Company of Australia Limited as Custodian to the Orchard Trust;
- Timbercorp Asset Management Pty Ltd as the Manager of the Orchard Trust's assets;
- Baker & McKenzie as lawyers to the Offer and to OIML; and
- Computershare Investor Services Pty Limited as Registrar.

### ***Liability Statements***

ABN AMRO Morgans Limited consents to being named in the corporate directory of this prospectus as Lead Manager to the Issue, but does not make or purport to make any statement in this prospectus nor has it authorised or caused the issue of any part of this prospectus.

Austock Limited consents to being named in the corporate directory of this prospectus as Co-Manager to the Issue but does not make or purport to make any statement in this prospectus nor has it authorised or caused the issue of any part of this prospectus.

Shadforths Limited consents to being named in the corporate directory of this prospectus as Co-Manager to the Issue but does not make or purport to make any statement in this prospectus nor has it authorised or caused the issue of any part of this prospectus.

Nexia Alexander and Spencer Pty Limited has had no involvement in the preparation of any part of this prospectus other than the Investigating Accountant's Report. Nexia Alexander & Spencer Pty Limited expressly disclaims and takes no responsibility for any part of this prospectus other than the Investigating Accountant's Report.

Horwath Melbourne has given its consent to be named as the Auditor of the Orchard Trust and Compliance Plan Auditor for the Orchard Trust in this prospectus. Horwath Melbourne has also consented to the inclusion in the prospectus of financial information extracted from the audited financial statements of the Timbercorp Orchard Trust and Orchard Investments Management Limited contained in section 4 of this prospectus, but does not make or purport to make any other statement in this prospectus nor has it authorised or caused the issue of any part of this prospectus.

Permanent Nominees (Aust) Limited (Trustee) and Trust Company of Australia Limited (Custodian) have not authorised or caused the issue of this prospectus. Neither the Trustee or the Custodian, nor any member of the Trust Company Group, makes any representations as to the truth or accuracy of the contents of this prospectus other than references to its name. The Trustee and the Custodian have relied upon OIML for the accuracy of the content of this prospectus. The Trustee and the Custodian do not make any representation regarding, or accept any responsibility for, any statements or omissions in or from any other parts of this prospectus. Neither the Trustee or the Custodian, nor any member of the Trust Company Group, makes any representations as to the performance of the Debenture issue, the maintenance of capital or any particular rate of return. Timbercorp Asset Management Pty Ltd consents to being named in the corporate directory of this prospectus as the manager to the Orchard Trust but does not make or purport to make any statement in this prospectus nor has it authorised or caused the issue of any part of this prospectus.

Baker & McKenzie consents to being named in the corporate directory of this prospectus as the lawyers to OIML, but does not make or purport to make any statement in this prospectus. Baker &



McKenzie has not authorised or caused the issue of any part of this prospectus and it expressly disclaims and takes no responsibility for this prospectus.

Computershare Investor Services Pty Limited consents to being named in the corporate directory of this prospectus as the Registry but does not make or purport to make any statement in this prospectus nor has it authorised or caused the issue of any part of this prospectus.

Sandhurst Trustees Limited has had no involvement in the preparation of this prospectus and does not take any responsibility for any part of this prospectus. Its name appears for information purposes only.

#### **8.4 Other Interests:**

Except as set out in this prospectus:

- all persons named in this prospectus as having performed services in a professional, advisory or other capacity in connection with the preparation or distribution of this prospectus do not have and have not had within 2 years before lodgement of this prospectus with ASIC, any interest in the formation or promotion of the Orchard Trust, any property acquired or proposed to be acquired by the Orchard Trust in connection with the promotion or formation of the Orchard Trust or in the Issue; and
- no amount has been paid or agreed to be paid and no benefit has been given or agreed to be given to any persons named in this prospectus as having performed services in a professional, advisory or other capacity in connection with the preparation or distribution of this prospectus, in connection with the formation or promotion of the Orchard Trust or the Issue.

#### ***Horwath Melbourne***

Horwath Melbourne has received fees of \$81,236 from the Orchard Trust and OIML since the Orchard Trust's establishment in September 2003.

#### **8.5 Litigation**

The Orchard Trust is not involved in any actual or threatened litigation or administrative action that could have a material effect on the Trust.

#### **8.6 ASIC Relief**

OIML has obtained relief from ASIC in connection with sections 713 and 727(3) of the Corporations Act.

#### **8.7 Your Personal Information**

When submitting your Application Form, you will be providing OIML and its agents with your personal information. Your personal information will be treated strictly in accordance with National Privacy Principles in the federal Privacy Act. At any time, upon request, you may gain access to the information OIML holds about you in accordance with the National Privacy Principles.

OIML has requested this information to enable it to issue Debentures offered under this prospectus in your name and to keep you updated during the term of your Debentures by, for example, sending you statements, reports, and correspondence in relation to the Debentures and possibly other activities of OIML. OIML is required by law to maintain a Register of Debenture Holders under the Corporations Act and to make the Register available for inspection by any person. It may also be required to provide details of Debenture Holders to ASIC and other regulatory bodies from time to time.

OIML may disclose your personal information to:

- financiers or other such organisations in connection with its corporate activities;

- rating agencies; and
- your financial planner or advisor.

OIML may use your personal information for:

- marketing its products and services to you; and
- developing an understanding of the products and services which may interest you.

By signing the Application Form, you consent to OIML using and disclosing your personal information as described above.

You can gain access to any information that OIML holds about you by calling (03) 8615 1231.

If you do not provide OIML with the information requested in the Application Form, it will be unable to issue Debentures to you. If you provide OIML with incomplete or incorrect information, it will be unable to inform you of the continuing circumstances of your investment in the Debentures.

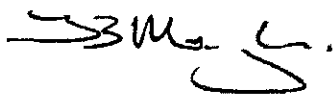
### **8.8 Inspection of documents**

During the Offer Period, copies of the Trust Deed, the Fixed and Floating Charge and the Mortgages, may be inspected or obtained free of charge during normal business hours at OIML's registered office at Level 6, 505 St Kilda Road, Melbourne, Victoria.

### **8.9 Directors' consents**

Each Director of OIML has given, and not withdrawn as at the date of this prospectus, their consent to the lodgement of this prospectus in accordance with section 720 of the Corporations Act.

This prospectus is signed by a Director of Orchard Investments Management Limited in accordance with section 351 of the Corporations Act.




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Trevor Moyle  
Chairman

## 9. Glossary

**"AEST"** means the Australian Eastern Standard Time;

**"Andriske"** means Andriske Research Pty Limited (ACN 006 565 260);

**"Andriske Licence Agreement #1"** means the licence agreement between Andriske, OIML and Timbercorp dated 9 October 2003 (as varied by a deed of variation on 12 November 2004) under which the Orchard Trust and Timbercorp have been granted an exclusive licence to plant the "Stanley Seedless" and the "Red Rob" table grape varieties in certain geographical areas and sell the fruit from such vines;

**"Andriske Licence Agreement #2"** means the licence agreement between Andriske, OIML and Timbercorp dated 12 November 2004 under which the Orchard Trust and Timbercorp have been granted a licence to plant the "BW 41/5" table grape variety and sell the fruit from such vines;

**"Annuity Bonds"** means the annuity bonds issued under the Annuity Bond Trust Deed made between OIML and Sandhurst Trustees Limited in October 2003 with a face value of \$1.00 each;

**"Applicant"** means a person who applies to subscribe for Debentures issued under this prospectus;

**"Application Form"** means an application form attached to, or accompanying this prospectus;

**"Application Moneys"** means subscription moneys for Debentures issued under this prospectus;

**"Assets"** means the assets of the Orchard Trust excluding any crops or produce generated from the Land;

**"ASIC"** means the Australian Securities and Investments Commission;

**"ASTC Settlement Rules"** means the operating rules of ASX Settlement & Transfer Corporation Pty Limited (ABN 49 008 504 532);

**"ASX"** means Australian Stock Exchange Limited (ABN 98 008 624 691);

**"Auditor"** means Horwath Melbourne (ABN 43 774 280 973);

**"Bella Vista"** means the land described as such in section 2.1, and more particularly described in Folio Identifier 1/1067588;

**"Bella Vista #2"** means the land described as such in section 3.4, being the proposed lot of approximately 295 hectares to be carved out of Lot 2 in DP 1067588;

**"Bella Vista #2 Contract"** means the contract of sale to purchase Bella Vista #2 or the whole of the Vendors' Property, as follows: (a) if the plan of subdivision in relation to Bella Vista #2 does not occur within 30 calendar months after the date of the contract of sale or the vendors properly terminate the Bella Vista #2 Interim Lease, the whole of the Vendors' Property, at no additional cost to the Orchard Trust; or (b) if the plan of subdivision in relation to Bella Vista #2 occurs within 30 calendar months after the date of the contract of sale, the Vendors' Property Bella Vista #2;

**"Bella Vista #2 Fixed Price Contract"** means the fixed price contract under which TAM will establish the New Table Grape Vineyard;

**"Bella Vista #2 Guarantee"** means the guarantee given by Timbercorp to OIML in respect of TAM's obligations under the Bella Vista #2 Fixed Price Contract;

**"Bella Vista #2 Interim Lease"** means the interim lease between OIML and the vendors of Bella Vista #2;

**"Board"** means the board of Directors of OIML;

**"Business Day"** means Monday to Friday inclusive, except New Year's Day, Good Friday, Easter Monday, Christmas Day, Boxing Day, and any other day that the ASX declares is not a business day;

**"Change of Use"** means the grant of an amendment by the DIPNR to allow Bella Vista #2 to be used for the growing and irrigation of table grape vineyards and to permit the application of up to 3.5 megalitres of water per acre per annum; **"CHESS"** means Clearing House Electronic Sub-register System;

**"Chiquita"** means Chiquita Brands South Pacific Limited (ABN 41 002 687 961);

**"Chiquita Agribusiness"** means Chiquita Agribusiness Pty Limited (ACN 093 583 049), formerly known as Kangara Foods Pty Ltd;

**"Chiquita Mortgage"** means the registered first mortgage given by the Orchard Trust in favour of Chiquita Agribusiness (formerly known as Kangara Foods Pty Ltd), in the usual form in accordance with good conveyancing practice;

**"Citrus Crop"** means the products, rights, benefits or credits derived from the citrus trees on the Land;

**"Citrus Orchards"** means the citrus orchards established or to be established on Kangara Estate;

**"Closing Date"** means 31 May 2005 or such other date as the Directors determine in their sole discretion;

**"Co-Manager"** means Austock Limited or Shadforths Limited, as the case requires;

**"Compliance Plan Auditor"** means Horwath Melbourne (ABN 43 774 280 973);

**"Corporations Act"** means the *Corporations Act 2001* of the Commonwealth of Australia;

**"Costa's Crest"** means the land described as such in section 2.1, and more particularly described in Folio Identifier 2/1046695;

**"Costa Management"** means Costa Management Group Pty Limited (ABN 20 105 341 900);

**"Crops"** means the Wine Grape Crop, the Table Grape Crop, the Citrus Crop and the Other Crops;

**"Custodian"** means Trust Company of Australia Limited (ABN 59 004 027 749);

**"Debentures"** means the debentures issued under the Trust Deed with a face value of \$100.00 each;

**"Debenture Gearing Ratio"** has the same meaning as in section 7.1;

**"Debenture Holders"** means the holders of Debentures from time to time;

**"Debt"** is defined in section 7.1 of this prospectus;

**"DIPNR"** means the Department of Infrastructure, Planning and Natural Resources;

**"Directors"** means the directors of OIML from time to time;

**"Events of Default"** means events set out in clause 12.1 of the Trust Deed, and summarised in section 7.1 of this prospectus;

**"Existing Debentures"** means the Debentures issued under the prospectus issued by OIML dated 24 October 2003;

**"Fixed and Floating Charge"** means the mortgage debenture charge over the Assets;

**"Gearing Ratio"** has the same meaning as in section 7.1;

**"Global Debenture"** means the global debenture issued to the Trustee by Timbercorp, which evidences or acknowledges the indebtedness of Timbercorp to the Trustee (on trust for each person named, for the amounts noted, in the Register);

**"Grower"** means a participant in projects promoted by the Timbercorp group as a "Timbercorp Citrus Project", "Timbercorp Table Grape Project", "Timbercorp Wine Grape Project", "Timbercorp

Eucalypts Project", "Timbercorp Olive Project" or "Timbercorp Almond Project" or such other projects undertaken by the Timbercorp Group of a horticultural, viticultural or other agricultural nature;

"HIN" means Holder Identification Number;

"Issue" the proposed issue of Debentures described in this prospectus;

"ITAA" means the *Income Tax Assessment Act*;

"Kangara Estate" means the Land described as such in section 2.1, and more particularly described in Certificates of Title Volume 5171 Folio 743, Volume 5097 Folios 564, 565, 566 and 567, Volume 5131 Folio 62 and Volume 5509 Folios 65 and 66;

"Kangara Estate Fixed Price Contract" means the fixed price contract under which TAM will establish the New Citrus Orchard;

"Kangara Estate Guarantee" means the guarantee given by Timbercorp to OIML in respect of TAM's obligations under the Kangara Estate Fixed Price Contract;

"Kangara Estate Undeveloped Land" means the land described as such in section 2.1, and more particularly described in Allotment 9/ FP 106444 on Certificate of Title 5171/743;

"Kangara Property" means the land described in Certificate of Title Register Book Volume 5171 Folio 743 and Certificates of Title Volume 5097 Folios 564, 565, 566 and 567, Volume 5131 Folio 62 and Volume 5509 Folios 65 and 66;

"Land" means the real property described in section 2.1 and in the Mortgages, and any further real property that is acquired by the Orchard Trust and becomes subject to the Trust Deed, collectively, the Citrus Orchards, the Table Grape Vineyards and the Wine Grape Vineyards, including all fixtures and other improvements erected or installed or to be erected or installed on the Land including the Water Licences but excluding the Citrus Crops, the Table Grape Crops, the Wine Grape Crops and Other Crops derived from other Projects;

"Lead Manager" means ABN AMRO Morgans Limited (ABN 49 010 669 726);

"Lease Agreements" means the lease agreements between the Orchard Trust and Timbercorp in relation to any one or more of Costa's Crest, Bella Vista, Kangara Estate and Bella Vista #2;

"Listing Rules" means the listing rules of the ASX;

"Maturity Date" means 15 December 2010, being the date on which OIML is obliged to repay the principal moneys payable to Debenture Holders;

"MOHT" means Martinez Open Hydroponics Technology, the production technique to be implemented on the New Citrus Orchard on the Kangara Estate;

"Moneys Owning" is defined in section 7.1 of this prospectus;

"Mortgagee" means the Trustee, Permanent Nominees (Aust) Limited;

"Mortgages" means the registered first and second mortgages to be given by OIML in favour of the Trustee over the Land in the usual form;

"New Citrus Orchard" means the citrus orchard to be established on Kangara Estate;

"New Debentures" means the Debentures offered under this prospectus;

"New Table Grape Vineyard" means the table grape vineyard to be established on Bella Vista #2;

"Offer" means the offer of Debentures that is subject to this prospectus;

"Offer Period" means the period from the Opening Date until the Closing Date;

"Official Quotation" has that meaning given to it in the Listing Rules;

**"OIML"** means Orchard Investments Management Limited in its capacity as responsible entity of the Orchard Trust;

**"Opening Date"** means 5 May 2005, or such other date as determined by the Directors in their sole discretion;

**"Orchard"** means the citrus orchards established or to be established on that specified and identifiable part of the Land;

**"Orchard Trust"** means the registered managed investment scheme (ARSN 106 557 297) of which OIML is the responsible entity or Orchard Investments Management Limited in its capacity as responsible entity of the Orchard Trust, as the case requires;

**"Other Crops"** means crops, products, rights, benefits or credits derived from horticultural, viticultural, silvicultural or other agricultural activities undertaken on the Land, other than the Citrus Crop, the Table Grape Crop and the Wine Grape Crop;

**"Priority Allocation"** means the priority allocation of up to 30,000 Debentures (\$3 million) made available to existing holders of TODHA Debentures until the Priority Allocation Closing Date;

**"Priority Allocation Closing Date"** means Monday, 19 May 2005;

**"Private Raising"** means the raising of \$13.1 million through the issue of \$13.1 million of Units in the Orchard Trust ;

**"Project Sub-lease Agreements"** means the sub-lease agreements entered into, or to be entered into, by Timbercorp and Timbercorp Securities in relation to parts of Costa's Crest, Bella Vista, Kangara Estate and Bella Vista #2 for use in the Projects to be established by Timbercorp Securities;

**"Projects"** means ~~"Timbercorp Citrus Projects"~~, "Timbercorp Table Grape Projects", "Timbercorp Wine Grape Projects" and such other projects to be undertaken by Timbercorp Securities on the Land from time to time;

**"Register"** means the register of persons who are registered as Debenture Holders and includes an electronic issuer sponsored sub-register and a sub-register established and maintained under CHESS;

**"Registrar"** or **"Registry"** means Computershare Investor Services Pty Limited (ABN 48 078 279 277);

**"Secured Money"** means moneys owing by OIML to the Mortgagee under the Transaction Documents (as defined in the Trust Deed) and secured by the Mortgages;

**"SRN"** means Securityholder Reference Number;

**"Subdivision"** means the plan of registration severing the area of 295 hectares from the larger 1,959 hectare Bella Vista property;

**"Table Grape Crop"** means table grapes growing or to be grown on the Table Grape Vineyard and any of the products, rights, benefits or credits that are derived from those table grapes;

**"Table Grape Vineyards"** means the table grape vineyards which have been established on the Costa's Crest and Bella Vista properties and the New Table Grape Vineyard;

**"TAM"** means Timbercorp Asset Management Limited (ABN 19 105 888 364);

**"Timbercorp"** means Timbercorp Limited (ABN 87 055 185 067);

**"Timbercorp Securities"** or **"TSL"** means Timbercorp Securities Limited (ABN 12 092 311 469);

**"Timbercorp Group"** means Timbercorp and its controlled entities;

**"Tranche 1 of the Issue"** means the raising of \$10 million through the issue of \$10 million of Debentures, as part of the Tranche 1 Raising;

**"Tranche 2 of the Issue"** means the raising of \$13.9 million through the issue of \$13.9 million of Debentures, as part of the Tranche 2 Raising;

**"Tranche 1 Private Raising"** means the raising of \$5 million through the issue of \$5 million of Units, as part of the Tranche 1 Raising;

**"Tranche 2 Private Raising"** means the raising of \$8.1 million through the issue of \$8.1 million of Units, as part of the Tranche 2 Raising;

**"Tranche 1 Raising"** means the raising of \$15 million, comprising \$10 million of Debentures and \$5 million of Units;

**"Tranche 2 Raising"** means the raising of \$22 million, comprising \$13.9 million of Debentures and \$8.1 million of Units;

**"Transactions"** means the transactions and developments described in section 3.1 of this prospectus;

**"Trustee"** means Permanent Nominees (Aust) Limited (ACN 000 151 441), the trustee under the Trust Deed;

**"Trust Company Group"** means Trust Company of Australia Limited and its associated entities;

**"Trust Deed"** or **"Debenture Trust Deed"** means the trust deed between OIML and the Trustee made on or about 17 October 2003;

**"Two Year Bank Bill Swap Rate"** means the average rate calculated by taking the rates quoted on the Reuters Screen BBSW Page at approximately 10:00am, Sydney time, expressed as a yield percentage per annum to maturity, on each of the five Business Days up to and including 15 December 2008 for each reference bank so quoting (but not fewer than five) as being the mean buying and selling rate for a bill having a tenor of 2 years, eliminating the highest and the lowest mean rates and taking the average of the remaining mean rates and then (if necessary) rounding the resultant figure upwards to four decimal places. If in respect of the five Business Days up to and including 15 December 2008 fewer than five reference banks have quoted rates on the Reuters Screen BBSW Page, the rate must be calculated as above by taking the rates otherwise quoted by 5 of the reference banks on application by the parties for such a bill of the same tenor. If in respect of the five Business Days up to and including 15 December 2008 the rate cannot be determined in accordance with the foregoing procedures then the rate will be such rate as is agreed between OIML and the Trustee having regard to comparable indices then available;

**"Unit"** means a unit in the Orchard Trust;

**"Vendors' Property"** means the 1,989 hectare property described in Lot 2 in DP 1067588 that is owned by Charlie and Paul Costa;

**"Water Licences"** means the permanent water licences or allocations attributed to all or part of the Land as required from time to time;

**"Wilson Lease"** means the lease considered by the High Court of Australia in *Wilson v Anderson*;

**"Wine Grape Crop"** means wine grapes growing or to be grown on the land and any of the products, rights, benefits or credits that are derived from those wine grapes;

**"Wine Grape Vineyard"** means the wine grape vineyard which has been established on the Kangara Estate;

**"You"** or **"Debenture Holder"** or **"Holder"** means a person (or in the case of joint Applicants, those persons) who subscribe(s) for Debentures pursuant to an application under this prospectus and who remain(s) the registered holder for the time being of any relevant Debentures; and the expression "all Debenture Holders" means all persons who have so subscribed for Debentures under this prospectus or previously under the prospectus dated 24 October 2003 and remain the registered holders for the time being of any relevant Debentures.





## How to Complete the Application Form

Please complete all relevant sections of the Application Form using **BLOCK LETTERS**

- A** Enter the **NUMBER OF DEBENTURES** you wish to apply for.  
Applications must be for a minimum of 50 Debentures (\$5,000)
- B** Enter the **TOTAL AMOUNT** of application money payable. To calculate this amount, multiply the number of Debentures applied for by \$100.00.
- C** Enter the **FULL NAME(S)** and **TITLE(S)** of all legal entities that are to be recorded as the registered holder(s).  
Refer to the **Name Standards** below for guidance on valid registration.
- D** Enter the **POSTAL ADDRESS** for all communications from Orchard Investments Management Limited. Only one address can be recorded.
- E** Enter telephone numbers and a contact person the registry can speak with if they have any queries regarding this application.
- F** If you are sponsored in CHESS by a stockbroker or other CHESS participant enter your Holder Identification Number (HIN) – optional.
- G** Enter the **TAX FILE NUMBER(s)** (TFN) or exemption category of the applicant(s). Where applicable, please enter the TFN for each joint applicant. Collection of TFNs is authorised by taxation laws. However, it is not compulsory to provide your TFN. Tax may be withheld from any dividend should you choose not to provide your TFN.
- H** Payment must be made in **Australian currency** and cheques must be drawn on an Australian bank or financial institution. Cheques or bank drafts must be payable **ORCHARD INVESTMENTS MANAGEMENT LIMITED** and crossed **Not Negotiable**. Cheques not properly drawn may be rejected. Cheques will generally be deposited on the day of receipt.

Forward the completed Application Form together your payment to Computershare Investor Services Pty Limited

### IMPORTANT NOTICE IF YOU OBTAINED AN ELECTRONIC COPY OF THE PROSPECTUS

This prospectus expires on 4 June 2006. The Corporations Act prohibits any person from passing on to another person the Application Form that was attached to the electronic copy of the prospectus unless the Application Form is attached to a complete and unaltered copy of the electronic prospectus. You should read the prospectus before applying. Orchard Investments Management Limited will send you, at no charge on request, a paper copy of the electronic prospectus if you ask for one during the Offer Period described in the prospectus. If you apply for Debentures on the basis of the Application Form attached to the electronic prospectus, you are deemed to declare to Orchard Investments Management Limited that you received personally the electronic prospectus, or a print out of it, attached to the Application Form before applying for Debentures. If you give another person access to this Application Form you must at the same time and by the same means give the other person access to the prospectus and any supplementary prospectus.

<b>Standards</b>	Note that only legal entities are allowed to hold Debentures. Applications must be in the name of a natural person or natural persons, company or other legal entity acceptable to Orchard Investments Management Limited. At least one full given name and the surname is required for each natural person. The name of the beneficiary or any other non-registrable name may be included by way of an account designation if completed exactly as described in the example of correct forms of registrable title below:	
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Type of Investor	Correct Form of Registration	Incorrect Form of Registration
Individual Use given names in full, not initials	Mr John Alfred Smith	J A Smith
Company Use OIML's full title, not abbreviations	ABC Pty Ltd	ABC P/L or ABC Co
Joint Holdings Use full and complete names	Mr Peter Robert Williams & Ms Louise Susan Williams	Peter Robert & Louise S Williams
Trusts Use the trustee(s) personal name(s).	Mrs Susan Jane Smith <Sue Smith Family A/C>	Sue Smith Family Trust
Deceased Estates Use the executor(s) personal name(s).	Ms Jane Mary Smith & Mr Frank William Smith <Est John Smith A/C>	Estate of late John Smith or John Smith Deceased
Minor (a person under the age of 18) Use the name of a responsible adult with an appropriate designation.	Mr John Alfred Smith <Peter Smith A/C>	Master Peter Smith
Partnerships Use the partner's personal names.	Mr John Robert Smith & Mr Michael John Smith <John Smith and Son A/C>	John Smith and Son
Long Names.	Mr John William Alexander Robertson-Smith	Mr John W A Robertson-Smith
Clubs/Unincorporated Bodies/Business Names Use office bearer(s) personal name(s).	Mr Michael Peter Smith <ABC Tennis Association A/C>	ABC Tennis Association
Superannuation Funds Use the name of the trustee of the fund.	Jane Smith Pty Ltd <Super Fund A/C>	Jane Smith Pty Ltd Superannuation Fund



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- A** Enter the **NUMBER OF DEBENTURES** you wish to apply for.  
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Refer to the **Name Standards** below for guidance on valid registration.
- D** Enter the **POSTAL ADDRESS** for all communications from Orchard Investments Management Limited. Only one address can be recorded.
- E** Enter telephone numbers and a contact person the registry can speak with if they have any queries regarding this application.
- F** If you are sponsored in CHESS by a stockbroker or other CHESS participant enter your Holder Identification Number (HIN) – optional.
- G** Enter the **TAX FILE NUMBER(s) (TFN)** or exemption category of the applicant(s). Where applicable, please enter the TFN for each joint applicant. Collection of TFNs is authorised by taxation laws. However, it is not compulsory to provide your TFN. Tax may be withheld from any dividend should you choose not to provide your TFN.
- H** Payment must be made in **Australian currency** and cheques must be drawn on an Australian bank or financial institution. Cheques or bank drafts must be payable **ORCHARD INVESTMENTS MANAGEMENT LIMITED** and crossed **Not Negotiable**. Cheques not properly drawn may be rejected. Cheques will generally be deposited on the day of receipt.

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------------------	---

Type of Investor	Correct Form of Registration	Incorrect Form of Registration
Individual Use given names in full, not initials	Mr John Alfred Smith	J A Smith
Company Use OIML's full title, not abbreviations	ABC Pty Ltd	ABC P/L or ABC Co
Joint Holdings Use full and complete names	Mr Peter Robert Williams & Ms Louise Susan Williams	Peter Robert & Louise S Williams
Trusts Use the trustee(s) personal name(s).	Mrs Susan Jane Smith <Sue Smith Family A/C>	Sue Smith Family Trust
Deceased Estates Use the executor(s) personal name(s).	Ms Jane Mary Smith & Mr Frank William Smith <Est John Smith A/C>	Estate of late John Smith or John Smith Deceased
Minor (a person under the age of 18) Use the name of a responsible adult with an appropriate designation.	Mr John Alfred Smith <Peter Smith A/C>	Master Peter Smith
Partnerships Use the partner's personal names.	Mr John Robert Smith & Mr Michael John Smith <John Smith and Son A/C>	John Smith and Son
Long Names.	Mr John William Alexander Robertson-Smith	Mr John W/A Robertson-Smith
Clubs/Unincorporated Bodies/Business Names Use office bearer(s) personal name(s).	Mr Michael Peter Smith <ABC Tennis Association A/C>	ABC Tennis Association
Superannuation Funds Use the name of the trustee of the fund.	Jane Smith Pty Ltd <Super Fund A/C>	Jane Smith Pty Ltd Superannuation Fund

DEFENDERS PROSPECTUS

NO. 2

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

This is the exhibit marked "exhibit CJA-P" 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-P**

**Timbercorp Orchard Trust Financial report  
For year ended 30 June 2010**

# TIMBERCORP ORCHARD TRUST

## Financial Report for the year ended 30 June 2010

### Responsible Entity

#### Align Funds Management Limited

(AFSL No 234554 ABN 34 105 684 231)

### Registered Office

Level 33, 360 Collins Street  
Melbourne VIC 3000

### Directors

Alan Fisher (Chairman)

Sam Baillieu

Trevor Moyle

Jeff Clifton (resigned 19 November 2009)

### Company Secretary

Asuka Sugimoto (appointed 20 April 2009)

(resigned 28 January 2010)

Andrew Ashbolt (resigned 20 April 2009)

(re-appointed 28 January 2010)

### Units & Annuity Bonds Registrar

Align Funds Management Limited

Level 33, 360 Collins Street

Melbourne VIC 3000

### Debenture Registrar

Computershare Investor Services Pty Ltd

ABN 48 078 279 277

Yarra Falls, 452 Johnston Street

Abbotsford VIC 3067

### Custodian

The Trust Company Limited

(AFSL No 235148 ABN 59 004 027 749)

Level 3, 530 Collins Street

PO Box 361

Collins Street West

Victoria 8007

### Trustee for Debenture Holders

Permanent Nominees (Aust) Limited

(AFSL No 235140 ABN 14 000 154 441)

Level 3, 530 Collins Street

PO Box 361

Collins Street West

Victoria 8007

### Auditor

BDO Audit (NSW-VIC) Pty Ltd

Level 30, The Rialto

525 Collins Street

Melbourne VIC 3000

GPO Box 4736

Melbourne VIC 3001

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**TIMBERCORP ORCHARD TRUST**  
**ARSN 106 557 297**

**DIRECTORS' REPORT**

The directors of Align Funds Management Limited ("Align"), the Responsible Entity of Timbercorp Orchard Trust ("the Trust") present their report for the year ended 30 June 2010.

**Directors**

The names of the directors in office during and since the end of the year are:

Alan Fisher - Chairman  
Sam Baillieu  
Trevor Moyle  
Jeff Clifton (resigned 19 November 2009)

**Principal Activity**

The principal activity during the year was to market the properties owned by the Trust in order to dispose of them and extinguish its liabilities.

On 22 October 2009, the Trustee for the Debenture Holders ("Permanent Nominees (Aust) Limited", appointed Stephen Longley and Paul Kirk of PricewaterhouseCoopers as Receivers and Managers of Align Funds Management Limited in its capacity as the responsible entity of the Trust. Following Stephen Longley's retirement from PricewaterhouseCoopers, Michael Fung replaced Stephen Longley under a Deed of Replacement of Receiver and Manager dated 18 May 2010. The consequence of this appointment was that the properties of the Trust consisting of Kangara and Bella Vista were offered for sale by the Receivers and Managers.

**Operating Results**

The loss of the Trust for the year was \$7,858,132. The loss is a result of the Trust no longer earning rental revenue but continuing to incur ongoing operational, finance and other costs. In addition, the Trust has incurred significant legal and other costs following the appointment of Receivers and Managers.

For the year ended 30 June 2009, there was a change in the methodology used in valuing the properties (to a realisation basis) to reflect the insolvency of the Timbercorp Group of companies and its consequent impact on the leases and licences of the agricultural property investments of the Trust. In addition, there was a further decline in market conditions for agricultural properties generally. Investment properties are recorded in the accounts on a realisation basis as reflected in the 30 June 2009 accounts, and there is no change in the fair value of the properties.

**Review of Operations**

During the year ended 30 June 2010 the Trust owned two properties – Kangara and Bella Vista (which includes the Costa Crest vineyard). Both properties were leased to Timbercorp Limited ("Timbercorp") under long term leases and sub-leased or licensed by the Timbercorp Group to investor growers in Timbercorp Projects.

Timbercorp Limited and its subsidiaries were placed into voluntary administration on 23 April 2009 and in liquidation on 29 June 2009. These events have severely impacted the operations of the Trust as follows:

- a) Timbercorp, in its capacity of head lessee of each of the properties, not being in a position to pay rent and outgoings that were due and payable under the lease of each property;
- b) A subsidiary of Timbercorp, Timbercorp Asset Management Pty Ltd (TAM), being unable to provide ongoing contracted asset management services for the properties owned by the Trust (the provision of these services was taken over by Align Asset Management Pty Ltd, a subsidiary of the responsible entity); and
- c) Whilst the position of the Timbercorp Citrus and Table Grapes MIS Projects conducted on the Trusts' properties remains unresolved, the Trust is unlikely to receive any rent for the ongoing use and occupation of its citrus and table grape orchard properties.

**TIMBERCORP ORCHARD TRUST**  
**ARSN 106 557 297**

**DIRECTORS' REPORT**

**Review of Operations (continued)**

As a consequence of the above, the fair values of the Trust's investment properties reduced significantly in the prior reporting period as they are no longer valued on the basis of continuing long term leases being in place.

It should be stressed that due to the appointment of Receivers and Managers, the directors do not have control of any assets of the Trust but continue to monitor developments on a regular basis.

**Net Liability Position of the Trust**

Stakeholders should be aware that the financial statements of the Trust as at 30 June 2010 have been prepared on a realisation basis and not on a liquidation basis contemplating the ultimate return to stakeholders. That is, they do not take into account on-going costs including operational, management, Receivers and Managers, interest and further costs of disposal. The financial statements also do not include a liability for any potential claims against the proceeds of sale of the properties as outlined in Note 17.

**After Balance Date Events**

**1) Professional Indemnity Insurance**

Under its Australian Financial Services Licence, Align is required to maintain an insurance policy covering professional indemnity and fraud by officers (PI Insurance Policy) that is adequate, having regard to the nature of the activities carried out by the licensee under the licence, and which covers claims amounting in aggregate to a minimum of \$5 million.

Align's current role as responsible entity of the Trust is significantly diminished as a consequence of the appointment of Receivers and Managers, which now control all the property of the Trust.

There has been a significant tightening of the PI Insurance market following the demise of major agricultural managed investment schemes and difficult conditions faced by the funds management industry. As a consequence, and despite the best efforts of the directors, Align has been unable to renew its PI Insurance policy for the minimum amount of cover of \$5 million and has advised ASIC of the lesser cover of \$1 million that it has been able to obtain.

**2) Sale of Property**

Since their appointment, the Receivers and Managers have been pursuing a sale of the Trust's assets. Sale contracts have now been executed for all of the assets:

- Bella Vista land on 23 July 2010
- Kangara land on 3 December 2010
- Bella Vista water rights on 22 December 2010
- Kangara water rights on 4 January 2011

Completion and settlement for the sale of all assets is dependent upon the satisfaction of several conditions precedent. The key condition precedent being the Liquidators of Timbercorp Securities Limited (in Liquidation) (TSL), as responsible entity of the relevant citrus and table grape projects, obtaining orders that they are justified in extinguishing the rights of growers in the associated citrus and table grape projects to permit the sales to proceed. The Receivers and Managers remain hopeful that this will be achieved in February / March 2011.

A condition of the removal of the grower encumbrances will be the setting aside of all sale proceeds, pending a further court determination on the allocation of these funds between debenture holders and growers. Any return to debenture holders will only occur after the Supreme Court of Victoria has made its determination.



**TIMBERCORP ORCHARD TRUST**  
**ARSN 106 557 297**

**DIRECTORS' REPORT**

**Significant Changes in State of Affairs**

Other than disclosed above, no significant changes in the Trust's state of affairs occurred during the year.

**Likely Developments**

It is likely that both of the Trusts' properties will be sold by the Receivers and Managers and that proceeds from their sale will be insufficient to repay the secured debentures in full. Proceeds from the sale of the properties are also subject to a determination by the Supreme Court of Victoria of the rights of Timbercorp managed investment scheme growers to those proceeds – refer Note 17. Accordingly, it is unlikely that Annuity Bond holders or Unit holders will receive further interest, distributions or return of capital. Other than the matters previously discussed, the directors are not aware of any likely developments that are outside the normal operation of the Trust.

**Environmental Issues**

The properties owned by the Trust are subject to a number of environmental regulations. To the best of the directors' knowledge all activities are performed in accordance with the requirements of relevant environmental regulations.

**Distributions paid or recommended**

The directors have not declared or paid a distribution for the year ended 30 June 2010.

**Options**

No options have been issued during or since the financial year and there were no options outstanding at the end of the financial year.

**Indemnifying of Officers or Auditor**

During the year, the Responsible Entity of the Trust has paid premiums in respect of an insurance contract to indemnify officers against liabilities that may arise from their position as officers of the Trust. Officers indemnified include all directors, the company secretary and all executive officers participating in the management of the Trust.

Further disclosure required under section 300(9) of the *Corporations Act 2001* is prohibited under the terms of the contract.

**Proceedings on behalf of the Trust**

No person has applied for leave of Court to bring proceedings on behalf of the Trust or intervene in any proceedings to which the Trust is party for the purposes of taking responsibility on behalf of the Trust for all or part of those proceedings.

The Trust was not a party to any such proceedings during the financial year.

**Fees paid to and unit holdings of the Responsible Entity or related parties of the Responsible Entity**

All fees paid and units held are disclosed in Note 13 "Related Party Transactions".

**Interests in the Trust**

The number of units as at 30 June 2010 was 24,976,537 (2009: 24,976,537 units).

**TIMBERCORP ORCHARD TRUST**  
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**DIRECTORS' REPORT**

**Directors' interest in the Trust**

As at the date of this report:

- (a) Sam Baillieu has a relevant interest in 137,719 units in the Trust;
- (b) there are no other directors who have a relevant interest in units in the Trust;
- (c) no director has any rights or options over units in the Trust; and
- (d) there are no contracts to which a director is a party or under which a director is entitled to a benefit and that confer a right to call for or deliver interests in the Trust.

**Auditors Independence declaration**

A copy of the auditors' independence declaration as required by section 307C of the *Corporations Act 2001* is enclosed.

Signed in accordance with a resolution of the Board of Directors:

A handwritten signature in black ink, appearing to read 'Alan Fisher', with a large loop at the start and a horizontal stroke at the end.

**Alan Fisher**

Director

Melbourne  
31 January 2011

**TIMBERCORP ORCHARD TRUST**  
**ARSN 106 557 297**

**STATEMENT OF COMPREHENSIVE INCOME**  
**FOR THE YEAR ENDED 30 JUNE 2010**

	Notes	2010 \$	2009 \$
Property income			
- rental revenue		-	11,256,090
- recovery of outgoings		39,259	47,610
- property expenses		<u>(302,922)</u>	<u>(525,449)</u>
Net property income / (expense)		(263,663)	10,778,251
Interest income – other persons		2,345	66,239
Gain on buy-back of debentures		-	1,532,416
Responsible entity's fee		(355,987)	(477,852)
Receivers' fees		(499,641)	-
Legal expenses		(1,162,973)	(283,826)
Other expenses		(188,572)	(362,645)
Finance costs	3	(5,389,641)	(5,680,612)
Changes in fair value of investment property – realisation basis	7	<u>-</u>	<u>(72,386,307)</u>
<b>Loss for the year</b>	11	<u>(7,858,132)</u>	<u>(66,814,336)</u>
Other comprehensive income		-	-
<b>Total comprehensive loss for the year</b>	11	<u>(7,858,132)</u>	<u>(66,814,336)</u>

The accompanying notes form part of these financial statements.

**TIMBERCORP ORCHARD TRUST**  
**ARSN 106 557 297**

**STATEMENT OF FINANCIAL POSITION**  
**AS AT 30 JUNE 2010**

	Notes	2010 \$	2009 \$
<b>ASSETS</b>			
<b>Current assets</b>			
Cash and cash equivalents	5	16,225	888,299
Receivables	6	133,431	9,861
Assets held for sale	7	<u>24,650,000</u>	<u>-</u>
<b>Total current assets</b>		<b>24,799,656</b>	<b>898,160</b>
<b>Non-current assets</b>			
Investment property – realisation basis	7	<u>-</u>	<u>24,650,000</u>
<b>Total non-current assets</b>		<u>-</u>	<u>24,650,000</u>
<b>Total assets</b>		<u><b>24,799,656</b></u>	<u><b>25,548,160</b></u>
<b>LIABILITIES</b>			
<b>Current Liabilities</b>			
Payables	8	2,543,085	1,968,913
Interest bearing liabilities	9	<u>64,458,447</u>	<u>57,922,991</u>
<b>Total current liabilities</b>		<u><b>67,001,532</b></u>	<u><b>59,891,904</b></u>
<b>Total liabilities</b>		<u><b>67,001,532</b></u>	<u><b>59,891,904</b></u>
<b>Net liabilities</b>		<u><b>(42,201,876)</b></u>	<u><b>(34,343,744)</b></u>
<b>EQUITY</b>			
Settlement capital	10	26,084,840	26,084,840
Accumulated losses	11	<u>(68,286,716)</u>	<u>(60,428,584)</u>
<b>Total equity</b>		<u><b>(42,201,876)</b></u>	<u><b>(34,343,744)</b></u>

The accompanying notes form part of these financial statements.

**TIMBERCORP ORCHARD TRUST**  
**ARSN 106 557 297**

**STATEMENT OF CHANGES IN EQUITY**  
**FOR THE YEAR ENDED 30 JUNE 2010**

	Notes	2010 \$	2009 \$
<hr/>			
<b>Total equity at the beginning of the year</b>		(34,343,744)	32,458,814
<b>Loss for the year</b>		(7,858,132)	(66,814,336)
Transactions with unitholders in their capacity as unitholders:			
- Contributions of equity, net of transaction costs		-	511,309
- Distributions paid or declared	4	<u>-</u>	<u>(499,531)</u>
<b>Total equity at the end of the year</b>		<u>(42,201,876)</u>	<u>(34,343,744)</u>

The accompanying notes form part of these financial statements.

**TIMBERCORP ORCHARD TRUST**  
**ARSN 106 557 297**

**STATEMENT OF CASH FLOWS**  
**FOR THE YEAR ENDED 30 JUNE 2010**

	Notes	2010 \$	2009 \$
<b>Cash flows from operating activities</b>			
Receipts from customers		106,549	8,526,141
Payments to suppliers		(983,036)	(1,910,293)
Interest received		4,413	72,000
Finance costs		-	(5,337,204)
Net cash (used in)/provided by operating activities	15 (b)	<u>(872,074)</u>	<u>1,350,644</u>
<b>Cash flows from investing activities</b>			
Payment for capital additions to assets		-	(26,114)
Net cash used in investing activities		<u>-</u>	<u>(26,114)</u>
<b>Cash flows from financing activities</b>			
Contributions of equity, net of transaction costs		-	511,309
Payment for buy-back of debentures		-	(2,065,684)
Repayment of borrowings		-	(1,146,777)
Distributions paid		-	(1,485,476)
Net cash used in financing activities		<u>-</u>	<u>(4,186,628)</u>
Net decrease in cash and cash equivalents held		(872,074)	(2,862,099)
Cash and cash equivalents at the beginning of the year		<u>888,299</u>	<u>3,750,398</u>
Cash and cash equivalents at end of the year	15 (a)	<u>16,225</u>	<u>888,299</u>

The accompanying notes form part of these financial statements.

**TIMBERCORP ORCHARD TRUST**  
**ARSN 106 557 297**

**NOTES TO THE FINANCIAL STATEMENTS**  
**FOR THE YEAR ENDED 30 JUNE 2010**

**NOTE 1: STATEMENT OF SIGNIFICANT ACCOUNTING POLICIES**

**Reporting Entity**

The financial report is for the entity Timbercorp Orchard Trust ('the Trust') as an individual entity. Timbercorp Orchard Trust is an unlisted unit trust, established and domiciled in Australia. The Responsible Entity of the Timbercorp Orchard Trust is Align Funds Management Limited ("Align").

**Basis of Preparation (Realisation)**

The financial report is a general purpose financial report that has been prepared in accordance with Australian Accounting Standards (including the Australian Interpretations) and the *Corporations Act 2001*.

The following circumstances have caused the directors to conclude that it is unlikely that the Trust could continue as a going concern:

- The Trust's sole tenant, Timbercorp, was placed into the voluntary administration on 23 April 2009, followed by the appointment of liquidators on 29 June 2009. Accordingly, the Trust has not received rental income beyond the quarter ended 30 June 2009, and subsequent receipt of any entitlement for rental income under the long-term lease agreements is considered unlikely.
- As at 30 June 2010, the Trust has net liabilities of \$42.2m.
- Since the voluntary administration of Timbercorp (and subsequent liquidation), the directors have vigorously explored all available options in consultation with the Trustee that might ensure the continuation of the operation of the Trust, and to maximise the financial outcome to unit holders of the Trust. In the absence of being able to demonstrate a viable restructure to the Trustee, Receivers and Managers were appointed to Align in its capacity as the responsible entity of the Trust. This appointment places the Receivers and Managers in control of the assets of the Trust.

The directors intend to proceed with liquidating the Trust following the receipt of funds from the sale of properties. Accordingly, the financial report has not been prepared on a going concern basis, but rather has been prepared on a realisation basis.

The financial report therefore includes necessary adjustments relating to the recoverability and classification of recorded asset amounts and the amounts and classification of the liabilities on the basis the Trust will not continue as a going concern. This mainly affects the fair value basis for investment property (Note 1 (a)).

*Compliance with IFRSs*

Australian Accounting Standards include Australian Equivalents to International Financial Reporting Standards ('AIFRS'). Compliance with AIFRS ensures that the financial statements and notes of the Trust comply with International Financial Reporting Standards ('IFRS').

**Significant Accounting Policies**

The accounting policies set out below have been applied consistently to all periods presented in this financial report.

**(a) Investment Property – Realisation Basis**

Investment property is property which is held to earn rental income, or for capital appreciation, or for both.

Investment properties are initially measured at cost including transaction costs. Subsequent to initial recognition, investment properties are carried at fair value determined by either the directors or independent valuers. Gains or losses arising from changes in fair values of investment properties are recorded in the income statement as income in the year in which they arise. Investment properties are not depreciated.

The fair value of investment property – realisation basis is the price at which the property could be exchanged between knowledgeable, willing parties in an arm's length transaction. Fair value is the estimated 'gross sale value', and therefore does not include necessary costs to sell the property.

**TIMBERCORP ORCHARD TRUST**  
**ARSN 106 557 297**

**NOTES TO THE FINANCIAL STATEMENTS**  
**FOR THE YEAR ENDED 30 JUNE 2010**

**NOTE 1: STATEMENT OF SIGNIFICANT ACCOUNTING POLICIES (continued)**

**(b) Revenue**

Rental income from operating leases is recognised as income on a straight-line basis over the lease term.

Rental income received in advance is brought to account as unearned income.

Interest income is recognised in the income statement on a time basis using the effective interest rate method.

Distribution income is recognised when the right to receive a distribution has been established.

Other income is recognised when the right to receive the revenue has been established.

All income is stated net of the amount of goods and services tax.

**(c) Financial instruments**

Financial assets and financial liabilities are recognised on the balance sheet when the Trust becomes a party to the contractual provisions of the instrument.

*Cash and cash equivalents*

Cash and cash equivalents comprise cash on hand and demand deposits and other short-term highly liquid investments that are readily convertible to a known amount of cash and are subject to an insignificant risk of changes in value.

*Trade and other receivables*

Trade and other receivables are recognised initially at fair value and subsequently measured at amortised cost. Any allowances for non-recoverable receivables are recognised in a separate allowance account.

*Trade and other payables*

Trade and other payables represent liabilities for goods and services provided to the Trust prior to the end of the financial year which are unpaid at year end. Trade and other payables are recognised initially at fair value and subsequently measured at amortised cost.

A liability is recognised for distributions declared or committed to which are unpaid at year end.

*Financial liabilities and equity*

Financial liabilities and equity instruments issued by the Trust are classified according to the substance of the contractual arrangements entered into and the definitions of a financial liability and an equity instrument. The accounting policies adopted for specific financial liabilities and equity instruments are set out below.

*Borrowings*

Interest-bearing loans and overdrafts are initially measured at fair value, net of unamortised transaction costs, and are subsequently measured at amortised cost. Any difference between the proceeds (net of transaction costs) and the redemption amount is recognised in the income statement over the period of the borrowings using the effective interest rate method.

Borrowings are classified as current liabilities unless the Trust has an unconditional right to defer settlement of the liability for at least 12 months after the balance sheet date.

**(d) Financing Costs**

Financing costs are recognised using the effective interest rate applicable to the financial liability.

**(e) Goods and Services Tax (GST)**

Revenues, expenses and assets are recognised net of the amount of GST, except where the amount of GST incurred is not recoverable from the Australian Taxation Office. In these circumstances the GST is recognised as part of the cost of acquisition of the asset or as part of an item of expense. Receivables and payables in the statement of financial position are shown inclusive of GST.



**TIMBERCORP ORCHARD TRUST**  
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**NOTES TO THE FINANCIAL STATEMENTS**  
**FOR THE YEAR ENDED 30 JUNE 2010**

**NOTE 1: STATEMENT OF SIGNIFICANT ACCOUNTING POLICIES (continued)**

**(f) Income tax**

Under current income tax legislation, the Trust is not liable for income tax provided its taxable income is fully distributed to unitholders.

**(g) Critical judgments and significant accounting estimates**

The preparation of financial statements requires the directors to make judgments, estimates and assumptions that affect the application of accounting policies and the reported amounts of assets, liabilities, income and expenses. Actual results may differ from these estimates.

Estimates and assumptions are reviewed on an ongoing basis. Revisions to accounting estimates are recognised in the period in which the estimate is revised and in any future periods affected.

*Significant accounting estimates – fair value*

Investment properties are carried at values that are based on assumptions and estimates. If any of these assumptions or estimates were not correct, this could have a material impact on the carrying amounts in the balance sheet. Detailed information on the assumptions and estimates made in respect of investment properties are included in Note 7.

**(h) Accounting standards applicable but not yet adopted**

The following new accounting standards, amendments to standards and interpretations have been issued, but are not mandatory as at 30 June 2010. They may impact the Trust in the period of initial application. They are available for early adoption, but have not been applied in preparing this financial report:

AASB 2010-3 *Improvements to IFRSs* (issued June 2010) includes various urgent but necessary changes to IFRSs as a result of the IASB's 2009 annual improvements project. These include an amendment to AASB 7 *Financial Instruments: Disclosures*, which deletes various disclosures relating to credit risk, renegotiated loans and receivables and the fair value of collateral held. There will be no impact on initial adoption to amounts recognised in the financial statements as the amendments results in fewer disclosures only.

No other new standards, amendments or interpretations issued are expected to affect the Trust.

**TIMBERCORP ORCHARD TRUST**  
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**NOTES TO THE FINANCIAL STATEMENTS**  
**FOR THE YEAR ENDED 30 JUNE 2010**

**NOTE 2: FINANCIAL RISK MANAGEMENT**

The Trust's investing activities expose it to various types of risk that are associated with the financial instruments and markets in which it invests. The most important types of financial risk to which the Trust is exposed to is market risk, credit risk and liquidity risk. The Responsible Entity is responsible for determining objectives and risk policies. The exposure to each of these risks, as well as the Trust's policies and processes for managing these risks are described below.

**(a) Market Risk**

Market risk embodies the potential for both losses and gains and would normally include currency risk, interest rate risk and other price risk.

The Trust has no exposure in relation to currency risk as it does not trade in foreign currencies.

The Trust has ~~limited~~ short term exposure to interest rate risk. Interest-bearing financial assets are limited to cash and cash equivalents which have variable interest rate terms. Interest-bearing financial liabilities include bonds and debentures which have fixed interest rate terms as detailed in Note 9.

The Trust has no exposure in relation to other price risk.

**(b) Credit risk**

Credit risk is the risk that a party to the financial instrument will cause a financial loss to the Trust by failing to discharge an obligation. The Trust is exposed to credit risk through the financial assets listed below. The table also details the maximum exposure to credit risk for each of the classes of financial instrument.

	2010 \$	2009 \$
Cash at bank	<u>16,225</u>	<u>888,299</u>
Maximum exposure to credit risk	<u>16,225</u>	<u>888,299</u>

The Trust manages credit risk and the losses which could arise from default by ensuring that parties to contractual arrangements are of an appropriate rating.

Cash at bank is held with reputable organisations.

Previously, the Trust had largely known future cash flows from its operations through long-term leases with Timbercorp. Rental income is normally received quarterly in advance and has therefore never previously represented a receivable of the Trust.

**(c) Liquidity risk**

Liquidity risk is the risk that an entity will encounter difficulties in meeting obligations associated with financial liabilities. The Trust monitors its exposure to liquidity risk by ensuring that on a daily basis there is sufficient cash on hand to meet the contractual obligations of financial liabilities as they fall due, including redemptions to unitholders. The Trust manages liquidity risk by maintaining adequate cash reserves and by continuously monitoring forecasts and actual cash flows. This can involve adjusting the timing and amount of distributions paid, and consideration to the required levels of long-term capital.

Ultimately the cessation of rental income placed the Trust in a position where it could no longer manage liquidity and the Trust was placed into Receivership by the Trustee to the debenture holders.

**TIMBERCORP ORCHARD TRUST**  
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**NOTES TO THE FINANCIAL STATEMENTS**  
**FOR THE YEAR ENDED 30 JUNE 2010**

**NOTE 2: FINANCIAL RISK MANAGEMENT (continued)**

**(c) Liquidity risk (continued)**

The maturity of financial liabilities at reporting date are shown below, based on the contractual terms of each liability in place at reporting date. The amounts disclosed are based on undiscounted cash flows.

	Less than 1 year	1 – 2 years	2 – 5 years	More than 5 years	Total contractual cash flows	Carrying Amount liabilities
	\$	\$	\$	\$	\$	\$
<b>2010</b>						
<b>Trade and other payables</b>						
Non-interest bearing	2,543,085	-	-	-	2,543,085	2,543,085
<b>Interest bearing liabilities</b>						
Fixed interest rate	64,458,447	-	-	-	64,458,447	64,458,447
<b>2009</b>						
<b>Trade and other payables</b>						
Non-interest bearing	1,968,913	-	-	-	1,968,913	1,968,913
<b>Interest bearing liabilities</b>						
Fixed interest rate	65,170,690	-	-	-	65,170,690	57,922,991

**TIMBERCORP ORCHARD TRUST**  
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**NOTES TO THE FINANCIAL STATEMENTS**  
**FOR THE YEAR ENDED 30 JUNE 2010**

	2010 \$	2009 \$
<b>NOTE 3: EXPENSES</b>		
Loss for the year includes the following expenses:		
Finance costs:		
- interest paid	4,615,136	5,076,698
- amortisation of capitalised borrowing costs	774,092	603,914
	<u>5,389,228</u>	<u>5,680,612</u>
Remuneration of the auditors for:		
- audit or review of the financial report	44,000	44,000
Non-audit services:		
Auditor of the Trust:		
- financial reporting advisory services	-	5,000
- compliance plan audit	4,250	4,250
- annuity bond audit	2,000	2,000
Related practice of the auditor of the Trust:		
- taxation compliance	-	4,000
- corporate advisory	-	33,000
	<u>6,250</u>	<u>48,250</u>

**NOTE 4: DISTRIBUTIONS TO UNIT HOLDERS**

Distributions declared or paid	-	499,531
Interim distribution declared or paid		
- distribution value	-	499,531
- cents per unit	-	2.00
Final distribution declared or paid		
- distribution value	-	-
- cents per unit	-	-

**NOTE 5: CASH AND CASH EQUIVALENTS**

Cash at bank	<u>16,225</u>	<u>888,299</u>
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The weighted average interest rate on cash is 3.50% (2009:3.62%).

**TIMBERCORP ORCHARD TRUST**  
**ARSN 106 557 297**

**NOTES TO THE FINANCIAL STATEMENTS**  
**FOR THE YEAR ENDED 30 JUNE 2010**

	2010 \$	2009 \$
<hr/>		
<b>NOTE 6: RECEIVABLES</b>		
<b>CURRENT</b>		
Other receivables	<u>133,431</u>	<u>9,861</u>

Other receivables pertain to GST input credits refundable from the taxation office and are non-interest bearing. The fair value of all receivables is not materially different from the carrying amount.

**NOTE 7: ASSETS HELD FOR SALE / INVESTMENT PROPERTY – REALISATION BASIS**

Assets held for sale	<u>24,650,000</u>	-
Investment property – realisation basis	-	<u>24,650,000</u>

**Basis of valuation and assumptions**

The fair value of investment property – realisation basis is the price at which the property could be exchanged between knowledgeable, willing parties in an arm's length transaction.

Notwithstanding sale contracts have now been executed for all of the assets, they are subject to the satisfaction of a number of conditions precedent as outlined in the directors' report under the heading 'After Balance Date Events'. As a result, the Receivers and Managers are unwilling to provide evidence they have which would assist in the determination of fair value as this could be seen to conflict with their ability to realise the maximum sale proceeds. Accordingly, there exists a level of uncertainty as to their fair value.

The Directors have determined fair value after taking advice from various industry experts. The key assumptions in valuing the properties include:

- The water licences will likely be sold separate from the properties.
- The water licences have a current realisable value which is reasonably consistent with their historical cost at 30 June 2010 of \$17.3m. However, the trading price of water licences has significantly declined in recent months, and accordingly there exists a risk any further declines will result in the actual proceeds from the subsequent sale of water licences being below cost.
- The properties will be acquired for the purpose of continuing the agricultural activity, and accordingly existing irrigation infrastructure adds value to the properties.

In accordance with accounting standards, the fair value does not include costs to sell the assets. The costs to sell have a material impact on the net proceeds from the sale, and these costs will be recognised in subsequent reporting periods as they are incurred.

**TIMBERCORP ORCHARD TRUST**  
**ARSN 106 557 297**

**NOTES TO THE FINANCIAL STATEMENTS**  
**FOR THE YEAR ENDED 30 JUNE 2010**

	2010 \$	2009 \$
<b>NOTE 7: INVESTMENT PROPERTY – REALISATION BASIS (continued)</b>		
<b>Movements in Carrying Amounts</b>		
Movement in the carrying amounts for investment property – realisation basis between the beginning and the end of the current financial year.		
Balance at the beginning of the year	24,650,000	-
Reclassification from investment property	-	50,510,472
Reclassification from agricultural assets	-	29,267,414
Reclassification from water licences	-	17,258,421
Sub-total	24,650,000	97,036,307
Changes in fair value of investment property – realisation basis	-	(72,386,307)
Carrying amount at end of year	24,650,000	24,650,000

**Prior year movement**

The fair value of investment property and agricultural assets in reporting periods before 30 June 2009 was based on a discounted cash flow valuation, as determined by the directors and / or external property valuers. The fair value of the property as at 30 June 2009 represented a significant reduction to the 2008 reported value (and original cost) for the following reasons:

- The long-term rental contracts with Timbercorp were previously very valuable, but subject to the ongoing viability of the lessee.
- The properties have declined in value due to adverse agricultural factors in recent years. Timbercorp was under contract to replace vast areas of planting for the Trust but was placed into administration and subsequent liquidation prior to doing so.
- The market value for similar properties has declined, particularly following the global economic crisis.

**Amounts recognised in profit or loss**

Rental revenue	-	11,256,090
Recovery of outgoings	39,259	47,610
Property expenses	(302,922)	(525,449)
Net property income / (expense)	(263,663)	10,778,251

**TIMBERCORP ORCHARD TRUST**  
**ARSN 106 557 297**

**NOTES TO THE FINANCIAL STATEMENTS**  
**FOR THE YEAR ENDED 30 JUNE 2010**

	2010 \$	2009 \$
<b>NOTE 8: PAYABLES</b>		
<b>CURRENT</b>		
Unsecured liabilities		
Amounts payable to related parties	596,076	454,588
Accrued interest	-	1,146,228
Liability for costs incurred by the Receivers and Managers*	1,849,034	-
Other creditors and accruals	97,975	368,097
	<u>2,543,085</u>	<u>1,968,913</u>

\* Liabilities for costs incurred by the Receivers and Managers are secured and will be settled prior to the settlement of any other liabilities.

Payables are non-interest bearing.

Note that accrued interest has subsequently been capitalized into the interest bearing liabilities detailed in Note 9 as the accrued amount now attracts interest.

**NOTE 9: INTEREST BEARING LIABILITIES**

**CURRENT**

Secured liabilities		
Debentures (a)	62,375,211	56,069,303
Unsecured liabilities		
Annuity bonds (b)	2,083,236	1,853,688
	<u>64,458,447</u>	<u>57,922,991</u>

Total financial liabilities at amortised cost are \$67,001,532 (2009: \$59,891,904).

The carrying amounts of non-current assets pledged as security are:	<u>24,650,000</u>	<u>24,650,000</u>
---	-------------------	-------------------

**TIMBERCORP ORCHARD TRUST**  
**ARSN 106 557 297**

**NOTES TO THE FINANCIAL STATEMENTS**  
**FOR THE YEAR ENDED 30 JUNE 2010**

	2010 \$	2009 \$
<b>NOTE 9: INTEREST BEARING LIABILITIES (continued)</b>		
<b>(a) Debentures</b>		
The debentures are secured by fixed and floating charges over the assets of the Trust and registered mortgages over Kangara and Bella Vista.		
The covenants within the Debenture Trust Deed require debenture liabilities, adjusted for cash, not to exceed 66.67% of all assets, adjusted for cash. The Trust was in breach of this covenant at reporting date.		
Number of debentures issued 23 December 2003	375,530	375,530
Number of debentures issued 16 June 2005	239,000	239,000
	<u>614,530</u>	<u>614,530</u>
Less debentures acquired under on-market buy-back	(46,793)	(46,793)
Total number of debentures	<u>567,737</u>	<u>567,737</u>
Secured liability outstanding	56,773,700	56,773,700
(face value \$100/debenture)		
Plus accrued interest	5,601,511	-
Less unamortised capitalised borrowing costs	-	(704,397)
	<u>62,375,211</u>	<u>56,069,303</u>
<b>(b) Annuity Bonds</b>		
7.136 million annuity bonds with a face value of \$1 each were issued on 16 November 2003.		
The covenants within the Annuity Bond Trust deed require total debt, adjusted for cash, not to exceed 80% of all assets, adjusted for cash. The Trust was in breach of this covenant at reporting date.		
The annuity bonds are an unsecured obligation and rank below the secured debentures.		
Unsecured liability outstanding	1,923,383	1,923,383
Plus accrued interest	159,853	-
Less unamortised capitalised borrowing costs	-	(69,695)
	<u>2,083,236</u>	<u>1,853,688</u>

**(c) Credit Standby Facilities**

The Trust has no unused credit facilities and standby arrangements available at balance date, as the unsecured stand-by facility from Timbercorp Limited, in liquidation, ceased to be available.

**(d) Fair values**

Having regard to the financial position of the Trust and the uncertainties outlined in the Directors' Report under the heading 'Net Liability Position of the Trust', the fair value of interest bearing liabilities is significantly less than the carrying value, however the fair value cannot presently be reliably measured.



**TIMBERCORP ORCHARD TRUST**  
**ARSN 106 557 297**

**NOTES TO THE FINANCIAL STATEMENTS**  
**FOR THE YEAR ENDED 30 JUNE 2010**

	2010 \$	2009 \$
<b>NOTE 10: SETTLEMENT CAPITAL</b>		
24,976,537 fully paid ordinary units (2009: 24,976,537)	<u>26,084,840</u>	<u>26,084,840</u>
Represented by:		
Fully paid ordinary units	26,084,840	26,074,000
Units issued during the year	-	511,309
Issue costs incurred	-	(500,469)
	<u>26,084,840</u>	<u>26,084,840</u>

There were no movements in issued units during the year. In the prior year, 511,309 fully paid ordinary units were issued for consideration of \$511,309.

Each unit represents a right to an individual share in the Trust and does not extend to a right to the underlying assets of the Trust. There are no separate classes of units and each unit has the same rights attaching to it as all other units in the Trust.

Units will not be redeemable, unless the Responsible Entity makes a redemption facility available or a withdrawal offer in the future, in accordance with the constitution.

**Capital risk management**

The Trust regards total equity as its capital. The objective of the Trust is to provide unit-holders with regular tax-advantaged income distributions over the life of the Trust through the acquisition, development and management of agricultural investment properties, whilst maintaining sufficient liquidity to safeguard their ability to continue as a going concern. The directors regularly review the performance of the Trust including financial management strategies, performance review and risk management.

**NOTE 11: ACCUMULATED LOSSES**

Retained (losses)/ profits at the beginning of the financial year	(60,428,584)	6,885,283
Loss for the year	(7,858,132)	(66,814,336)
Distributions provided for or paid	-	(499,531)
Accumulated losses at the end of the financial year	<u>(68,286,716)</u>	<u>(60,428,584)</u>

**NOTE 12: CAPITAL AND LEASING COMMITMENTS**

The Trust has no capital and leasing commitments.

**TIMBERCORP ORCHARD TRUST**  
**ARSN 106 557 297**

**NOTES TO THE FINANCIAL STATEMENTS**  
**FOR THE YEAR ENDED 30 JUNE 2010**

**2010**  
\$  
**2009**  
\$

**NOTE 13: RELATED PARTY TRANSACTIONS**

**Responsible Entity**

The Responsible Entity of Timbercorp Orchard Trust is Align Funds Management Limited.

Align Funds Management Limited receives a fee of 0.50% of the market value of the Trust's assets per annum, calculated monthly at the end of each month and payable at the end of each half-year, subject to it receiving a minimum fee of \$155,837 each half-year.

The Responsible Entity will, in addition to its remuneration, be reimbursed out of the Trust for all out-of-pocket charges, expenses and outgoings reasonably and properly incurred by or on behalf of the Trust in accordance with the constitution.

Until February 2009, the Responsible Entity contracted Timbercorp to provide Finance and Administration services and since then (until October 2009) that role has been performed by Opis Capital Limited. The cost of these services has been incurred by Align Funds Management Limited in its own capacity.

Both Align Funds Management Limited and Opis Capital Limited are entities related to a director, Sam Baillieu.

**Property Manager**

Timbercorp Asset Management Pty Limited ("TAM"), a wholly owned subsidiary of Timbercorp, was previously engaged to acquire, develop, lease, manage and dispose of the Trust's assets. TAM received a fee of 0.75% of the market value of the Trust's assets per annum, at the end of each half-year, subject to it receiving a minimum fee of \$233,756.

Since Timbercorp (and its wholly owned entities including TAM) was placed into voluntary administration, the role of Property Manager has been performed by Align Funds Management Limited and its wholly owned subsidiary Align Asset Management Pty Ltd.

Both Align Funds Management Limited and Align Asset Management Pty Ltd are entities related to director, Sam Baillieu.

Fees payable to the new Property Manager are consistent with fees previously paid to TAM.

Property manager services ceased following the appointment of Receivers and Managers on 22 October 2009.

**Trustee/Custodian**

The assets custodian, The Trust Company Limited, was entitled to a fee of \$16,814 p.a. which is increased for CPI inflation on 1 January each year.

The debenture trustee, Permanent Nominees (Aust) Limited, was entitled to a fee of \$27,787 p.a. which is increased for CPI inflation on 1 July each year.

The annuity bond trustee, Sandhurst Trustees Limited, was entitled to a fee of \$14,991 p.a. which is increased for CPI inflation on 1 July each year.

**Align Funds Management Limited (Responsible Entity)**

Management fees for the year incurred by the Trust to the Responsible Entity

Aggregate amount payable to the Responsible Entity at reporting date

<u>355,987</u>	<u>477,852</u>
<u>355,987</u>	<u>227,294</u>

**TIMBERCORP ORCHARD TRUST**  
**ARSN 106 557 297**

**NOTES TO THE FINANCIAL STATEMENTS**  
**FOR THE YEAR ENDED 30 JUNE 2010**

	2010 \$	2009 \$
<b>NOTE 13: RELATED PARTY TRANSACTIONS (continued)</b>		
<b>Align Asset Management Pty Ltd (Property Manager)</b>		
Management fees for the period incurred by the Trust to Align Asset Management Pty Ltd (same value payable at year-end)	<u>98,020</u>	<u>32,538</u>
<b>Timbercorp Asset Management Pty Ltd (previous Property Manager)</b>		
Management fees for the year incurred by the Trust to Timbercorp Asset Management Pty Ltd	<u>-</u>	<u>391,152</u>
Management fees payable to the property manager at reporting date	<u>-</u>	<u>140,595</u>
<b>Fixed price contract amounts paid to the Property Manager</b>		
Timbercorp Asset Management Pty Ltd	<u>-</u>	<u>26,113</u>
<b>Trustee/Custodian fees for the year</b>		
The Trust Company Limited	11,439	16,814
Permanent Nominees (Aust) Limited	17,425	27,787
Sandhurst Trustees Limited	<u>4,451</u>	<u>14,991</u>
<b>Aggregate amount payable to the Trustee/Custodian at reporting date</b>		
The Trust Company Limited	11,439	8,409
Permanent Nominees (Aust) Limited	17,425	13,894
Sandhurst Trustees Limited	<u>4,451</u>	<u>3,748</u>

**Key Management Personnel Disclosures**

The names and positions held of key management personnel in office at any time during the financial year are:

<b>Key Management Personnel</b>	<b>Position</b>
Trevor Moyle	Non-Executive Director
Sam Baillieu	Non-Executive Director
Alan Fisher	Non-Executive Director and Independent Chairman
Jeff Clifton	Non-Executive Director (resigned 19 November 2009)
Asuka Sugimoto	Company Secretary (resigned 28 January 2010)
Andrew Ashbolt	Company Secretary (appointed 28 January 2010)

**Key Management Personnel Compensation**

The Responsible Entity and other related entities remunerate key management personnel. Payments made from the Trust to the Responsible Entity and other related entities do not include any amounts attributable to the compensation of key management personnel.

**TIMBERCORP ORCHARD TRUST**  
**ARSN 106 557 297**

**NOTES TO THE FINANCIAL STATEMENTS**  
**FOR THE YEAR ENDED 30 JUNE 2010**

	2010 \$	2009 \$
<b>NOTE 13: RELATED PARTY TRANSACTIONS (continued)</b>		
<b>Related Party unit holdings</b>		
The number of units in the Trust held during the financial year by related parties and the key management personnel are set out below.		
Timbercorp Limited		
- Balance at the beginning of the year	11,614,734	11,040,766
- Additions	-	444,942
- Transfers	-	129,026
- Balance at the end of the year	11,614,734	11,614,734
% of total issued units held	46.5%	46.5%
Bulk Class Pty Ltd*		
- Balance at the beginning of the year	137,719	50,000
- Transfers	-	87,719
- Balance at the end of the year	137,719	137,719
% of total issued units held	0.6%	0.6%
Andrew Ashbolt		
- Balance at the beginning of the year	18,251	17,544
- Additions	-	707
- Balance at the end of the year	18,251	18,251
% of total issued units held	0.1%	0.1%
* Sam Baillieu is a director of Bulk Class Pty Ltd.		
<b>Other transactions with Related Parties</b>		
Asuka Sugimoto (former company secretary of Align Funds Management Limited) has provided the Trust with professional services. The advice was provided on normal commercial terms and conditions.	1,369	26,162
A director, Sam Baillieu, is a director of Bulk Class Pty Ltd, which owns 50,000 annuity bonds in the Trust. Distributions paid or payable for the year.	-	9,705
The amount payable to Bulk Class Pty Ltd at reporting date	1,213	1,213
In the prior year, the Trust generated rental revenue from the lease of its investment property to Timbercorp Limited.	-	11,256,090

**TIMBERCORP ORCHARD TRUST**  
**ARSN 106 557 297**

**NOTES TO THE FINANCIAL STATEMENTS**  
**FOR THE YEAR ENDED 30 JUNE 2010**

	2010 \$	2009 \$
<b>NOTE 14: SEGMENT REPORTING</b>		
The Trust operated solely in the business of investment property management within Australia.		
<b>NOTE 15: CASH FLOW INFORMATION</b>		
(a) Reconciliation of cash and cash equivalents		
Cash and cash equivalents at the end of the financial year as shown in the Statement of Cash Flows is reconciled to the related items in the Statement of Financial Position as follows:		
Cash at bank	<u>16,225</u>	<u>888,299</u>
(b) Reconciliation of cash flow from operations with loss for the year:		
Loss for the year	(7,858,135)	(66,814,336)
Non-cash flows in loss for the year:		
Amortisation	774,092	603,914
Changes in fair value of investment property	-	72,386,307
Changes in assets and liabilities:		
(Increase) / Decrease in receivables	(123,569)	1,578
Increase / (Decrease) in payables	<u>6,335,538</u>	<u>(4,826,819)</u>
Cash flows from operations	<u>(872,074)</u>	<u>1,350,644</u>

**NOTE 16: OPERATING LEASE ARRANGEMENTS**

As a result of the administration of Timbercorp and subsequent liquidation, lease income has ceased to be received in accordance with long-term lease agreements. Accordingly, it is no longer appropriate to disclose future minimum lease income receivable in respect of lease agreements with Timbercorp.

**NOTE 17: CONTINGENT LIABILITIES**

The Supreme Court of Victoria ('Court') is yet to make a determination on what rights the growers have in relation to the proceeds of sale of the properties, and what value, if any, should be attributed to growers' rights to such proceeds. The date of the proceedings and the subsequent Court determination has not yet been set.

The directors believe that the outcome of the legal proceedings will have major significance on the reported net liability position of the Trust as at 30 June 2010. A liability (assuming that the growers prove their claim) has not been recognised on the basis this represents a possible, rather than actual, obligation at the time of this report, whose outcome is dependent on a subsequent determination by the Court.

**NOTE 18: EVENTS SUBSEQUENT TO REPORTING DATE**

Other than matters outlined in the Directors' Report, there are no further matters requiring disclosure.

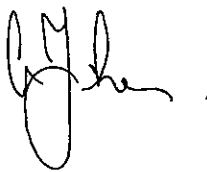
**TIMBERCORP ORCHARD TRUST**  
**ARSN 106 557 297**

**DIRECTORS' DECLARATION**

The directors of the Responsible Entity, Align Funds Management Limited, declare that:

- (a) the financial statements, comprising the statement of comprehensive income, statement of financial position, statement of changes in equity, statement of cash flows and notes for the financial year ended 30 June 2010 are in accordance with the *Corporations Act 2001* and:
  - (i) comply with Accounting Standards and the *Corporations Regulations 2001*; and
  - (ii) give a true and fair view of the Trust's financial position as at 30 June 2010 and of its performance for the year ended on that date.
- (b) in the directors' opinion, the Trust is not a going concern and the financial statements have therefore been prepared on a realisation basis.

This declaration is made in accordance with a resolution of the Board of Directors and is signed for and on behalf of the directors:



**Alan Fisher**  
Director

Melbourne  
31 January 2011



Tel: +61 3 8320 2222  
Fax: +61 3 8320 2200  
www.bdo.com.au

The Rialto, 525 Collins St  
Melbourne VIC 3000  
GPO Box 4736 Melbourne VIC 3001  
Australia

The Board of Directors  
Align Funds Management Limited  
C/O Level 33  
360 Collins Street  
Melbourne VIC 3000

**DECLARATION OF INDEPENDENCE BY MICHAEL CLIMPSON TO THE DIRECTORS OF ALIGN FUNDS MANAGEMENT LIMITED, THE RESPONSIBLE ENTITY OF TIMBERCORP ORCHARD TRUST**

As lead auditor of the Timbercorp Orchard Trust for the year ended 30 June 2010, I declare that, to the best of my knowledge and belief, there have been no contraventions of:

- the auditor independence requirements of the *Corporations Act 2001* in relation to the audit; and
- any applicable code of professional conduct in relation to the audit.

This declaration is in respect of Timbercorp Orchard Trust.

**Michael Climpson**  
Director

**BDO Audit (NSW-VIC) Pty Ltd**  
Chartered Accountants

Melbourne, 31 January 2011

## INDEPENDENT AUDITOR'S REPORT

To the unitholders of the Timbercorp Orchard Trust

We have audited the accompanying financial report of Timbercorp Orchard Trust ("the Trust"), which comprises the statement of financial position as at 30 June 2010, and the statement of comprehensive income, statement of changes in equity and statement of cash flows for the year ended on that date, a summary of significant accounting policies, other explanatory notes and the directors' declaration.

### Directors' Responsibility for the Financial Report

The directors of Align Funds Management Limited, the Responsible Entity, are responsible for the preparation and fair presentation of the financial report in accordance with Australian Accounting Standards (including the Australian Accounting Interpretations) and the *Corporations Act 2001*. This responsibility includes establishing and maintaining internal controls relevant to the preparation and fair presentation of the financial report that is free from material misstatement, whether due to fraud or error; selecting and applying appropriate accounting policies; and making accounting estimates that are reasonable in the circumstances. In Note 1, the directors also state, in accordance with Accounting Standard AASB 101 *Presentation of Financial Statements*, that the financial statements comply with *International Financial Reporting Standards*.

### Auditor's Responsibility

Our responsibility is to express an opinion on the financial report based on our audit. We conducted our audit in accordance with Australian Auditing Standards. These Auditing Standards require that we comply with relevant ethical requirements relating to audit engagements and plan and perform the audit to obtain reasonable assurance whether the financial report is free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial report. The procedures selected depend on the auditor's judgement, including the assessment of the risks of material misstatement of the financial report, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial report in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by the directors, as well as evaluating the overall presentation of the financial report.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.





### Independence

In conducting our audit, we have complied with the independence requirements of the *Corporations Act 2001*. We confirm that the independence declaration required by the *Corporations Act 2001* was given to the directors at the time that this auditor's report was made.

### Auditor's Opinion

In our opinion:

- (a) the financial report of Timbercorp Orchard Trust is in accordance with the *Corporations Act 2001*, including:
  - (i) giving a true and fair view of the Trust's financial position as at 30 June 2010 and of its performance for the year ended on that date; and
  - (ii) complying with Australian Accounting Standards (including the Australian Accounting Interpretations) and the *Corporations Regulations 2001*; and
- (b) the financial report also complies with International Financial Reporting Standards as disclosed in Note 1.

### Significant contingent liabilities

Without qualification to our opinion, we draw attention to Note 17 of the financial statements, 'Contingent Liabilities'. Legal proceedings pertaining to growers' rights represent a significant contingent liability which could have a material negative impact on the net liability position reported at 30 June 2010.

**BDO Audit (NSW-VIC) Pty Ltd**  
Chartered Accountants

**Michael Climpson**  
Director

Melbourne, 31 January 2011

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-Q**" 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-Q**

**Extract of the Citrus Project PDS**

### THE LEASES AND LICENCES

The Land Owners of the Existing Orchard (OIM #2) and of the New Orchard (OIML) have leased the Orchard to Timbercorp. Timbercorp will sublease the Orchard to us for the Project Term. The Subleases will grant us exclusive possession of the Orchard and the security of our tenure will be ensured through the registration of the Subleases in our name under South Australian land title laws.

Importantly, under the leases to Timbercorp and the Subleases to us, the Land Owner has agreed that if the leases terminate during the Project Term, Growers will continue to have a right to use their Citruslots in accordance with the Licence Agreements provided they continue to pay licence fees. In addition, the Land Owner has agreed that it will not create any encumbrances over the Orchard ranking in priority to the interests of Timbercorp as lessee, us as sub-lessee and the rights of Growers unless required to do so by a government authority.

*alternative*

PWC have not even fully investigated that debenture holder and growers may be better off continuing the projects, since growers are going to be cash positive from the harvest period this year and can thus pay the rent from harvest proceeds with no need for inflow from growers or Timbercorp. KORDA MENTHA have known this, as clearly evidenced in cash flow projections provided by KORDA MENTHA to the Committee of Inspection, but none of these projections were ever disclosed to the court.

The citrus project are quite different to some of the other MIS schemes operated by Timbercorp and are far more lucrative now and more so in the future. (This aspect was specifically noted in a reply to ABL but not disclosed to the court see attached). Specifically it was not disclosed that the current yields jump dramatically from this year on and increase exponentially over the next 5 to 6 years to yield around \$45 million cumulative net cash flow before rental obligations over that time with an ongoing income stream of 13 million

The "market value" to be achieved is to an "unrelated purchaser bidding in a market on an ordinary commercial basis... without any sort of discount or incentive" Einstein J – It seems hard to see how leaving the FROR in place achieved this.

The lack of any signed contract, the lack of investigation into ways around the FROR impediment, the profitability that is far greater if projects continue rather than selling now, the ignoring of the ability to continue the projects or restructure them suggests that a robust sale process has not taken place.

### JUDGE FINKELSTEIN COMMENT

PWC did not disclose that in a recent MIS case, where there was debate about circumstances where there might be a grower funded proposition versus a sale to totally unrelated parties, Judge Finkelstein states that ...

*I accept that the duty (under 601FD, if there be one) could come into play if the receiver has available to him/her alternative courses of action; one that would advantage and the*

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

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Fax: 03 8681 4499

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Solicitors Code: 101294

MELBOURNE VIC 3000

MJF 1100412

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

This is the exhibit marked "exhibit CJA-R" 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-R**

**Water licence no. 827**



Government of South Australia  
Department of Water, Land and  
Biodiversity Conservation

# L

# Water Licence

LICENCE NO: 827

EXPIRY DATE: N/A

**LICENSEE(S)** ALIGN FUNDS MANAGEMENT LIMITED  
LEVEL 33  
360 COLLINS STREET  
MELBOURNE VIC 3000

## WATER ACCESS ENTITLEMENT

**CONSUMPTIVE POOL** River Murray

Components of Shares	Shares	Class	Expiry Date
	500	Class 1	N/A
102ML kl	10,238,010	Class 3a	N/A
<b>Total Shares</b>	<b>10,238,510</b>		

## SHARE TRANSACTION HISTORY

**CONSUMPTIVE POOL** River Murray

Effective Date	Description	Shares	Class	Expiry Date
01/07/09	Issue	500	Class 1	N/A
01/07/09	Issue	10,238,010	Class 3a	N/A
<b>Total Shares</b>		<b>10,238,510</b>		

Intervals at which conditions of this licence may be varied by the Minister (sections 149(1)(b) of the *Natural Resources Management Act 2004* ('the Act')):

Yearly (on or about 30 June each year)

This licence is subject to the Act, and any conditions which may be specified from time to time in the Regulations or by the Minister under the Act, and to the following further conditions:

## CONDITIONS

If the company name or name of holder(s) and/or the postal address of the holder(s) changes, then the holder(s) must notify the Department in writing within 21 days of the change occurring.

## NOTES

Delegated Minister for Environment and Conservation

DATE 01/07/09

WATER RESOURCES ALLOCATION DIVISION WILMA.OfficeAddress Ph. WILMA.OfficePhoneNo Fax  
WILMA.OfficeFaxNo

This Water Licence is granted pursuant to section 146 of the *Natural Resources Management Act 2004*

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-S" 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-S**

**Kangara information memorandum  
dated 30 November 2009**

# Kangara

## Information Memorandum

30 November 2009

Copy for Siger Super Services Pty Ltd

**Strictly Private and Confidential**

**Kangara**

Information Memorandum  
30 November 2009

Issued to                      Siger Super Services Pty Ltd

Date Issued                19 January 2010

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

**Attention: Amir Lefkovic**

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



# 1 Disclaimer

This Information Memorandum ("Memorandum") has been prepared by Stephen Graham Longley and Paul William Kirk of PricewaterhouseCoopers ("PwC") as joint and several receivers and managers ("Receivers") appointed to Align Funds Management Limited (formerly known as Orchard Investments Management Limited) in its capacity as the responsible entity of the Timbercorp Orchard Trust (Receivers and Managers Appointed) ("Responsible Entity").

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 the Responsible Entity (the "Assets") and which have signed both a confidentiality deed in respect of confidential information in connection with the proposed sale and purchase of 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 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 the Responsible Entity or the Assets, nor shall it constitute an indication that there has been no change in the business of the Responsible Entity 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.

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## 2 Introduction

### 2.1 Purpose of Memorandum

On Thursday 22 October 2009, Stephen Longley and Paul William Kirk of PwC were appointed joint and several Receivers over the Assets pursuant to certain fixed and floating charges granted by the Responsible Entity in favour of Permanent Nominees (Aust.) Limited. The Receivers have been appointed over Align Funds Management Limited (Align) only in its capacity as Responsible Entity of the Timbercorp Orchard Trust (TOT) and the appointment does not extend to any of Align's other activities.

The Receivers are seeking offers for the purchase of the Assets, namely Kangara, a high-yielding, premium quality citrus orchard and vineyard in the Riverland region of Southeast South Australia and 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 Friday 11 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 10.4. No communications should occur with management of the Responsible Entity, 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(s) 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 1,425 Ha, including 1,179 planted Ha (citrus planted land of 739 Ha and vineyard planted land of 440 ha).
✓ Owned Water Rights	Owned permanent water entitlements of 8,861 ML.
✓ Diversity in Produce	Kangara produces a variety of citrus fruits including oranges, mandarins, lemons and tangelos as well as a variety of wine grapes including Cabernet Sauvignon, Shiraz, Colombard, Pinot Noir, Merlot and Chardonnay.
✓ Historical Harvest Success	Orchard and vineyard established in 1985 and 1997 respectively, with strong historical harvest volumes to date.
✓ 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. The region is also considered an ideal climate for grape growing. Australian wine grape production benefits from the increasing popularity of Australian wines in international markets, and also from the proximity to the emerging Asian markets.
✓ Highly Skilled Orchard and Vineyard Manager	Existing relationship in place with AgriExchange, currently under short term renegotiation.
✓ Strong Domestic Demand for Citrus	The recognition of the health benefits of citrus fruit has driven strong domestic demand for both fresh fruit and juice products.
✓ Strong Global Demand for Citrus	Global demand for citrus fruits is strong, in particular for fresh counter-season 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 246 Ha.
✓ Long Term Agreement for Supply of Wine Grapes	A long-term rolling agreement with CCW Co-operative Limited has been in place since 2000 for the supply of wine grapes.

## 3.2 Overview of Opportunity

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

- 1,425 hectares of freehold land in Murtho, South Australia (located in the 'Riverland' region)
- 739 hectares of planted citrus orchards (approximately 490,500 citrus trees with an average maturity of seven years)
- 440 hectares of planted vineyards (approximately 793,700 vines with an average maturity of 11 years)
- 8,861 megalitres of PWR per annum
- all other owned infrastructure used at Kangara.

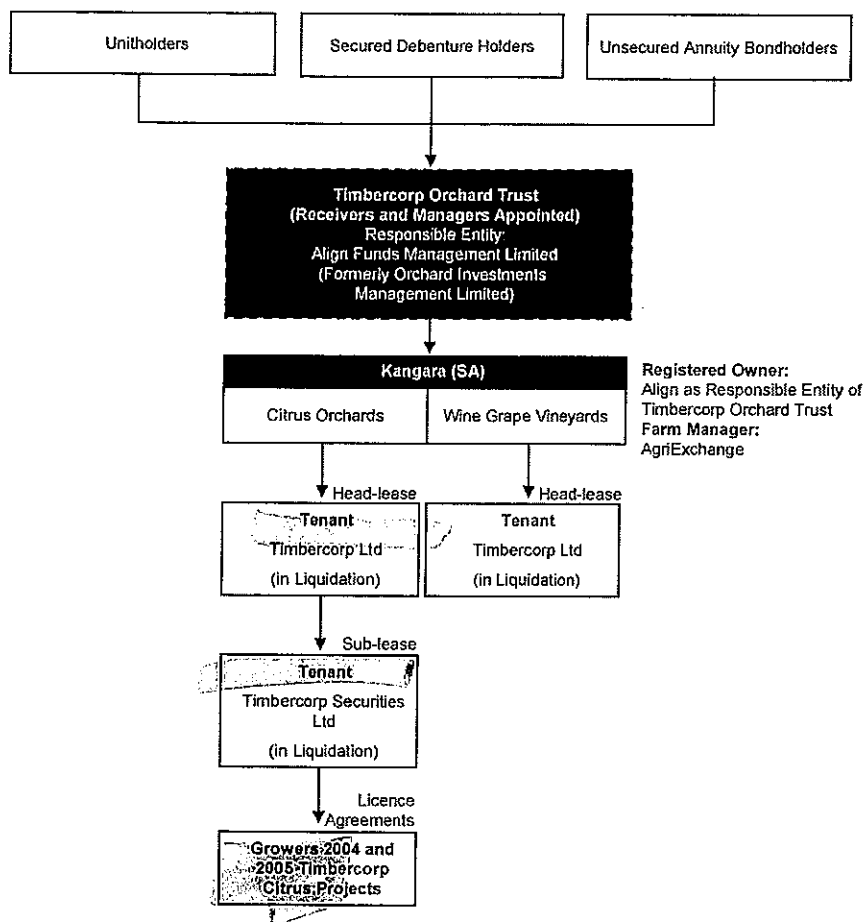
## 3.3 Background

Align, as the Responsible Entity of TOT is the registered proprietor of Kangara. Debentures issued by TOT are quoted on the Australian Securities Exchange under the ASX code 'TODHA' and are currently suspended from trading. The units in TOT are not quoted.

### 3.4 TOT Structure

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

Figure 3.1 Ownership structure of TOT



**Align Funds Management Limited** – formerly Orchard Investments Management Limited, acts as the Responsible Entity of TOT. Stephen Graham Longley and Paul William Kirk of PwC are joint and several Receivers appointed to Align Funds Management Limited in its capacity as the Responsible Entity of TOT.

**AgriExchange** – a division 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 Citrus Orchard Management Agreements.

**Timbercorp Limited ("Timbercorp")** – Timbercorp leases Kangara from TOT.

**Timbercorp Securities Limited ("TSL")** – a wholly owned subsidiary of Timbercorp leases part of Kangara from Timbercorp and also acts as the responsible entity of the two registered Managed Investment Schemes ("MIS") in which Growers participate, namely the 2004 Timbercorp Citrus Project (ARSN 108 887 538) and the 2005 Timbercorp Citrus Project (ARSN 114 091 299).

**Growers** – the investors who participate in the MIS operated by the Timbercorp Group at the Orchard.



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

The Assets available for purchase have been outlined in section 3.2 above. Kangara is described in more detail in section 6 of this Memorandum. As indicated in Figure 3.1, Kangara is currently encumbered by a head-lease to Timbercorp. Part of Kangara is also encumbered by a sub-lease, entered into by certain companies in the Timbercorp Group in connection with the MIS, and licences that have been granted to the Growers in the MIS.

Kangara Estate is divided into five separate parts:

- **"Kangara 350"** – 350 Ha comprising part of the 2004 Timbercorp Citrus Project
- **"Block R (or Kangara 300)"** – 306 Ha comprising part of both the 2004 and 2005 Timbercorp Citrus Projects
- **"Block S"** – 152 Ha comprising part of the 2004 Timbercorp Citrus Project (of which 69 Ha remains unplanted)
- **"Vines"** – 440 Ha of planted vineyards not part of any Timbercorp MIS projects
- **"Other land"** – comprising 177 Ha of unplanted land

As at the date of this Memorandum, the Receivers understand that the MIS conducted by the Timbercorp Group on Kangara (namely the 2004 and 2005 Timbercorp Citrus Projects which are conducted on the parts of Kangara referred to as Kangara 350, Block R and Block S are unlikely to continue as going concerns due largely to the insolvency of the Timbercorp Group, including the Responsible Entity of the registered MIS, Timbercorp Securities Limited (in Liquidation). 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 Kangara 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 Kangara. 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 440 hectares of Kangara have been developed as vineyards which do not form part of the MIS. The Receivers presently understand however that the Vines may be the subject of the head-lease referred to above. The Receivers will be looking to the liquidators of Timbercorp to terminate the head-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 Citrus 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

- 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 Wine Grape Industry Overview

### 5.1 The Global Market for Wine Grapes

#### 5.1.1 *Wine and Wine Grape Supply*

In 2008, the top five wine producers globally were Italy, France, Spain, the United States and Argentina, accounting for 62% of the 27 billion litres of wine produced in the world. Australia was the sixth largest wine producer accounting for 5% of total world production. Australia does however, export a higher volume of wine than both the United States and Argentina (Australian Wine and Brandy Corporation Market Insight Report, Global Wine Supply Monitor, 2009).

### 5.2 The Australian Wine Grape Industry

The Australian wine grape industry is highly dependant on activity in the wine manufacturing industry and the majority of wine grapes produced in Australia are sold domestically. The Australian wine industry is highly dependant on export markets, which contribute an estimated 55.2% of manufacturing revenue. (IBISWorld Industry Report, July 2009, A0114)

Australia exports wine to over 100 countries and is the fourth largest wine exporting nation after France, Italy and Spain (The Australian Wine and Brandy Corporation, 2009).

The US is Australia's largest export market, followed by the UK and Canada. Emerging markets include Japan, Europe and Asia (The Australian Wine and Brandy Corporation, 2009).

The Australian wine grape industry has suffered from fluctuating production levels in recent years, largely due to the drought and erratic weather conditions.

Australian wine grape production is expected to increase in the short to medium term due to increasing availability of water for irrigation and the maturing of recently planted vines (Australian Bureau of Agricultural and Resource Economics, Australian Wine Grape Production Projections to 2010-2011).

#### 5.2.1 *Geographic Advantages*

The Australian wine industry has a number of geographical advantages, including:

- a temperate climate ideal for wine grape growing
- land areas and soil composition suitable for vineyard development
- adequate water supply
- relatively few pests and diseases destructive of vines and grapes
- a harvest period that is counter-seasonal to that of major competitors.

### *5.2.2 Wine Grape Growing Regions*

The major Australian wine grape growing regions are:

- South Australia: Lower Murray, Limestone Coast, the Fleurieu Peninsula, and the Barossa Valley
- Victoria: Sunraysia, Kerang-Swan Hill and the Murray Darling
- New South Wales: Murrumbidgee Irrigation Area, Hunter Valley, Sunraysia

Newer grape growing areas have also developed in Tasmania, around the Margaret River region in Western Australia and in the cool climates of southern Victoria.

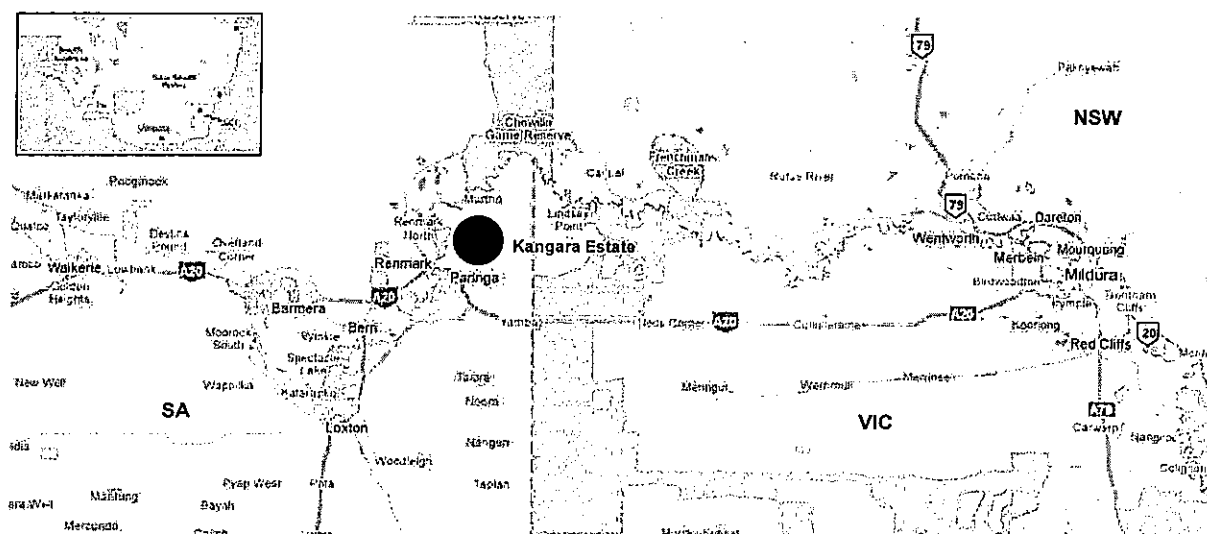
## 6 The Property

### 6.1 Property Overview

#### 6.1.1 Location

Per Figure 6.1, Kangara is located near Murtho in the 'Riverland' region of South Australia.

**Figure 6.1** Location of the Orchard



#### 6.1.2 Large Scale Infrastructure

Substantial amounts of capital have been invested in irrigation systems, trees, vines and other infrastructure at Kangara. Table 6.1 below summarises the book value of property, plant and equipment as at 30 June 2009.

**Table 6.1** Property, plant and equipment as at 30 June 2009

A\$	Total
Irrigation	12,223,156
Trees	10,652,865
Land	2,385,021
Water	12,938,884
Trellises	2,482,719
Vines	8,527,423
Land & Site Preparation	668,788
Other	581,981
<b>Total</b>	<b>50,460,837</b>

Source: Timbercorp

## Financial Information

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

Section 6.2 below contains detailed information pertaining to Kangara (refer Appendix B for property maps):

### 6.2 Kangara

Location:	Murtho, South Australia (Riverland region)
Established:	Citrus orchard established 1985; Vineyard established 1997
Land Owner:	Align Funds Management Limited (formerly Orchard Investments Management Ltd) in its capacity as Responsible Entity for the Timbercorp Orchard Trust (Receivers and Managers Appointed).
Title:	1,425 ha
Total planted area:	739 ha of citrus planted land; 440 ha of vineyard planted land (total of 1,178 ha)
Total 'plantable' area:	1,425 ha
Number of trees:	Approximately 490,500 citrus trees and 793,700 grape vines
Varietal Selection - Citrus:	Approximately 73% Navel, 16% Mandarin, 7% Valencia, 3% Tangelo and 1% Lemon
Varietal Selection – Wine Grapes:	Approximately 36% Cabernet Sauvignon, 30% Shiraz, 10% Colombard, 8% Merlot, 7% Pinot Noir, 5% Chardonnay, 2% Vignier and 2% White Frontignan
Orchard Manager:	AgriExchange Murtho Pty Limited, a subsidiary of CostaExchange Limited
PWR:	8,861 ML per annum
Water Source:	Murray River
Dams:	Two dams (65 ML and 325 ML)

As illustrated in Table 6.2 overleaf, Kangara is divided into five separate parts:

- **"Kangara 350"** – 350 Ha comprising part of the 2004 Timbercorp Citrus Project
- **"Block R (or Kangara 300)"** – 306 Ha comprising part of the 2005 Timbercorp Citrus Project
- **"Block S"** – 152 Ha comprising part of the 2004 Timbercorp Citrus Project (69 Ha remains unplanted)
- **"Vines"** – 440 Ha of planted vineyards not part of any Timbercorp MIS projects
- **"Other land"** – comprising 177 Ha of unplanted land

**Table 6.2 Kangara Land Use Distribution**

Block	Citrus (ha)	Vines (ha)	Planted (ha)	Unplanted (ha)	Total (ha)
Kangara 350	350.1	-	350.1	-	350.1
Block R (or Kangara 300)	305.9	-	305.9	-	305.9
Block S	83.1	-	83.1	69.1	152.2
Vines	-	439.6	439.6	-	439.6
Other land	-	-	-	177.2	177.2
<b>Total</b>	<b>739.0</b>	<b>439.6</b>	<b>1178.6</b>	<b>246.3</b>	<b>1,425.0</b>

Source: Timbercorp

### 6.2.1 Historic Crop Returns

**Table 6.3 Historic Crop Returns – Citrus**

Crop Year (\$'000)	2007	2008F
Total Tonnes	11,581	10,397
<b>Net Sales Proceeds</b>	<b>3,860</b>	<b>3,875</b>
Less:		
Orchard Operating Costs	2,416	2,645
Harvesting Costs	1,016	828
Equipment lease Costs	319	287
Employee Costs	1,430	1,454
Administrative Expenses	299	352
<b>Total Operating Expenditure</b>	<b>5,481</b>	<b>5,566</b>
<b>Net Crop Return</b>	<b>(1,620)</b>	<b>(1,690)</b>

Source: Timbercorp

**Note** i) 2008 proceeds and expenditure are shown as forecast pending completion of final reconciliations for the 2008 crop year (tonnes are actuals)  
ii) financials above exclude temporary water costs



### 6.2.2 Forecast Crop Yields

Table 6.4 below outlines the forecast long-term average yields for Kangara which have been sourced from internal Timbercorp management forecasts. Please note, the forecast crop yields in Table 6.4 below are for the Kangara 350 and R Block/Kangara 300 citrus only – i.e. they do not include forecast yields for S Block, given its relative immaturity.

**Table 6.4 Forecast Crop Citrus Yields**

Year	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
Mandarin	1,759	3,153	4,282	5,310	6,073	6,623	6,635	6,635	6,635	6,635
Navel	8,808	11,279	13,003	15,618	18,759	20,689	21,690	22,601	22,601	22,601
Valencia	2,355	1,821	2,499	2,532	2,565	2,598	2,631	2,664	2,664	2,664
Other	102	122	121	121	128	142	154	166	179	186
<b>Total</b>	<b>13,023</b>	<b>16,376</b>	<b>19,905</b>	<b>23,580</b>	<b>27,525</b>	<b>30,052</b>	<b>31,110</b>	<b>32,067</b>	<b>32,079</b>	<b>32,086</b>

Source: Timbercorp

### 6.2.3 Packing Shed

It is the Receivers' understanding that:

- (i) the packing shed at the Orchard is owned by AgriExchange
- (ii) the packing shed is situated on land that is on a separate title, which is owned by TOT

Given the above, the Receivers will not be offering the Packing Shed for sale as part of this sale process, however for the avoidance of doubt, the land on which the Packing Shed is located is available for purchase.

## 7 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 the 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.

## 8 Management and Employees

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

## 9 Management of Kangara

### 9.1 CostaExchange

CostaExchange 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 CostaExchange'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 CostaExchange to manage its citrus interests (including the Kangara orchard) and provide orchard, processing and marketing services, which it has continued to do following the appointment of Receivers. In addition, AgriExchange maintains the vineyards at Kangara.

The current management agreement expires on 30 November 2009 and the Receivers are currently in discussions with CostaExchange regarding a short term extension of the arrangement.

## 10 Sale Process and Timing

### 10.1 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

#### *10.1.1 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 Interested Parties during the due diligence phase.

#### *10.1.2 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
- 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 Orchard and attached Permanent Water Rights owned by TOT, on a debt free and cash free basis – refer section 10.5 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.

## 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 should 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, it is intended that "Preferred Purchaser" status will be granted to one Interested Party, being the party with which the Receivers wish to transact.

AgriExchange has a first right of refusal in relation to the Orchard. Pursuant to this right, Align must not sell the Orchard to the Preferred Purchaser without first offering the Orchard to AgriExchange at the same price and on the same terms and conditions as those upon which Align proposes to sell the Orchard to the Preferred Purchaser. AgriExchange has 30 days upon receiving such an offer to elect to enter into a contract for the purchase of the Orchard on the same terms and conditions as offered by the Preferred Purchaser. Any delay in the sale process caused by this 30 day period can be minimised by making the non-exercise by AgriExchange of the first right of refusal a condition precedent to the contract of sale.

## 10.2 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.

### 10.3 Sale Timetable

The sale process is anticipated to be conducted in accordance with the following timetable in Table 10.1.

**Table 10.1 Sale Timetable**

Event	Date
Deadline for final offer and marked-up sale documentation	11 December 2009
Selection of Preferred Purchaser	18 December 2009
Execution of Sale Agreement	31 December 2009
Completion	January / February 2010

### 10.4 Enquiries and Contact Particulars

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

Bernard Hall	Amir Lefkovic
Associate Director PricewaterhouseCoopers Freshwater Place 2 Southbank Boulevard Southbank, Victoria 3006 Tel: +61 3 8603 4149 Fax: +61 3 8613 2652 Email: bernard.hall@au.pwc.com	Manager PricewaterhouseCoopers Freshwater Place 2 Southbank Boulevard Southbank, Victoria 3006 Tel: +61 3 8603 6378 Fax: +61 3 8613 2285 Email: amir.lefkovic@au.pwc.com

### 10.5 Structure of Offer

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

**Table 10.2 Structure of Offer to Purchase**

Kangara	Final Offer (\$)
Citrus Orchard	[\$]
Vineyard	[\$]
Land on which Packing Shed is located	[\$]
PWR	[\$]
<b>Total</b>	<b>[\$]</b>

## Appendix A Glossary of Terms

Term	Meaning
\$	Australian dollars, unless otherwise stated
AgriExchange	AgriExchange Murtho Pty Limited (ACN 093 583 049), a subsidiary of CostaExchange
Align	Align Funds Management Limited (ACN 105 684 231)
Assets	The assets of TOT outlined in section 6.2, namely the Orchard and the PWR associated with the Orchard
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
CostaExchange	CostaExchange Limited (ACN 002 687 961)
Growers	The investors who participate in the MIS operated by the Timbercorp Group at the Orchard
ha	Hectares
Interested Parties	Parties which have expressed an interest in acquiring the Assets and which have executed a Confidentiality Deed
Km	Kilometres
Memorandum	This Information Memorandum
MIS	Managed Investment Scheme. The MIS operated by the Timbercorp Group at the Orchard are the 2004 Timbercorp Citrus Project (ARSN 108 887 538) and the 2005 Timbercorp Citrus Project (ARSN 114 091 299)
NRM	Natural Resources Management
NWI	National Water Initiative
Orchard	Kangara, incorporating title to the freehold interests in the property, the citrus orchard, the wine grape vineyards and all owned infrastructure used at the orchard
Preferred Purchaser	The Interested Party with which the Receivers wish to transact
PwC	PricewaterhouseCoopers
PWR	Permanent Water Rights
Receivers	Stephen Longley and Paul Kirk of PwC in their capacity as joint and several receivers and managers of the Assets
Representatives	Partners, employees, advisers or agents of the Receivers
Timbercorp	Timbercorp Limited (In Liquidation) (ACN 055 185 067)
Timbercorp Group	The Timbercorp group of companies
TOT	Timbercorp Orchard Trust (ARSN 106 557 297)
TSL	Timbercorp Securities Limited (In Liquidation) (ACN 092 311 469)

## Appendix B Property Maps

### Kangara

