

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

**LIST E**

No 7114 of 2009

**IN THE MATTER OF TIMBERCORP SECURITIES LIMITED  
(ADMINISTRATORS APPOINTED)**

**ACN 092 311 469**

**TIMBERCORP SECURITIES LIMITED  
(ADMINISTRATORS APPOINTED) ACN 092 311 469  
IN ITS CAPACITY AS RESPONSIBLE ENTITY OF EACH OF THE  
MANAGED INVESTMENTS SCHEMES LISTED IN SCHEDULE 1  
First Plaintiff**

**MARK ANTHONY KORDA and LEANNE CHESSER  
Second and Third Plaintiffs**

**AFFIDAVIT OF MARK ANTHONY KORDA -**

**2001 TIMBERCORP OLIVE PROJECT (ARSN 094 382 082)**

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Date of document: June 2009

Filed on behalf of: the Plaintiffs

Prepared by:

Arnold Bloch Leibler  
Lawyers and Advisers  
Level 21  
333 Collins Street  
MELBOURNE 3000

Solicitor's Code: 54  
DX 38455 Melbourne  
Tel: 9229 9999  
Fax: 9229 9900  
Ref: 011499489  
(Leon Zwier)

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

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

2 On 23 April 2009, we were appointed as voluntary administrators of TSL pursuant to section 436A of the *Corporations Act 2001 (Cth)* (**Act**). Various partners of KordaMetha Pty Ltd (ACN 100 169 391) (**KordaMentha**) and I were appointed as voluntary administrators of Timbercorp Limited (ACN 055 185 067) (**Timbercorp**) and 39 of its wholly owned subsidiaries (**Timbercorp Group**).

3 In this affidavit I refer to two other affidavits:

- (a) an affidavit sworn on 4 June 2009 and filed in this proceeding for the purpose of obtaining a direction under s 447D (**Directions Affidavit**);
- (b) an affidavit that I am yet to swear but intend to file shortly after filing this affidavit giving general information about the Olive and Almond Schemes (**Olive and Almond Affidavit**).

4 TSL is the responsible entity for a number of forestry and horticultural schemes which are registered managed investment schemes, including the 2001 Timbercorp Olive Project, which has the Australian Registered Scheme Number 094 382 082 (**2001 Olive Scheme**).

## 5 **2001 Olive Scheme Documents**

5.1 The 2001 Olive Scheme documents are voluminous. Shown to me marked **MAK-1** is a computer disc of all the documents I refer to in this affidavit. Where I refer to specific pages in these documents I exhibit them separately in hard copy to this affidavit. I am told by Antony Munro that the documents contained in the computer disc marked MAK-1 were posted on the Arnold Bloch Leibler website on 23 June 2009 and on the KordaMentha website on 24 June 2009.

5.2 The key documents of those constituting the 2001 Olive Scheme (exhibited at MAK-1) are:

- (a) the constitution dated 4 September 2000 (O 2001 005) and supplemental deeds dated 16 July 2002 (O 2001 005A), 24 November 2004 (O 2001 005B) and 5 May 2005 (O 2001 005C), which bind TSL (in its capacity as responsible entity for each scheme) and each of the Growers (**Constitution**);
- (b) a prospectus dated 3 October 2000 (O 2001 000) in respect of the 2001 Olive Scheme lodged with the Australian Securities and Investments Commission on 3 October 2000 which includes a summary of the key documents for the

2001 Olive Scheme, an application form and a power of attorney form (**Prospectus**) (more recently replaced by a product disclosure statement or PDS as a result of legislative amendment);

- (c) a lease for the land on which the 2001 Olive Scheme is conducted at Boort, Victoria (**Land**). Olivecorp Land Pty Ltd (ACN 090 141 512) (administrators appointed), a company within the Timbercorp Group, owns the Land (**Landowner**). The lease dated 2 October 2000 (O 2001 008) and deeds of variation dated 16 July 2002 (O 2001 008A) and 15 May 2003 (A 2001 011), is between TSL (in its capacity as responsible entity) and the Landowner (**Head Lease**). Title searches have been conducted in respect of each certificate of title that comprises the Land. Copies of the title searches have been copied onto the computer disc marked MAK-1. Now produced and shown to me marked **MAK-2** is a table prepared by my solicitors setting out the title particulars for the Land. Where the volume and folio number or certificate of title for the relevant section of Land has changed since the Head Lease between the Landowner and TSL was entered into, the new volume and folio numbers are set out in MAK-2;
- (d) a sub-lease dated 2 October 2000 (O 2001 009) and deeds of variation dated 16 July 2002 (O 2001 009A) and 15 May 2003 (O 2001 010), by which TSL (in its capacity as responsible entity), sub-leases the Land to the Landowner (**Sub-Lease**);
- (e) a custody agreement dated 23 August 2000 (O 2000 004) between Permanent Trustee Company Limited (ACN 000 000 993) and TSL (in its capacity as the responsible entity), by which TSL agreed to appoint Trust Company Ltd as custodian to hold the Scheme Assets (**Custody Agreement**);
- (f) a licence and joint venture agreement dated 30 June 2001 (O 2001 002), in which each Grower and the Landowner associate themselves as joint venturers for the purpose of management of an olive grove, cultivation of olives and the production of olive oil for commercial gain. The Landowner grants the Grower a licence to use and occupy part of the Land (known as a **Grovelot**) (in joint venture with the Landowner) for the purposes of cultivating the crop and producing olive oil (**Joint Venture Agreement**);

- (g) a grower agreement dated 30 June 2001 (O 2001 007) amended by agreements dated 8 June 2006 (O 2001 007A) and 1 October 2008 (O 2001 007B) (referred to as the Grovelot Management Agreement), between each Grower with the Landowner by which the Growers appointed TSL (in its personal capacity) as attorney for and on behalf of the Growers, to cultivate and maintain the crop grown on the Land, procure the processing of the crop and sell it on behalf of the grower (**Grower Agreement**);
- (h) a management agreement dated 30 June 2001 (O 2001 001), by which TSL (in its capacity as responsible entity) engaged Olivecorp Management Limited (ACN 089 542 343) (Administrators Appointed) (**OML**) to manage the Grovelots (**Management Agreement**);
- (i) a processing agreement dated 14 July 2005 (O 2001 012) and supplemental deed dated 12 June 2008 (O 2001 012A), by which Boort Estate Pty Ltd (ACN 101 679 716) (Administrators Appointed) engaged Boundary Bend Management (Boort) Pty Ltd ACN 110 670 285 (**BBMB**) to manage and process the crop from the Grovelots (**Processing Agreement**);
- (j) a management agreement dated 14 July 2005 (O 2001 013), by which OML engaged BBMB to manage the Grovelots (**Olive Grove Management Agreement**); and
- (k) a distribution agreement dated 20 May 2006 (O 2001 014), by which OML appointed Boundary Bend Marketing Pty Ltd (ACN 118 216 863) (**BBM**) as the worldwide exclusive distributor of the olive oil sourced from and produced from the Grovelots (Distribution Agreement).

**(Key Scheme Documents)**

- 5.3 Now produced and shown to me marked **MAK-3** is a structure diagram for the 2001 Olive Scheme.
- 5.4 There are 770 Growers in the 2001 Olive Scheme and 3,919 Grovelots. Now produced and shown to me marked **MAK-4** is a confidential exhibit (on computer disc) listing the Growers for the 2001 Olive Scheme.

## 6 Growers' Contributions to the 2001 Olive Scheme

- 6.1 The Growers' obligations to contribute to the 2001 Olive Scheme are set out in the Scheme Documents. Now produced and shown to me marked **MAK-5** are the clauses which concern the Grower's obligations that I refer to below.
- 6.2 Under the Constitution each Grower was required to pay an initial application fee to TSL (in its capacity as responsible entity) (**Application Moneys**). Each Grower agreed that TSL (as responsible entity) has irrevocable power as agent, representative and attorney, to (amongst other things) use the Application Moneys in discharging the Grower's obligations under the Grower Agreement or under the Constitution (clause 11(c)).
- 6.3 Once the necessary Scheme documents were executed, TSL released the Application Moneys and applied them to pay the fees owing under the Grower Agreement and the Joint Venture Agreement (clause 9.3.1).
- 6.4 Under the Joint Venture Agreement entered into by TSL (as responsible entity), as agent and attorney for the Growers, each Grower (amongst other things):
- (a) pays an annual licence fee per Grovelot to the Land Owner in respect of each Financial Year (clause 7.1(a));
  - (b) must, at its expense, comply with or procure compliance with the Grower Agreement (clause 8.1(g)); and
  - (c) is required to contribute to TSL 90% of the management expenses (clause 11.5(b)).
- 6.5 Under the Grower Agreement, the Growers must pay annual management fees and charges to TSL (in its personal capacity) (clause 10).
- 6.6 Under the Constitution, TSL (as Responsible Entity) must pay into a separate account (**Agency Account**), amongst other things, the proceeds of the sale of the crop and from the sale of product produced from the olives and crop (**Proceeds**) (clause 13.6).
- 6.7 Each Grower is entitled to the money in the Agency Account which represents its participating interest in the Proceeds, less any fees or amounts payable under (amongst other things):

- (a) the Joint Venture Agreement;
- (b) the Grower Agreement; and
- (c) the Constitution (clause 13.7).

**(Deductions)**

- 6.8 Under the Constitution, the Grower authorises TSL (as Responsible Entity) to make these deductions and pay the deducted amounts (clause 13.7(b)).

**7 Solvency of the 2001 Olive Scheme**

- 7.1 The solvency of the 2001 Olive Scheme depends on its ability to pay its debts as and when they fall due from its own cashflows or from other sources of funding available to it. Unlike a company with its own assets and liabilities, the 2001 Olive Scheme is represented by a collection of contracts which create rights and impose obligations.
- 7.2 To analyse whether the 2001 Olive Scheme is solvent I have instructed my staff to prepare a forecast cashflow statement for the 2010 harvest, excluding recovery of costs from, and distribution of proceeds to Growers, to show the forecast cash flow for the 2001 Olive Scheme. Now produced and shown to me marked **MAK-6** is the Solvency Analysis (**Solvency Analysis**).

**8 Cashflow - Historic**

- 8.1 The final section of the Solvency Analysis shows the net operating cashflow to date for the years since the 2001 Olive Scheme began on a financial year basis (July 1 to June 30). For the financial years 2001-2005 and 2008 the 2001 Olive Scheme had a negative net operating cashflow. For the financial years 2006 and 2007 the 2001 Olive Scheme had a positive operating cashflow. The 2009 net operating cashflow is an estimate and will change as the proceeds from the sale of the 2008 and 2009 crops are received.

**9 Projected Cashflow 2010**

- 9.1 The 2010 crop commences after the 2009 harvest and will conclude with the receipt of sale proceeds from the 2010 crop (**2010 Harvest Result**). The Solvency Analysis shows the projected net operating cashflow for the 2010 Harvest Result.

- 9.2 The Solvency Analysis spreadsheet shows the expected net cashflow from the 2010 harvest by taking the Growers' gross proceeds (from the net sales of olives less the Joint Venture Partner's share) and subtracting the scheme costs that the Growers are liable to pay. There are a number of assumptions underlying these figures.

*Scheme Income - Explanation, Variables and Assumptions*

- 9.3 The net sales figure in the Solvency Analysis is the estimated proceeds from sale of the 2010 crop. The assumptions underlying the sales figures are listed under the heading "2010 Crop Variables" in the Solvency Analysis:

- (a) Litres per hectare - this is the estimated yield per hectare of the crop and is a Timbercorp management projection based on its experience.
- (b) The yield depends on a number of factors including rainfall, storms, water supply, variations in soil type, pestilence, vermin, disease, frost and wind, as well as horticultural practices. While all efforts are made to minimise annual variations in yields and production, yields may vary from tree to tree and harvest to harvest. The actual yield in litres per year for the 2001 Olive Scheme from the first crop in 2004 up to the estimate for 2010 is summarised below:

Yield Litres	2003	2004	2005	2006	2007	2008	2009F	2010F
Yield Total 2001	10,966	179,057	477,255	1,043,572	1,359,084	1,636,791	1,671,890	1,984,073

- (c) The estimated yield for the 2010 crop is a function of the estimated yield per hectare and the "sold area". The sold area is the number of hectares planted;
- (d) Net sale price per litre of olives the analysis assumes an average sale price of \$4.55/ltr for the 2010 crop. The projected farm-gate price compares to an average price of \$4.50 per litre achieved for the 2008 crop sold over the last 12 months and represents a small uplift over the current, relatively low market price of \$4.30. Farmgate prices achieved in recent years are:

Crop Year	2003	2004	2005	2006	2007	2008	2009	2010*
Price per litre (\$)	5.94	5.00	4.92	5.20	4.65	4.50	4.30	4.55

\*Forcecast

- 9.4 "Grower's Gross Proceeds" on the Solvency Analysis records the estimated gross sales less the joint venture partner's share. This is a 10% deduction from net sales in accordance with the Joint Venture Agreement.

*Scheme Costs - Explanation, Variables and Assumptions*

- 9.5 BBM deducts sales and related costs including a brokerage charge of 1.5% of gross sales and an estimate of sales and marketing overheads relating to bulk oil sales (approximately \$0.13 per litre for the 2010 crop) prior to remitting proceeds to TSL (through the Agency Account).
- 9.6 In addition, the following fees are deducted before proceeds are distributed to Growers:
- (a) Processing Fee - 10% of the net sales for the provision of collected by TSL to pay OML and forwarded to the processor of the olives;
  - (b) Storage Fee - fee for storing oil in excess of the contracted volume of storage the processor has available. The fee varies from year to year depending on production and sales programs and is charged at \$0.15/ltr;
  - (c) TIM Variable Management Fee that TSL charges the Growers to manage the lot on the Growers' behalf. It is charged at 7.5% of the Growers' net sales proceeds;
- 9.7 The Grower's are responsible for the payment of operating expenditure. Even though the Timbercorp Group can no longer provide services for the 2001 Olive Scheme, I have assumed an alternative provider will charge a like fee. The key variables and assumptions underpinning the expenses analysis are:
- (a) Base Admin Fee per Lot - this fee is billed by TSL to administer the 2001 Olive Scheme. It is calculated as a fixed charge per lot of \$70 (base) and adjusted annually for the Consumer Price Index;
  - (b) Farm Operating Costs - These costs include expenses such as harvest, fertiliser, pest control, pruning olives. Spring and autumn are key periods for expenditure of grove operating costs; spring being when the bulk of fertiliser is applied and when pollination services are required and autumn due to harvest operations. The actual grove costs are reconciled at the end of the year and



any adjustment (over or under budget) is included in the following seasons billings.

- (c) Technical Fee - Modern Olives (Pengala Pty Ltd (ACN 084 730 101)), a division of the Boundary Bend group, provides grove agronomy services and specialist technical advice. TSL collects the fee which is charged on a per hectare basis increasing annually by the CPI. The base fee at the beginning of the Scheme was \$120/Ha.
- (d) BB Management Fee - BBEM, a wholly owned subsidiary of BB, provides grove management services. To date this costs has not been passed on to Growers and have been borne by OML as project manager. It has been included in the 2010 crop return on the basis that OML does not have the financial capacity to meet any financial costs in the future and therefore needs to be invoiced to the Growers. It is charged on a per hectare basis increasing annually for the CPI. The base fee at the beginning of the Scheme was \$585/Ha.
- (e) Temporary Water and Permanent Water allocation - There are permanent water rights in place to meet the Project's water requirements (5.5 ml/ ha at Boort and 7 ml/ha for mature groves). However, during drought years, the relevant water authorities apply a set allocation to the permanent water rights that limits the amount of water available to be used during the year. The allocation determined by the water authority is based on available water in the system. Management's FY2010 forecast assumes an allocation of 40% which is consistent with current allocations. As a result of the 40% allocation of permanent water rights, there will be a requirement to purchase temporary water to meet the shortfall. Temporary water is estimated to cost \$350 per mega litre which is based on the current cost. The percentage allocation for water historically are:

Crop Year	2003	2004	2005	2006	2007	2008	2009	2010F
Total – Goulburn Allocation	57%	100%	100%	100%	95%	43%	35%	40%

- (f) Licence fee per lot - The licence fee is referred to in the Prospectus. It is payable for the use of and occupancy of the Grovelot under the Joint Venture Agreement. The Growers pay the licence fee on the basis that the

Landowner provides the entire necessary infrastructure and other capital works to operate a commercial olive grove.

(g) AOA Levy - This is a voluntary levy paid to Australian Olive Association (AOA). TSL collects the AOA levy along with the Farm Operating costs. The olive industry, unlike other horticulture industries, is not subject to a statutory levy collected by Horticulture Australia, for research and development. AOA fulfils this role in the olive industry.

(h) CPI Assumption - it is assumed that there will be a 2.5% increase in the Consumer Price Index.

9.8 The joint venture partner's share of the costs of the 2010 Harvest Result have been excluded from the Scheme expenses. That is, the analysis is net of both the joint venture partner's share of revenues and expenses.

9.9 The operational costs are charged in accordance with the 2001 Olive Scheme agreements. The assumption in the Solvency Analysis is that the Growers are billed for 100% of the expected operational costs and all costs are due and payable annually in one lump sum (with the exception of those fees deducted before proceeds are paid). Historically, some of the operational costs were absorbed by the Timbercorp Group. However, neither TSL nor any of the other companies in the Timbercorp Group have the financial capacity to meet any financial costs. (There is no provision in any of the Key Scheme Documents to empower TSL to invoice growers for additional amounts required to cover default of Growers or shortfalls generally).

*Net Operating Cashflow (excluding capital expenditure)*

9.10 The conclusion from this analysis is that for the 2010 Harvest Result the Growers will have to meet a shortfall of \$2,407,904 (approximately) as project costs are greater than gross proceeds.

9.11 Timbercorp Group needs to pay for scheme costs (spread over the course of the year) but the timing of these expenses is not matched to when Timbercorp Group can recover those costs from Growers. Growers are invoiced annually for these costs. TSL has no capacity to fund the schemes until those costs are recovered. Furthermore, the Act provides that for a management investment scheme to borrow funds, the constitution must set out that power and the Constitution does not contain

that power. This is a fundamental issue for the solvency of TSL. I have asked my staff to prepare a spreadsheet showing cashflow on a month-by-month basis for the 2010 Harvest Result. This is a complex exercise and I am advised it will take another week to complete this information for all almond and olive schemes.

9.12 TSL has not invoiced Growers for the 2010 crop. Historically, the Timbercorp Group have not asked for payment until 31 October 2009 and invoices would not ordinarily have been raised at this point in the year. For the avoidance of any misunderstanding, I do not consider that it is in the best interests of the Growers to raise invoices for the estimated scheme costs for the 2010 financial year, on an accelerated basis, or at all, because:

- (a) as I have deposed in my Directions and Olives and Almonds Affidavits, TSL is insolvent;
- (b) it is likely that some of the Growers in the 2001 Olive Scheme will default on their participation (as detailed below); and
- (c) as TSL has no capacity to absorb any funding shortfall arising from any defaults on grower project invoices the scheme is insolvent.

#### *Capital Expenditure*

9.13 In addition to the operating expenditure, the 2001 Olive Scheme must meet capital expenditure to achieve projected crop harvests. This capital expenditure requirement is largely to acquire additional permanent water rights and/or to provide irrigation infrastructure.

9.14 There is no capital expenditure expected for water for the 2010 Harvest Result.

9.15 There is expected expenditure for water related infrastructure, referred to in the Solvency Analysis as "Non Water Capital Expenditure" of \$63,663. It is not necessary to install 100% of the water supply infrastructure for the grove when the trees are planted as the water use requirements increase over time as the olive trees mature. Pumping infrastructure and rising mains are installed as determined by the water requirements of the trees on an annual basis. TSL and the Timbercorp Group have no capacity to procure the necessary capital expenditure. TSL has no right to compel Growers to make additional contributions to meet required capital expenditure commitments.

## 10 Arrears and Defaults

10.1 The 2010 Harvest Result forecast assumes that:

- (a) no Growers in the 2001 Olive Scheme terminate their participation in the 2001 Olive Scheme or default in payment of amounts owing by them; and
- (b) no Growers in any of the other Olive Schemes terminate their participation in the relevant Olive Scheme or default in payment of amounts owing by them.

10.2 We consider it likely that some Growers in the 2001 Olive Scheme and the other Olive Schemes will terminate their participation or default in payment. Now produced and shown to me marked **MAK-7** is a summary of the Grower's defaults on loans and payment of obligations that has been prepared using figures provided by Timbercorp Group Management. It shows:

- (a) level of unpaid scheme invoices - Growers were invoiced a total of \$7.9m in October 2008 of which \$1.5m or 18% of the total remains unpaid for the 2001 Olive Scheme costs;
- (b) loans in arrears - 5.8% of Growers in the 2001 Olive Scheme have taken out loans with Timbercorp Finance Pty Ltd (ACN 054 581 190) (Administrators Appointed) (**Timbercorp Finance**) and \$1.2m (32%) of these loans are in arrears;
- (c) direct debit rejections - monthly loan payments to Timbercorp Finance are typically processed by direct debit. The number of direct debit rejections instigated by growers increased from 6 in March 2009 to 41 in May 2009 for the 2001 Olive Scheme.

10.3 Furthermore, Timbercorp Finance is no longer in a position to provide finance to Growers to meet their obligations in the 2001 Olive Scheme.

10.4 For these reasons I consider that not all Growers will continue to participate or meet their obligations as they fall due.

10.5 TSL is insolvent and unable to absorb these costs.

*Defaults in other Olive Schemes*

- 10.6 The costs included in the Solvency Analysis include a portion of fixed costs across this or other Olive Schemes, which will remain constant despite a reduction in the number of participating Grovelots or an increase in the number of defaulting Growers. In the event these additional costs could not be passed on to Growers (due to constraints of the Key Scheme Documents or other reasons) the liability could fall to TSL, and it is unable to absorb any costs.

## 11 Long term viability

- 11.1 I have asked my staff to prepare a long term viability analysis for the schemes across their lives (**Viability Analysis**). Now produced and shown to me marked **MAK-8** is the viability analysis for the 2001 Olive Scheme. This is a theoretical analysis that ignores the cashflow problem discussed above. As an insolvency practitioner I often see businesses that are insolvent but appear viable over the long term. For the benefit of the Court I provide this analysis to give a picture of the 2001 Olive Scheme over its life.
- 11.2 The Viability Analysis is based on Timbercorp management's cashflow model for the 2001 Olive Scheme. We provide this information to demonstrate a range of possible outcomes for Growers but do not hold out any one outcome as being more likely to be achieved than any other. It shows the net present value (**NPV**) of estimated future cashflows on a per lot basis at three different discount rates (10%, 15% and 20%). The expected level of future cashflows are particularly influenced by the price achieved for the crop each year, crop yield (kilograms of olives per hectare) and the allocation of permanent water rights. To demonstrate the potential impact of these variables on the NPV the Viability Analysis includes a sensitivity analysis.
- 11.3 The base case included in the sensitivity analysis was provided by Timbercorp management. We note that this base case forecasts that the average price of \$4.50/ltr (achieved for the 2008 crop sold over the last 12 months) will increase to \$4.55 in the 2010 crop and \$4.75 in the 2011 crop. In addition, the permanent water rights allocation is expected to return to 100% by 2013 from its 2008 level of 43%.
- 11.4 Looking at the three sections of the Viability Analysis:
- (a) the first shows the impact of price on project NPV;
  - (b) the second the impact of variations in crop yields (+/-15%) on project NPV;
- and

- (c) the third shows the impact of varying permanent water right allocations on NPV.

11.5 The Viability Analysis suggests that if the base case assumptions concerning yield and water allocations are realised an average olive oil price of between \$5/litre and \$6/litre is required to achieve a positive NPV.

11.6 The NPV calculations assume that the permanent water rights and irrigation infrastructure necessary to operate the schemes has been provided. However, capital expenditure of \$0.06m is still required for this scheme in addition to the cash flows identified above. As such, the actual NPV for the scheme, from a grower perspective, will be lower than the amounts included in the sensitivity analysis to the extent growers need to make additional contributions to meet the capital expenditure requirements.

11.7 As already discussed above, we note the potential for difficulties in binding Growers to additional cost commitments.

## **12 Sale of Olives**

12.1 On 12 May 2009, TSL, with other parties) entered into a sale of crop agreement (**Sale of Crop Agreement**) pursuant to which the 2009 olive crop was sold to BBM. A copy of the Sale of Crop Agreement, which is a confidential exhibit, is located on the computer disc marked MAK-4.

12.2 The purchase price payable by BBM under the Sale of Crop Agreement is the actual proceeds of sale less the costs associated with harvesting and processing the 2009 crop. The Growers are entitled to the purchase price as Proceeds.

## **13 Termination of Agreements on Winding Up pursuant to Constitution**

13.1 Based on legal advice, I believe that if the Court orders that the 2001 Olive Scheme is to be wound up in accordance with the Constitution, the following Key Scheme Documents will automatically end:

- (a) the Head Lease (cl 12);
- (b) the Sub-Lease (cl 8.1)
- (c) the Joint Venture Agreement ends on termination of the Joint Venturer's interest in the Project (cl 4.1(b)); and

(d) the Grower Agreement (cl 2.1).

13.2 Now produced and shown to me marked **MAK-9** is a bundle of the clauses I have referred to above.

#### **14 Impediments to Restructure**

14.1 Based on legal advice I believe that the structure of the 2001 Olive Scheme means that there are a number of impediments to restructuring it. I discuss these below.

##### *Encumbrances on Land title*

14.2 MAK-2 sets out the details of the registered instruments by which the Land is encumbered. The Land is encumbered by a mortgage (**Mortgage**) to the Commonwealth Bank of Australia (**CBA**) dated 8 March 2005.

14.3 The Mortgage over the Land has been granted as security for the CBA Olives Facility (**CBA Facility**). By the restated facility agreement dated 12 May 2008, CBA agreed to advance to the Landowner and to Olivecorp Processing Facility Pty Ltd (Administrators appointed) (**Olivecorp Processing**) the sum of \$50,000,000.

14.4 The purpose of the CBA Facility was to refinance existing development debt in respect of the 2000, 2001, 2002, 2003 and 2004 Timbercorp Olive Projects (**Timbercorp Projects**), all of which are undertaken on the Boort site, and for working capital.

14.5 The CBA Facility is secured by:

- (a) fixed and floating charges;
- (b) real property mortgages over land owned by the Landowner and Olivecorp Processing;
- (c) guarantees by a number of Timbercorp Group entities granted in favour of CBA, to secure moneys owing under the Facility; and
- (d) mortgages of contractual rights between CBA, TSL and the Landowner and between CBA and TSL,

(collectively the **CBA Olive Securities**).

- 14.6 Events of default have occurred under the relevant provisions of the CBA Facility and the CBA Olive Securities.

*Encumbrances on water rights*

- 14.7 Now produced and shown to me marked **MAK-10** is a table prepared by my solicitors (based on information provided by Timbercorp Group management) setting out the details of the water rights (**Water Rights**) utilised by the 2001 Olive Scheme, along with details of the registered instruments by which the Water Rights are encumbered. The Water Rights are leased, along with the Land, pursuant to the Head Lease and Sub-Lease.
- 14.8 The Water Rights are encumbered by mortgages from Almond Land Pty Ltd (Administrators Appointed) (**Almond Land**) to BOSI Security Services Ltd (**BOS**) and from the Landowner to CBA.
- 14.9 The Mortgage over the Water Rights held by Almond Land and utilised in the 2001 Olive Scheme has been granted as security for the BOS Syndicate Facility (**BOS Syndicated Facility**). By Syndicated Loan Agreement dated 15 December 2006, as amended and restated on 30 December 2008, BOS International (Australia) Limited, Westpac Banking Corporation and Australia and New Zealand Banking Group Limited (collectively **the Syndicate**) agreed to advance Timbercorp Limited (Administrators appointed) (**Timbercorp**) the sum of \$200,000,000.
- 14.10 The BOS Syndicated Facility is secured by, amongst other things, water mortgages granted by Almond Land (collectively the **BOS Securities**). The appointment of administrators to Timbercorp constitutes an event of default under relevant provisions of the BOS Syndicated Facility and BOS Securities.
- 14.11 The Mortgage over the Water Rights held by the Landowner are subject to the CBA Facility as described in paragraph 16.3-16.6 above.

**15 Grower obligations in the event TSL defaults**

- 15.1 As I deposed in my Directions Affidavit, I consider that TSL is insolvent. If the Court does not wind up the 2001 Olive Scheme then TSL will default on its obligations under the 2001 Olive Scheme. Based on legal advice, I believe that if TSL does default then:



- (a) under the Head Lease or the Sub-Lease there is no direct impact on the obligations of the Growers as the Growers' owe obligations directly to the Landowner under the Joint Venture Agreement;
- (b) under clauses 3.1 and 7.1 of the Joint Venture Agreement, the Landowner grants to the Grower a license to use and occupy the land and the Grower is obligated to pay a license fee directly to the Landowner. Presumably, this would remain unchanged by TSL's default under the Head Lease or Sub-Lease;
- (c) additionally, as TSL is insolvent and can no longer carry on its business, the Growers will be adversely affected. The Growers have entered into a Grower Agreement with TSL under which TSL agrees to cultivate and manage the growth of the olives and eventually produce olive oil from the olives for commercial sale. The Growers are entitled to the proceeds of such sale. As TSL is insolvent and can no longer perform its duties under the Grower Agreement, the Growers will have to seek a new manager for the olive groves and will likely incur costs and the crops will suffer damage or waste.

15.2 Now produced and shown to me marked **MAK-11** is a bundle of the clauses I have referred to above.

**SWORN** by the abovenamed deponent at       )  
 Melbourne in the State of Victoria       )  
 this        day of       )

\_\_\_\_\_

Before me: \_\_\_\_\_

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

**LIST E**

No 7114 of 2009

**IN THE MATTER OF TIMBERCORP SECURITIES LIMITED  
(UNDER ADMINISTRATION)**

**ACN 092 311 469**

**TIMBERCORP SECURITIES LIMITED  
(UNDER ADMINISTRATION) ACN 092 311 469  
IN ITS CAPACITY AS RESPONSIBLE ENTITY OF EACH OF THE MANAGED  
INVESTMENTS SCHEMES LISTED IN SCHEDULE 1  
First Plaintiffs**

**MARK ANTHONY KORDA and LEANNE KYLIE CHESSER  
Second and Third Plaintiffs**

**CERTIFICATE IDENTIFYING EXHIBIT**

---

Date of document: June 2009  
Filed on behalf of: the Plaintiffs  
Arnold Bloch Leibler  
Lawyers and Advisers  
Level 21  
333 Collins Street  
MELBOURNE 3000

Solicitor's Code: 54  
DX 38455 Melbourne  
Tel: 9229 9999  
Fax: 9229 9900  
Ref: 011499489  
(Leon Zwier)

---

This is the exhibit marked "**MAK-1**" now produced and shown to **MARK ANTHONY KORDA** at the time of swearing his affidavit on June 2009.

Before me: .....

**Exhibit "MAK-1"**  
**CD of Key Scheme Documents**

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

**LIST E**

No 7114 of 2009

**IN THE MATTER OF TIMBERCORP SECURITIES LIMITED  
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First Plaintiffs**

**MARK ANTHONY KORDA and LEANNE KYLIE CHESSER  
Second and Third Plaintiffs**

**CERTIFICATE IDENTIFYING EXHIBIT**

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(Leon Zwier)

---

This is the exhibit marked "**MAK-2**" now produced and shown to **MARK ANTHONY KORDA** at  
the time of swearing his affidavit on June 2009.

Before me: .....

**Exhibit "MAK-2"**  
**Table setting out the title particulars  
for Land**

MAK-2"

2001 OLIVE PROJECT

Land Owner		Title Particulars		Mortgagee		Mortgage ID
Timbercorp	Non-Timbercorp	(derived from Scheme lease documents)	(derived from Titles Office searches)			
Olivecorp Land Pty Ltd		Vol 4217 Fol 261	Vol 4217 Fol 261	Commonwealth Bank of Australia		AD627415B
		Vol 7958 Fol 068 (cancelled title)	Vol 10549 Fol 030	Commonwealth Bank of Australia		AD627415B
		Vol 10489 Fol 101 (cancelled title)	Vol 10549 Fol 030	Commonwealth Bank of Australia		AD627415B
		Vol 7958 Fol 069	Vol 7958 Fol 069	Commonwealth Bank of Australia		AD627415B
		Vol 8256 Fol 613	Vol 8256 Fol 613	Commonwealth Bank of Australia		AD627415B
		Vol 9528 Fol 791	Vol 9528 Fol 791	Commonwealth Bank of Australia		AD627415B
		Vol 4095 Fol 919 (part only)	Vol 4095 Fol 919	Commonwealth Bank of Australia		AD627415B
		Vol 4095 Fol 920 (part only)	Vol 4095 Fol 920	Commonwealth Bank of Australia		AD627415B
		Vol 5795 Fol 923	Vol 5795 Fol 923	Commonwealth Bank of Australia		AD627415B
		Vol 6353 Fol 443	Vol 6353 Fol 443	Commonwealth Bank of Australia		AD627415B
		Vol 8706 Fol 002	Vol 8706 Fol 002	Commonwealth Bank of Australia		AD627415B

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

**LIST E**

No 7114 of 2009

**IN THE MATTER OF TIMBERCORP SECURITIES LIMITED  
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IN ITS CAPACITY AS RESPONSIBLE ENTITY OF EACH OF THE MANAGED  
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First Plaintiffs**

**MARK ANTHONY KORDA and LEANNE KYLIE CHESSER  
Second and Third Plaintiffs**

**CERTIFICATE IDENTIFYING EXHIBIT**

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Date of document: June 2009  
Filed on behalf of: the Plaintiffs  
Arnold Bloch Leibler  
Lawyers and Advisers  
Level 21  
333 Collins Street  
MELBOURNE 3000

Solicitor's Code: 54  
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Tel: 9229 9999  
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(Leon Zwier)

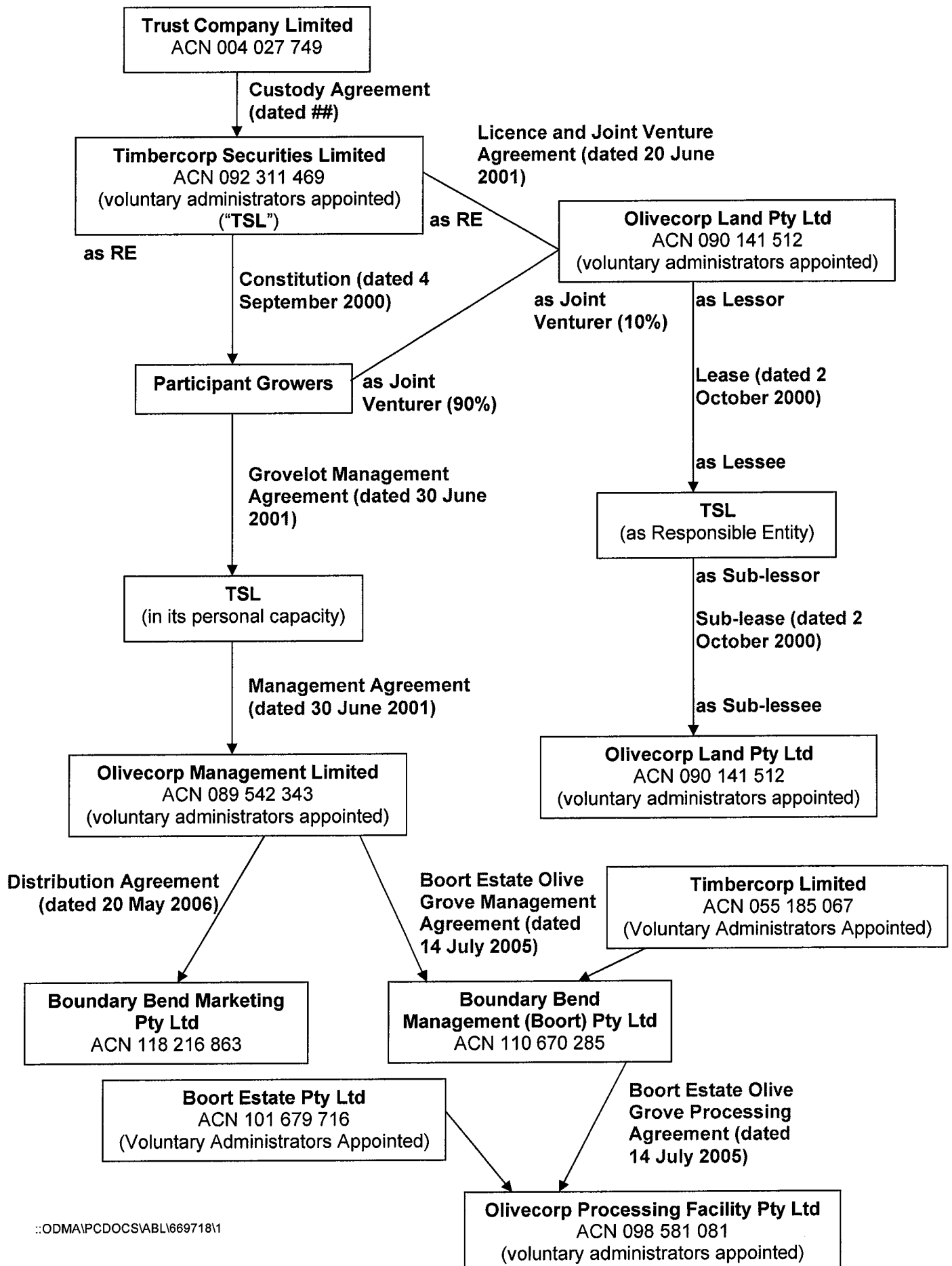
---

This is the exhibit marked "**MAK-3**" now produced and shown to **MARK ANTHONY KORDA** at  
the time of swearing his affidavit on June 2009.

Before me: .....

**Exhibit "MAK-3"**  
**Structure diagram for the 2001 Olive Scheme**

## STRUCTURE DIAGRAM 2001 TIMBERCORP OLIVE PROJECT



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

**LIST E**

No 7114 of 2009

**IN THE MATTER OF TIMBERCORP SECURITIES LIMITED  
(UNDER ADMINISTRATION)**

**ACN 092 311 469**

**TIMBERCORP SECURITIES LIMITED  
(UNDER ADMINISTRATION) ACN 092 311 469  
IN ITS CAPACITY AS RESPONSIBLE ENTITY OF EACH OF THE MANAGED  
INVESTMENTS SCHEMES LISTED IN SCHEDULE 1  
First Plaintiffs**

**MARK ANTHONY KORDA and LEANNE KYLIE CHESSER  
Second and Third Plaintiffs**

**CERTIFICATE IDENTIFYING EXHIBIT**

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Date of document: June 2009  
Filed on behalf of: the Plaintiffs  
Arnold Bloch Leibler  
Lawyers and Advisers  
Level 21  
333 Collins Street  
MELBOURNE 3000

Solicitor's Code: 54  
DX 38455 Melbourne  
Tel: 9229 9999  
Fax: 9229 9900  
Ref: 011499489  
(Leon Zwier)

---

This is the exhibit marked "**MAK-4**" now produced and shown to **MARK ANTHONY KORDA** at  
the time of swearing his affidavit on June 2009.

Before me: .....

**Exhibit "MAK-4"**  
**Confidential exhibit - CD of Register of Growers  
& Sale Agreements for the 2001 Olive Scheme**

r43.06

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

LIST E

No 7114 of 2009

IN THE MATTER OF TIMBERCORP SECURITIES LIMITED  
(UNDER ADMINISTRATION)

ACN 092 311 469

TIMBERCORP SECURITIES LIMITED  
(UNDER ADMINISTRATION) ACN 092 311 469  
IN ITS CAPACITY AS RESPONSIBLE ENTITY OF EACH OF THE MANAGED  
INVESTMENTS SCHEMES LISTED IN SCHEDULE 1  
First Plaintiffs

MARK ANTHONY KORDA and LEANNE KYLIE CHESSER  
Second and Third Plaintiffs

**CERTIFICATE IDENTIFYING EXHIBIT**

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Date of document: June 2009  
Filed on behalf of: the Plaintiffs  
Arnold Bloch Leibler  
Lawyers and Advisers  
Level 21  
333 Collins Street  
MELBOURNE 3000

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Ref: 011499489  
(Leon Zwier)

---

This is the exhibit marked "**MAK-5**" now produced and shown to **MARK ANTHONY KORDA** at  
the time of swearing his affidavit on June 2009.

Before me: .....

**Exhibit "MAK-5"**  
**Clauses concerning Grower's obligations**



"MAK-5"

2001005

## CONSTITUTION

Timbercorp Securities Limited  
(ACN 092 311 469)  
Each Grower

**NM TAYLOR**  
LAWYERS

Level 7  
350 Collins Street  
MELBOURNE VIC 3000

Telephone: 9600 3525  
Facsimile: 9600 3527

---

attorney for and on behalf of the Grower, enter into a Licence and Joint Venture Agreement and a Grovelot Management Agreement in relation to the Grovelots allocated to the Grower, and any other documents which are ancillary or related to the Licence and Joint Venture Agreement or Grovelot Management Agreement, or contemplated by the provisions of the Licence and Joint Venture Agreement or Grovelot Management Agreement.

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## **9. RESPONSIBLE ENTITY TO ENTER INTO LICENCE AND JOINT VENTURE AGREEMENT AND GROVELOT MANAGEMENT AGREEMENT**

### **9.1 Preparation of Licence and Joint Venture Agreement and Grovelot Management Agreement**

Upon acceptance of an Application, the Responsible Entity will prepare the Licence and Joint Venture Agreement and Grovelot Management Agreement. The Licence and Joint Venture Agreement and Grovelot Management Agreement:

- (a) must be completed in accordance with the details specified in the Application; and
- (b) will commence from such date as is determined by the Responsible Entity.

### **9.2 Responsible Entity to be reasonably satisfied**

Before release of moneys referred to in clause 9.3, the Responsible Entity must be reasonably satisfied that:

- (a) the Licence and Joint Venture Agreement and Grovelot Management Agreement are in the form required by this Deed and have been duly entered into by all parties;
- (b) the Land Owner has the capacity to grant the Licence;
- (c) all necessary consents to the grant of the Licence and Joint Venture Agreement and entry into the Licence and Joint Venture Agreement and Grovelot Management Agreement have been obtained or will be obtained;
- (d) the Land the subject of the Licence and Joint Venture Agreement is not subject to any encumbrance or restriction which detrimentally affects the interests of the Applicant and which is not disclosed in the Prospectus;
- (e) any other matter required to be attended to, which is necessary for the creation of the Licence and Joint Venture Agreement and the effective vesting in the Grower of his Licence and Joint Venture Agreement and Grovelot Management Agreement, whether by reason of this Deed or otherwise, has been attended to; and
- (f) there are no outstanding material breaches of any of the provisions of this Deed which are detrimental to the interests of the Growers whose Application Money is to be allocated pursuant to clause 9.3.

### **9.3 Release of Application Money**

#### **9.3.1 Release of Application Money**

In relation to each Application which is either expressed to be not subject to

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finance or (if subject to finance) is unconditional because finance has been approved, the Responsible Entity must within two (2) Business Days of the Responsible Entity being satisfied of the matters specified in clause 9.2, release the Application Money and apply it in payment of the fees payable under the Licence and Joint Venture Agreement and Grovelot Management Agreement PROVIDED THAT where a deposit has been paid as provided for in clause 6.4, the balance of the Application Money must be paid to the Responsible Entity in accordance with the requirements of clause 6.4.

**9.3.2 Refund if no release within 13 months**

If the Grower's Application Money to be released pursuant to sub-clause 9.3.1 is not released within a period of 13 months after the issue of the Prospectus to which it relates (other than by reason of the Applicant's default), then the Responsible Entity must, within 28 days, refund to the Grower the whole of the Application Money paid with any interest earned in relation to that Application Money (each Grower receiving its share of the aggregate interest earned in relation to all Growers in the proportion that the money of the Growers bears to the money held on behalf of all Growers calculated from day to day) and without any deduction except for bank fees and government charges.

**9.3.3 Extinguishment of Licence and Joint Venture Agreement and Grovelot Management Agreement**

Upon the refund of the moneys referred to in sub-clause 9.3.2, the Licence and Joint Venture Agreement and Grovelot Management Agreement of the Grower will be extinguished and the Responsible Entity will make an entry in the Register noting the extinguishment.

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## **10. GROVELOT STATEMENTS AND REGISTER**

### **10.1 Issue of Grovelot Statements**

Within two (2) months after the acceptance of any Application under the Prospectus, and thereafter, when next accounting to a Grower after any change in the holding of the Grower in the Register, the Responsible Entity must issue to the Grower a Grovelot Statement which must be substantially in the form set out in the Fifth Schedule or such other form as the Responsible Entity determines.

### **10.2 Grovelot Statements**

- (a) Each Grovelot Statement must specify such information regarding the Grovelots held by the Grower as set out in the Fifth Schedule.
- (b) The Grovelot Statements may be prepared and printed as the Responsible Entity may from time to time determine and may be issued by computer or other mechanical means and must be signed on behalf of the Responsible Entity.
- (c) A Grovelot Statement is not a certificate of title to any Grovelot, but is merely a statement from the Responsible Entity as to the state of affairs of the Register (or part of it) as it affects the Grower at a particular time.

### **10.3 Register of Growers**

The Responsible Entity must set up and maintain a Register of Growers in accordance with Chapter 2C of the Corporations Law.

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#### **10.4 Chargee**

Any person may be registered as the Chargee of any relevant Grovelots if that person is named as such in the Application in relation to those Grovelots, or a direction to that effect is received from the person registered as the Grower (in the form set out in Item 1 of the Sixth Schedule as varied from time to time by the Responsible Entity), or the Responsible Entity is otherwise satisfied that the relevant Grovelots are subject to a mortgage, provided that in no circumstances will the Responsible Entity be taken to have notice of (or be bound to enquire into) the terms of any mortgage of the relevant Grovelots.

#### **10.5 References to Chargees in Register**

Upon the written request of a Chargee in the form set out in Item 2 of the Sixth Schedule as varied from time to time by the Responsible Entity, the Responsible Entity must strike from the Register all reference to the Chargee in relation to the Grovelots referred to in the request.

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### **11. RESPONSIBLE ENTITY'S POWERS**

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

- (a) subject to the requirements of ASIC and of the Corporations Law, to receive and hold the Application Money;
- (b) to invest moneys standing in the Agency Account in any Authorised Investment in accordance with section 16;
- (c) to use the Application Money of the Grower in discharging the Grower's obligations under the Agreements or under this Deed;
- (d) to prepare reports and accounts in relation to the Grove Services and in relation to the crushing of Olives and the sale of Product;
- (e) to monitor the performance of all parties to the Project Documents;
- (f) to appoint agents to enter into the Project Documents on behalf of a Grower and to exercise all rights and powers of the Grower under any Project Document;
- (g) to execute any deed, agreement, certificate or other document and to do all other things necessary or desirable in furtherance of the powers granted to the Responsible Entity in this section 11;
- (h) generally to enter, make or engage in transactions, undertakings, activities and arrangements of every kind and nature which a natural person of full age and capacity could enter, make or engage in and which constitute or are part of or relate to or are incidental to the Grove Services on behalf of the Grower;
- (i) to appoint auditors to audit and/or monitor the accounting records and other records of the Responsible Entity and any party to a Project Document in relation to the Olives and Product from the Project; and
- (j) subject to there being adequate moneys in respect of any costs or expenses (or indemnities satisfactory to the Responsible Entity instead of them), to make claims and bring legal or arbitration proceedings against any person who is a party to any Project Agreement, to take legal or other arbitral or alternative dispute resolution proceedings on behalf of the Grower or Growers, and to

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terms and conditions as the Responsible Entity determines in its absolute discretion, and to enter into any sale agreement as agent and attorney for the Grower.

#### **13.4 Sale of Product**

The Grower further severally authorises and requests the Responsible Entity to sell its Participating Interest in the Product using its best endeavours to obtain the best price possible and on such terms and conditions as the Responsible Entity in its absolute discretion determines and for this purpose to enter into any agreement for the sale of the Grower's Participating Interest in the Product as agent and attorney for the Grower.

#### **13.5 Records**

The Responsible Entity must keep full and complete records of the sale of the Grower's Participating Interest of the Product and the Crop not sold and separately account to the Grower for the sale of the Grower's Participating Interest in the Product and the Crop, where applicable.

#### **13.6 Payment into Agency Account**

The Responsible Entity must pay into the Agency Account:-

- (a) proceeds from the sale of Crop attributable to the Growers' Grovelots;
- (b) proceeds from the sale of Product produced from the Olives attributable to the Growers' Grovelots;
- (c) proceeds of any insurance policy to which the Growers are entitled to benefit; and
- (d) any other amount properly related to the proceeds from the Growers' Grovelots.

#### **13.7 Grower's Entitlement**

- (a) A Grower is entitled to the money in the Agency Account which represents his Participating Interest in the gross income from the sale of the Product or the Crop, as applicable, for a particular Production Period less-
  - (i) any fees payable under the Grower's Grovelot Management Agreement;
  - (ii) any fees payable under the Grower's Licence and Joint Venture Agreement; and
  - (iii) any other amounts payable by the Grower under this Constitution, the Grower's Grove Management Agreement and the Grower's Licence and Joint Venture Agreement.
- (b) The Grower authorises the Responsible Entity to make the deductions listed in paragraph 13.7(a) and pay the deducted amounts to the persons entitled to them. The Responsible Entity may make these payments within 14 days of receiving the money into the Agency Account in respect of the relevant Grower.
- (c) If there is insufficient money to make all the required payments then the deductions to be made under paragraph 13.7 (a) must be made in the priority in which they are listed.
- (d) The surplus available to each Grower after all deductions are made by the Responsible Entity must be paid by the Responsible Entity to the relevant Grower. The payment must be made within five months after 30 June each year.

- 
- (e) If there are any accruals of amounts to be paid in any of the categories listed in the definitions of "Proceeds" then the accrual must be paid in the same order of preference as the items listed in paragraph 13.7(a).

### **13.8 Product Liability Insurance**

The Responsible Entity must at all times keep current with a reputable insurance company a product liability policy in respect of all of the Product of the Grower which is sold by or on behalf of the Grower. The policy must be in the names of the Responsible Entity and the Grower.

### **13.9 Proceeds from Insurance**

- (a) This clause 13.9 applies where insurance proceeds are paid in respect of some only of the Grower's Grovelots.
- (b) Where there is an event which only affects some Grower's Grovelots and insurance proceeds are paid in respect of that event, the proceeds are divided between those Growers only and according to the proportion of Grower's Grovelots affected.
- (c) In the event this clause 13.9 is operative, the Growers who receive their proportion of the insurance proceeds do not receive any part of the Proceeds in respect of the Production Periods to which the claim relates.

### **13.10 Interim distribution of entitlements**

Despite anything contained in this Constitution, the Responsible Entity may from time to time and at any time make such interim distributions to Growers on account of their respective entitlements under this clause 13. The timing and the amount of the distributions is at the complete discretion of the Responsible Entity.

### **13.11 Deduction of Taxes**

The Responsible Entity may, at its discretion, deduct or require to be deducted from any amounts payable to any Grower, the amount of any tax or duty which is paid or payable by the Responsible Entity in respect of the Grower.

### **13.12 Indemnity**

The Responsible Entity is indemnified by each person who is or was at any time a Grower in respect of any tax or duty referred to in clause 13.11.

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## **14. REMUNERATION OF THE RESPONSIBLE ENTITY**

### **14.1 The Responsible Entity's Fees**

The Responsible Entity will receive in respect of the Project by way of remuneration for carrying out its duties and obligations under this Deed, the Grovelot Management Agreement and the Project Documents and otherwise managing the Project, those fees provided for in this Deed and in the Licence and Joint Venture Agreement and the Grovelot Management Agreement. The rights of the Responsible Entity to receive the remuneration specified in this clause are available only in relation to the proper performance of the Responsible Entity's duties.

2001 002

**Licence and Joint  
Venture Agreement**

**Olivecorp Land Pty Ltd**

**Timbercorp Securities Limited**

**The Grower named in Schedule 1  
to this Agreement**

**NM TAYLOR**  
LAWYERS

Level 7  
350 Collins Street  
MELBOURNE VIC 3000

Telephone: 9600 3525  
Facsimile: 9600 3527

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the Land Owner.

- (c) The Land Owner has no obligation to pay the Grower any compensation.
- 

## **5. GOVERNMENT APPROVALS**

The Responsible Entity must 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 Grovelots.

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## **6. CONDITION PRECEDENT**

This Agreement is subject to and conditional on the Joint Venturers entering into the Grovelot Management Agreement with the Responsible Entity prior to or on the Commencement Date.

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## **7. LICENCE FEE**

### **7.1 Fee**

- (a) The Grower must pay to the Land Owner a licence fee of \$400 per JV Grovelot for the period from the Commencement Date until 30 June 2001. Thereafter, the Grower must pay an annual licence fee in accordance with clause 7.2 payable on 30 November 2001 and 30 November 2002 and on 30 September of each subsequent year during the life of the Project.
- (b) All licence fees under this agreement are payable solely by the Grower and the Land Owner will not be required to pay or contribute to any licence fees at any time during the term of this Agreement.

### **7.2 Adjustments to licence fee**

The licence fee will be reviewed on 30 June 2001 and each anniversary thereafter during the Term. The licence fee payable on and from each review date is the greater of:

- (a) the licence fee payable immediately prior to the relevant review date; and
- (b) the amount calculated in accordance with the following formula:

$$NL = L \times \frac{NCPI}{CPI}$$

Where:

**NL** is the annual licence fee payable on and from the relevant review date.

**L** is the annual licence fee payable immediately prior to the relevant review date.

**NCPI** is the Consumer Price Index (All Groups) Weighted average of eight capital cities (or any substitute accepted by the government of the Commonwealth of Australia) as last published by the Australian Bureau of Statistics prior to the relevant review date.

**CPI** is the Consumer Price Index (All Groups) Weighted average of eight capital cities (or any substitute accepted by the government of the Commonwealth of Australia) as last published by the Australian Bureau of Statistics prior to the



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immediately preceding review date or, in the case of the first review, as last published by the Australian Bureau of Statistics prior to the date of execution of this Agreement.

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

If the Consumer Price Index (All Groups) Weighted average of eight capital cities is discontinued or suspended, the method of review set out in clause 7.2(b) will cease to apply and will be replaced with such alternative method as is mutually agreed between the Land Owner and the Grower or, if they fail to agree, such alternative method as is 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. The cost of any expert determination carried out under this clause must be borne equally between the Land Owner and the Grower.

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## **8. GROWER'S OBLIGATIONS**

### **8.1 Grower's duties**

The Grower must, at its expense:-

- (a) use the JV Grovelots solely for the purpose of Joint Venture Operations;
- (b) comply with good horticultural and environmental practices;
- (c) comply with all laws and regulations relating to the use and occupancy of the JV Grovelots;
- (d) maintain the JV Grovelots in accordance with good horticultural practices including, without limitation, using soil management technique methods to reduce erosion and maintain soil quality;
- (e) permit the Land Owner and its employees, agents and contractors to enter upon the JV Grovelots from time to time with or without equipment for the purposes of observing the state of the JV Grovelots;
- (f) permit the Responsible Entity and its employees, agents and contractors to enter upon the JV Grovelots from time to time with or without equipment for the purpose of performing its obligations under the Grovelot Management Agreement;
- (g) comply or procure compliance with the provisions of the Grovelot Management Agreement; and
- (h) give such rights of way and free access to the occupiers of any other Grovelots adjoining the JV Grovelots as are necessary for their proper use and enjoyment of their land, but such rights of access are limited to the unimpeded use of any existing access roads, pathways or fire-breaks on or about the JV Grovelots.

### **8.2 Delegation by Grower**

The 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 Grower under this Agreement may be enjoyed by the Grower's agent.

### **8.3 Delegation does not limit Grower's liability**

Any delegation by the Grower under clause 8.2 does not release the Grower from liability under this Agreement.

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## **11.5 Entitlements and Obligations**

Subject to the terms and conditions of the Grovelot Management Agreement, each of the Grower and the Land Owner:

- (a) is entitled to its Prescribed Proportion of the Olives and the Proceeds;
- (b) must contribute to the Responsible Entity in proportion to its Prescribed Proportion of the management expenses; and
- (c) indemnifies the other against any losses or liability exceeding its Prescribed Proportion by reason of any joint liability incurred, or joint loss sustained, in connection with any contract or arrangement entered into by the Joint Venture.

## **11.6 Commencement and Term of this Joint Venture**

The Joint Venture commences on the date of this Agreement and unless terminated under clause 10, terminates on the termination of this Agreement.

## **11.7 Disposition of Joint Venture Assets on Termination**

- (a) On termination of the Joint Venture, the Joint Venture Assets must be distributed to, or be held for the benefit of, the Growers in their Prescribed Proportions, or be sold.
- (b) If the Joint Venture Assets are sold under clause 11.7(a), the net proceeds of sale must be divided amongst the Growers on a pro rata basis in accordance with their Prescribed Proportions.

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# **12 LICENCE FEES AND EXPENSES**

## **12.1 Failure to Pay**

If the Grower fails or neglects to pay the licence fee or its Prescribed Proportion of any amount due by the Joint Venturers under the Grovelot Management Agreement by the due date, the Land Owner may after giving the Grower 30 days' prior written notice exercise either of the remedies set out in clauses 12.2 and 12.3 (in addition to and without prejudice to any other rights of the Land Owner).

## **12.2 Land Owner may pay on Behalf of Defaulting Grower**

If the Grower fails or neglects to make payment of any amount under clause 12.1, the Land Owner may pay on behalf of the Grower, from its own funds, any such expense owing by the Grower and the Land Owner will be entitled to be reimbursed out of any Proceeds of the Grower the amount of such payment together with interest at a rate of 3% above the Commonwealth Bank Limited's prime overdraft lending rate, calculated from the date that the payment fell due until the Land Owner has been reimbursed in full.

## **12.3 Land Owner may Sell Defaulting Growers' Interest to other Growers**

If a Grower fails or neglects to make payment of any amount under clause 12.1 then the interest of the Grower may be dealt with under clause 18.4 of the Constitution.

## **12.4 Appointment of Land Owner as Attorney**

The Grower irrevocably nominates and appoints the Land Owner as its attorney for the purpose of executing the documents in its name and on its behalf as may be necessary to effect the sale of any interest under clause 12.3, including any document that effects an assignment of its interest in the JV Grovelots.

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2001 007

**Grovelot Management  
Agreement**

**Timbercorp Securities Limited**

**Each Several Grower**

**NM TAYLOR**  
LAWYERS

Level 7  
350 Collins Street  
MELBOURNE VIC 3000

Telephone: 9600 3525  
Facsimile: 9600 3527

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or any person who derives title through or under the owner, or any of the Growers.

#### **8.6 Failure to Perform if Access Denied**

The Responsible Entity will not be liable for any failure to perform its obligations under this Agreement which arises because it is denied access to, or possession or occupation of, the Grove or any part of it.

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### **9. NO LEASE OR LICENCE**

This Agreement does not create or confer any leasehold or proprietary interest or licence in favour of the Responsible Entity concerning the Growers' Grovelots.

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### **10. RESPONSIBLE ENTITY'S FEE**

#### **10.1 Annual Fee and Charges**

The Responsible Entity will be paid the following management fees and charges in respect of the Grove Services and all other services to be provided under this agreement as follows:

- (a) in respect of services to be provided in the period commencing on the Commencement Date and ending on 30 June 2001 (the "first Financial year") an amount of \$6,222 per Grovelot payable in advance on or before the Commencement Date; and
- (b) in respect of services to be provided in the period 1 July 2001 to 30 June 2002 - \$1,889 per Grovelot payable on 30 November 2001; and
- (c) in respect of services to be provided in the period 1 July 2002 to 30 June 2003 - \$1,889 per Grovelot payable on 30 November 2002; and
- (d) thereafter, in respect of services to be provided in each subsequent Financial Year during the Term, an amount per Grovelot calculated by the Responsible Entity as the reasonable costs of managing the Grovelot payable on 30 September during that Financial Year.

#### **10.2 Additional Management Fee**

The Responsible Entity will be entitled to be paid the following additional management fees in a Financial Year out of, and immediately prior to, any distribution:

- (a) from 30 September 2003, the estimated costs of operating the Grovelots (which will include an allocation of overhead costs incurred by the Responsible Entity or its contractors that will not exceed \$70 per Grovelot indexed to CPI (adopting year 2001 as the base year)) together with 7.5% of the Gross Proceeds in that Financial Year, and
- (b) 25% of so much of the annual Net Proceeds in a Financial Year as exceeds the Incentive Fee Threshold. But, if in the immediately preceding Financial Year, the Net Proceeds were less than the Incentive Fee Threshold the sum of the deficit must be deducted from the Net Proceeds when calculating the fee payable to the Responsible Entity under this paragraph in respect of the Financial Year to which reference is first made.

---

After the actual costs for a Financial Year have been determined by the Responsible Entity, the Responsible Entity will, when notifying the Grower under paragraph (a) of the projected costs for the succeeding Financial Year, notify the Grower of those actual costs per Grovelot, and either deduct the surplus per Grovelot from, or add the excess per Grovelot to, the fees payable for the next Financial Year, depending on whether they are more or less than the costs calculated by the Responsible Entity under paragraph (a).

---

## **11. INSURANCE**

### **11.1 The Responsible Entity to Keep Insurance**

The Responsible Entity will be responsible for obtaining and keeping or procuring some other person to procure and keep policies of insurance, on behalf of the Grower with a reputable insurer against damage to the Grove, which is caused by fire or other insurable risks, including public risk and occupier's liability provided that the cost of any such insurance is economically justified and it does not include crop insurance (unless specifically agreed between the Responsible Entity and the Grower from year to year).

### **11.2 Names of Policies**

All such policies of insurance must be in the names of or note the interests of the Responsible Entity, the Land Owner and the Grower.

### **11.3 No Party may prejudice Insurance Policies**

No Party will at any time during the Term permit or suffer to be done (and nothing in this Agreement will require the Responsible Entity to permit or suffer to be done) any act, matter or thing upon the Groves whereby any insurances in respect of the Grove or any Grower's Grovelots (or any part thereof) may be prejudiced or rendered void or voidable, or whereby the rate of premium on any insurance policy will be liable to be increased.

---

## **12. MANAGEMENT PLAN AND REPORTS**

### **12.1 Management Plan**

- (a) In performing its obligations under this Agreement, the Responsible Entity must observe and act in accordance with, the Management Plan.
- (b) Despite the preceding paragraph, the Responsible Entity is not required to follow or comply with the Management Plan to the extent that a written recommendation or direction from the Grower under clause 12.2 requires the Responsible Entity to do something which is not in accordance with the Management Plan.

### **12.2 Recommendation or Direction by Grower**

The Responsible Entity must consider any recommendation or direction made by a Grower and where it is satisfied that any such recommendation or direction is in the interests of the Growers and the Project generally, the Responsible Entity must use its best endeavours to carry out the recommendation or direction in accordance with the terms and conditions set out in this Agreement.

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

**LIST E**

No 7114 of 2009

**IN THE MATTER OF TIMBERCORP SECURITIES LIMITED  
(UNDER ADMINISTRATION)**

**ACN 092 311 469**

**TIMBERCORP SECURITIES LIMITED  
(UNDER ADMINISTRATION) ACN 092 311 469  
IN ITS CAPACITY AS RESPONSIBLE ENTITY OF EACH OF THE MANAGED  
INVESTMENTS SCHEMES LISTED IN SCHEDULE 1  
First Plaintiffs**

**MARK ANTHONY KORDA and LEANNE KYLIE CHESSER  
Second and Third Plaintiffs**

**CERTIFICATE IDENTIFYING EXHIBIT**

---

Date of document: June 2009  
Filed on behalf of: the Plaintiffs  
Arnold Bloch Leibler  
Lawyers and Advisers  
Level 21  
333 Collins Street  
MELBOURNE 3000

Solicitor's Code: 54  
DX 38455 Melbourne  
Tel: 9229 9999  
Fax: 9229 9900  
Ref: 011499489  
(Leon Zwier)

---

This is the exhibit marked "**MAK-6**" now produced and shown to **MARK ANTHONY KORDA** at  
the time of swearing his affidavit on June 2009.

Before me: .....

**Exhibit "MAK-6"  
Solvency Analysis**

"MAK-6"

## 2001 Olive Scheme - Forecast 2010 Harvest Result

### 2001 Timbercorp Olive Project (ARSN 094 382 082)

Gross Sales	9,424,345
less: JV Partners Share	(942,434)
Gross Grower Proceeds	8,481,910
less: Sales & Related Costs	(359,365)
less: Processing Fee	(812,255)
less: Storage Fee	(46,629)
Growers Net Proceeds	7,263,662
TIM Mgmt Fee	(548,272)
Admin Fee	(354,631)
Farm Operating Costs	(5,071,431)
Technical Fee	(117,262)
BB Management Fee	(571,621)
Temp Water	(1,018,450)
Licence Fee	(1,976,673)
AOA Levy	(13,227)
Total Operating Expenditure	(9,671,566)
Grower Net Operating Cashflow before CAPEX	(2,407,904)
Water Capital Expenditure	0
Non Water Capital Expenditure	(63,663)
2010 Capital Expenditure	(63,663)
Net Operating Cashflow after CAPEX	(2,471,567)

### 2010 Crop Variables

a	Litres per Ha (4 lots per hectare)	2,025
a	Litres per Lot	506
b	Wholesale Price (litre) \$	4.75
c	Net Sales Price (litre) \$ - Wholesale less sales & related costs	4.55
d	Sold Area (Ha)	979.75
e	Water Allocation	40%
e	Temp Water Price \$	350
f	TIM Variable Mgmt Fee (PDS)	7.50%
g	JV Share	10%
h	Processing Fee (% of Wholesale proceeds less sales & related costs)	10%
i	Base Admin Fee per Lot (Adjusted annually for CPI from Project C'ment)	70
j	Licence Fee per Lot (FY10 Rate - FY09 + CPI assumption) (per PDS)	504
k	CPI Assumption	2.5%

### Net Operating Cashflow Incurred to Date

2001	(23,526,000)
2002	(8,229,900)
2003	(8,274,420)
2004	(4,653,499)
2005	(3,448,258)
2006	584,121
2007	169,949
2008	(7,221,659)
2009	(6,272,565)
Total	(60,872,232)
Number of Grovelots	3,919
Cumulative Cashflow per Grovelot	
2001	(6,003)
2002	(2,100)
2003	(2,111)
2004	(1,187)
2005	(880)
2006	149
2007	43
2008	(1,843)
2009	(1,601)
Total	(15,533)

r43.06

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

LIST E

No 7114 of 2009

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TIMBERCORP SECURITIES LIMITED  
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IN ITS CAPACITY AS RESPONSIBLE ENTITY OF EACH OF THE MANAGED  
INVESTMENTS SCHEMES LISTED IN SCHEDULE 1  
First Plaintiffs

MARK ANTHONY KORDA and LEANNE KYLIE CHESSER  
Second and Third Plaintiffs

**CERTIFICATE IDENTIFYING EXHIBIT**

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Date of document: June 2009  
Filed on behalf of: the Plaintiffs  
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Lawyers and Advisers  
Level 21  
333 Collins Street  
MELBOURNE 3000

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(Leon Zwier)

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This is the exhibit marked "**MAK-7**" now produced and shown to **MARK ANTHONY KORDA** at  
the time of swearing his affidavit on June 2009.

Before me: .....

**Exhibit "MAK-7"**  
**Summary of Grower's defaults on loans and  
payment obligations**



# 2001 Timbercorp Olive Project (ARSN 094 382 082)

" MAK-7 "

## Project: 2001 Olive – 3,919 lots

Grower Obligations	Total Arrears		Amount Invoiced (Oct 2008)		Amount Outstanding		% Outstanding
	\$1,776,928		\$7,945,334		\$1,457,939		18%
<b>Timbercorp Finance Funding</b>							
	Amount Borrowed	Value of loans in arrears	% of loans in arrears				
	\$3,263,994	\$1,197,629	31.6%				
Percentage of growers with loans <sup>1</sup>	5.8%						
Failed Direct Debits	Pre Appointment (March) #	Pre Appointment Value	Post Appointment (May) #	Post Appointment Value			
	6	\$1,125	41	\$17,689			
1. This is funding provided by Timbercorp Finance. Status of loans provided by other lenders is unknown.							
<b>Lots held by Timbercorp Group</b>							
Timbercorp Ltd	▪ 140						
Timbercorp Finance Ltd	▪ 53						
Timbercorp Lot Investments	▪ 140						



**IN THE SUPREME COURT OF VICTORIA AT MELBOURNE  
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First Plaintiffs**

**MARK ANTHONY KORDA and LEANNE KYLIE CHESSER  
Second and Third Plaintiffs**

**CERTIFICATE IDENTIFYING EXHIBIT**

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Date of document: June 2009  
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This is the exhibit marked "**MAK-8**" now produced and shown to **MARK ANTHONY KORDA** at  
the time of swearing his affidavit on June 2009.

Before me: .....

**Exhibit "MAK-8"  
Viability Analysis**

" MAK-8 "

2001 Timbercorp Olive Project (ARSN 094 382 082) - 2001 Olive																						
Annual Inflationary Price Adjustment - 2.5%																						
2010 Price	NPV (10%)	NPV (15%)	NPV (20%)	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028
Base	-\$1,047.96	-\$1,466.23	-\$1,597.92	(1,379)	(715)	(303)	(97)	(53)	23	76	78	80	82	84	86	88	91	93	95	98	3,245	1,331
\$ per litre				4.49	4.75	4.87	4.99	5.12	5.24	5.37	5.51	5.65	5.79	5.93	6.08	6.23	6.39	6.55	6.71	6.88	6.88	6.88
4.00	-\$3,717.07	-\$3,348.95	-\$3,002.14	(1,529)	(938)	(577)	(400)	(370)	(314)	(277)	(284)	(291)	(298)	(306)	(313)	(321)	(329)	(337)	(345)	(354)	2,783	1,141
5.00	\$552.64	-\$321.96	-\$732.13	(1,225)	(586)	(145)	78	130	217	279	286	293	301	308	316	324	332	341	349	358	3,512	1,440
6.00	\$4,822.35	\$2,705.02	\$1,537.88	(922)	(234)	287	556	629	749	835	856	878	900	923	946	969	994	1,019	1,044	1,070	4,242	1,739
7.00	\$9,092.05	\$5,732.00	\$3,807.89	(619)	118	719	1,034	1,129	1,280	1,392	1,427	1,462	1,499	1,537	1,575	1,615	1,655	1,696	1,739	1,782	4,972	2,039
8.00	\$13,361.76	\$8,758.99	\$6,077.90	(315)	470	1,151	1,512	1,629	1,811	1,948	1,997	2,047	2,098	2,151	2,204	2,260	2,316	2,374	2,434	2,495	5,702	2,338

2001 Timbercorp Olive Project (ARSN 094 382 082) - 2001 Olive																						
Mature Yield	NPV (10%)	NPV (15%)	NPV (20%)	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028
-15%	-\$2,798.97	-\$1,534.80	-\$2,279.82	(1,379)	(715)	(303)	(97)	(53)	(194)	(295)	(303)	(310)	(318)	(326)	(334)	(342)	(350)	(359)	(368)	(377)	2,759	1,131
Base	-\$1,047.96	-\$1,466.23	-\$1,597.92	(1,379)	(715)	(303)	(97)	(53)	23	76	78	80	82	84	86	88	91	93	95	98	3,245	1,331
15%	\$703.06	-\$397.67	-\$916.02	(1,379)	(715)	(303)	(97)	(53)	240	447	458	469	481	493	506	519	532	545	559	573	3,732	1,530

2001 Timbercorp Olive Project (ARSN 094 382 082) - 2001 Olive																						
Temporary Water for 40%, 60% and 80% scenarios @ \$350 per ML																						
Water Allocation	NPV (10%)	NPV (15%)	NPV (20%)	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028
Base	-\$1,047.96	-\$1,466.23	-\$1,597.92	(1,379)	(715)	(303)	(97)	(53)	23	76	78	80	82	84	86	88	91	93	95	98	3,245	1,331
40%	-\$2,706.64	-\$2,640.07	-\$2,466.05	(1,379)	(801)	(501)	(357)	(313)	(237)	(184)	(182)	(180)	(178)	(176)	(174)	(172)	(169)	(167)	(165)	(162)	3,245	1,331
60%	-\$2,011.77	-\$2,116.24	-\$2,052.45	(1,292)	(715)	(414)	(270)	(227)	(150)	(98)	(96)	(94)	(92)	(89)	(87)	(85)	(83)	(80)	(78)	(75)	3,245	1,331
80%	-\$1,316.91	-\$1,592.40	-\$1,638.84	(1,205)	(628)	(328)	(184)	(140)	(64)	(11)	(9)	(7)	(5)	(3)	(1)	2	4	6	9	11	3,245	1,331

**Notes**

- NPV assessments are based on Timbercorp managements cashflow model for each project.
- Per Timbercorp management, the average forecast price for the 2009 olive crop is \$4.30 per litre.
- The base case yield assumes trees mature in 2014 and produce 645 litres per lot.
- Water allocation base case (40% in 2010, 60% in 2011, 80% in 2012 and 100% from 2013 and beyond).
- NPV's are from the growers perspective, based on current agreements and assume that all CAPEX is in place. However, other CAPEX of \$0.06m is still required for this scheme in addition to the cash flows identified above. Growers may expect a reduction in future licence fees to the extent it relates to permanent water or other infrastructure requirements.

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

**LIST E**

No 7114 of 2009

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INVESTMENTS SCHEMES LISTED IN SCHEDULE 1  
First Plaintiffs**

**MARK ANTHONY KORDA and LEANNE KYLIE CHESSER  
Second and Third Plaintiffs**

**CERTIFICATE IDENTIFYING EXHIBIT**

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Date of document: June 2009  
Filed on behalf of: the Plaintiffs  
Arnold Bloch Leibler  
Lawyers and Advisers  
Level 21  
333 Collins Street  
MELBOURNE 3000

Solicitor's Code: 54  
DX 38455 Melbourne  
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(Leon Zwier)

---

This is the exhibit marked "**MAK-9**" now produced and shown to **MARK ANTHONY KORDA** at  
the time of swearing his affidavit on June 2009.

Before me: .....

**Exhibit "MAK-9"  
Termination clauses**

"MAK-9"

2001 Olive Project  
008 LEASE

Olivecorp Land Pty Ltd

Timbercorp Securities Limited

NM TAYLOR  
LAWYERS

Level 7  
350 Collins Street  
MELBOURNE VIC 3000

Telephone: 9600 3525  
Facsimile: 9600 3527

---

## **11. DEFAULT AND RE-ENTRY**

### **11.1 Default by Lessee**

The Lessor and the Lessee covenant and agree the following are events of default under this Lease:

- (a) the rent remains unpaid for a period of six months after demanded under clause 4; or
- (b) the Lessee commits, permits or suffers to occur any material breach or default in the due and punctual performance of any of its obligations under this Lease.

### **11.2 Re-entry by Lessor**

The Lessor will have the right to re-enter the Land if an act of default in clause 11.1 has not been rectified by the Lessee to the Lessor's reasonable satisfaction within three months of the Lessee receiving written notice from the Lessor requesting such rectification.

### **11.3 Re-entry does not prejudice Lessor's rights**

Should the Lessor exercise its rights under clause 11.2, it will do so without prejudice to any action or other remedy which the Lessor has for arrears of rent or breach of covenant or for damages as a result of any breach of the terms of this Lease by the Lessee.

### **11.4 Lessor discharged from obligations**

Where the Lessor exercises its rights under clause 11.2, and upon re-entry by the Lessor, the Lessor will be freed and discharged from any action, suit, claim or demand by, or obligation, to the Lessee under or by virtue of this Lease.

---

## **12. TERMINATION**

If the Project ends then:

- (a) this Lease is automatically terminated; and
- (b) both the Lessor and the Lessee give to the other of them a power of attorney to do all things and sign all documents necessary to give effect to a termination under this clause only.

---

## **13. LESSOR'S RISK**

The Lessor is to assume all risk of loss, damage or injury by fire or otherwise to person or the Lessor's property by reason of the condition of the Land or any plant, equipment, fixtures or fittings on the Land.

---

## **14. LEGAL COSTS**

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

2001 009

**SUBLEASE**

**Timbercorp Securities Limited**

**Olivecorp Land Pty Ltd**

**NM TAYLOR**  
L A W Y E R S

Level 7  
350 Collins Street  
MELBOURNE VIC 3000

Telephone: 9600 3525  
Facsimile: 9600 3527

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made good or remedied and whether the Sublessee is still in possession or not, the Sublessee must not remove any of its fixtures, fittings or plant from the Land and is not entitled to enter upon the Land for the purpose of removing any of its fixtures, fittings or plant.

#### **7.5 Waiver by Sublessor**

No waiver by the Sublessor of a breach of any covenant, obligation or provision contained or implied in this Sublease will operate as a waiver of another breach of the same or of any other covenant, obligation or provision contained or implied in this Sublease. The only waiver by the Sublessor having any effect will be a waiver in writing by the Sublessor.

---

### **8. TERMINATION**

#### **8.1 Termination of the Project**

If the Project ends then:

- (a) this Sublease is automatically terminated; and
- (b) both the Sublessor and the Sublessee give to the other of them a power of attorney to do all things and sign all documents necessary to give effect to a termination under this clause only.

#### **8.2 Termination of Head Lease**

If the Head Lease comes to an end for whatever reason then this Sublease is automatically terminated.

---

### **9. SUBLESSEE WILL ASSUME ALL RISK**

The Sublessee will, to the entire exclusion of the Sublessor, assume all risk of loss, damage or injury by fire or otherwise to person or property by reason of the condition of the Land or any plant, equipment, fixtures or fittings at the Land, or by reason of the use, management, control or operation of any plant, equipment, fixtures or fittings and the Sublessee releases the Sublessor from all claims of such loss, damage or injury, including any loss of profits or other outgoings sustained by the Sublessee or by any person whatsoever. The Sublessee will indemnify the Sublessor from and against all actions, claims, demands, losses, damages, costs and expenses, either direct or indirect, for which the Sublessor shall or may be or become liable in respect of or arising from:

- (a) the negligent use, misuse, waste or abuse by the Sublessee of the water, gas, electricity, oil, lighting and other services and facilities of the Land;
  - (b) overflow or leakage of water (including rain water) into or from the Land from whatever cause;
  - (c) loss, damage or injury from any cause whatsoever to property or person caused or contributed to by the use of the premises by the Sublessee.
-



2001 002

**Licence and Joint  
Venture Agreement**

**Olivecorp Land Pty Ltd**

**Timbercorp Securities Limited**

**The Grower named in Schedule 1  
to this Agreement**

**NM TAYLOR**  
LAWYERS

Level 7  
350 Collins Street  
MELBOURNE VIC 3000

Telephone: 9600 3525  
Facsimile: 9600 3527

---

Grower. The Land Owner will not be liable for any loss or damage incurred by the Grower arising from any delay in so doing caused for any reason other than the negligence of the Land Owner, its officers, employees or agents.

- 2.4 The Grower acknowledges that the Capital Works on, and the Water Rights attaching to, the Grower's Grovelot are, and will at all times remain, the property of the Land Owner.
- 

### **3. GRANT**

#### **3.1 Grant of Licence**

The Land Owner grants to the Grower and the Grower takes from the Land Owner a licence, effective from the Commencement Date, to use and occupy the JV Grovelots (in joint venture with the Land Owner) for the purpose only of cultivating and harvesting Olives and producing olive oil for the Term.

#### **3.2 No right of exclusive occupation**

The right granted to the Grower under clause 3.1 confers no right of exclusive occupation in the JV Grovelots.

#### **3.3 Water Rights**

The Land Owner must:

- do all things necessary to ensure that its rights under the Water Rights are fully exploited to maximize the use and enjoyment of them by the Grower;
  - take all steps to avoid interfering with the supply of water to the Grower's Grovelots and to avoid any actions that would prejudice the Grower's rights under this Agreement; and
  - purchase and maintain the Water Rights during the Project and purchase any additional water rights on a temporary or permanent basis that may be required from time to time in order to irrigate the Grove.
- 

### **4 TERM**

#### **4.1 Term of Agreement**

- (a) This Agreement will commence on the Commencement Date.
- (b) Subject to clauses 10.1-10.3 and clause 12, this Agreement will continue until the earlier of:
- (i) termination of the Joint Venturers' Participating Interest in the Project; and
  - (ii) 30 June 2024.

#### **4.2 Removal of Olive Trees and equipment**

- (a) At the end of this Agreement, the Grower must return the JV Grovelots to the Land Owner in good condition but the Grower is not required to remove Olive Trees or restore the JV Grovelots to their original condition.
- (b) Any structures or plant and equipment of any description which belong to the Joint Venture must be removed from the JV Grovelots within 30 days after the end of this Agreement. If the parties do not comply with this requirement then, as between the Land Owner and the Grower, all structures and plant and equipment remaining on the JV Grovelots at the time will become the absolute property of

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## **9. LAND OWNER'S OBLIGATIONS**

The Land Owner must:

- (a) 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 Grovelots; and
  - (b) comply with all laws and regulations relating to the use and occupancy of any neighbouring land occupied by the Land Owner or other persons.
- 

## **10. TERMINATION OF AGREEMENT**

### **10.1 Termination of Agreement by Grower**

- (a) Subject to clause 10.1(b), the Grower may terminate this Agreement if the Land Owner commits a material breach of this Agreement and fails to remedy the breach or pay reasonable monetary compensation to the Grower within 30 days of receiving a written notice from the Grower.
- (b) The written notice referred to in paragraph 10.1(a) must specify the breach and require the Land Owner to rectify the breach.

### **10.2 Termination of Agreement by Land Owner**

- (a) Subject to clause 10.2(b) and without prejudice to the Land Owner's rights under clause 12, the Land Owner may terminate this Agreement, with immediate effect, if the Grower commits a material breach of this Agreement and fails to remedy the breach or make reasonable compensation in money within 30 days after the Land Owner has served a written notice on the Grower requiring the Grower to remedy the breach.
- (b) The written notice referred to in paragraph 10.2(a) must specify the breach.
- (c) The Agreement will terminate if the Land Owner exercises its rights under clause 12.3.

### **10.3 Loss of Olive Trees**

- (a) If, in respect of the JV Grovelots:
  - (i) the whole or a substantial part of the JV Grovelots is damaged or destroyed whether by fire or any other cause whatsoever; or
  - (ii) an independent horticultural consultant commissioned by the Grower reasonably determines that the whole or a substantial part of the JV Grovelots is no longer commercially viable,the Grower may terminate this Agreement in respect of all the JV Grovelots by giving not less than 4 months prior written notice of such termination to the Land Owner. Termination under this clause takes effect on and from the 30 June next following the expiration of the period of notice.
- (b) If so directed by the Land Owner in writing within 2 months after receipt of the Growers' notice of termination, the Grower must, at the Growers' expense, immediately remove from the JV Grovelots all Olive Trees and debris forming part of or derived from the Olive Trees and re-seed pasture on the JV Grovelots.

### **10.4 Reduction of JV Grovelots**

- (a) If in respect of the JV Grovelots:
  - (i) part of the JV Grovelots is damaged or destroyed whether by fire or any other cause whatsoever; or

---

### **11.5 Entitlements and Obligations**

Subject to the terms and conditions of the Grovelot Management Agreement, each of the Grower and the Land Owner:

- (a) is entitled to its Prescribed Proportion of the Olives and the Proceeds;
- (b) must contribute to the Responsible Entity in proportion to its Prescribed Proportion of the management expenses; and
- (c) indemnifies the other against any losses or liability exceeding its Prescribed Proportion by reason of any joint liability incurred, or joint loss sustained, in connection with any contract or arrangement entered into by the Joint Venture.

### **11.6 Commencement and Term of this Joint Venture**

The Joint Venture commences on the date of this Agreement and unless terminated under clause 10, terminates on the termination of this Agreement.

### **11.7 Disposition of Joint Venture Assets on Termination**

- (a) On termination of the Joint Venture, the Joint Venture Assets must be distributed to, or be held for the benefit of, the Growers in their Prescribed Proportions, or be sold.
- (b) If the Joint Venture Assets are sold under clause 11.7(a), the net proceeds of sale must be divided amongst the Growers on a pro rata basis in accordance with their Prescribed Proportions.

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## **12 LICENCE FEES AND EXPENSES**

### **12.1 Failure to Pay**

If the Grower fails or neglects to pay the licence fee or its Prescribed Proportion of any amount due by the Joint Venturers under the Grovelot Management Agreement by the due date, the Land Owner may after giving the Grower 30 days' prior written notice exercise either of the remedies set out in clauses 12.2 and 12.3 (in addition to and without prejudice to any other rights of the Land Owner).

### **12.2 Land Owner may pay on Behalf of Defaulting Grower**

If the Grower fails or neglects to make payment of any amount under clause 12.1, the Land Owner may pay on behalf of the Grower, from its own funds, any such expense owing by the Grower and the Land Owner will be entitled to be reimbursed out of any Proceeds of the Grower the amount of such payment together with interest at a rate of 3% above the Commonwealth Bank Limited's prime overdraft lending rate, calculated from the date that the payment fell due until the Land Owner has been reimbursed in full.

### **12.3 Land Owner may Sell Defaulting Growers' Interest to other Growers**

If a Grower fails or neglects to make payment of any amount under clause 12.1 then the interest of the Grower may be dealt with under clause 18.4 of the Constitution.

### **12.4 Appointment of Land Owner as Attorney**

The Grower irrevocably nominates and appoints the Land Owner as its attorney for the purpose of executing the documents in its name and on its behalf as may be necessary to effect the sale of any interest under clause 12.3, including any document that effects an assignment of its interest in the JV Grovelots.

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2001 007

**Grovelot Management  
Agreement**

**Timbercorp Securities Limited**

**Each Several Grower**

**NM TAYLOR**  
LAWYERS

Level 7  
350 Collins Street  
MELBOURNE VIC 3000

Telephone: 9600 3525  
Facsimile: 9600 3527

- 
- (b) exercise any of its rights under this Agreement, through its employees, agents and contractors but any delegation by the Responsible Entity does not release the Responsible Entity from liability under this Agreement.
- 

## **2. COMMENCEMENT AND TERM OF THIS AGREEMENT**

### **2.1 Term**

- (a) This Agreement will commence on the Commencement Date.
  - (b) Subject to clauses 14.2 and 14.3, this Agreement will continue until the earlier of:
    - (i) termination of the Growers Participating Interest in the Project; and
    - (ii) 30 June 2024.
- 

## **3. RELATIONSHIP OF THE PARTIES**

### **3.1 No Partnership etc**

The relationship amongst the Growers, between the Growers and the Responsible Entity and between the Grower and the Responsible Entity is not, is not intended to be, is not deemed to be and is not to be treated as a partnership or association or, other than the relationship between the Land Owner and a Grower, a joint venture.

### **3.2 Project**

The Parties expressly agree and acknowledge that:

- (a) the rights, duties, obligations and liabilities of the Growers are in every case several and not joint or joint and several;
  - (b) each Party is an independent contracting party; and
  - (c) no Party has any authority or power for or on behalf of any other Party to enter into any contract, to pledge any credit, to incur any liabilities, to assume any obligations or to make any warranties or representations whatsoever except as specifically provided by this Agreement.
- 

## **4. APPOINTMENT OF THE RESPONSIBLE ENTITY**

### **4.1 Engagement of Responsible Entity as Responsible Entity of the Project**

The Grower engages the Responsible Entity on the terms and conditions set out in this Agreement generally to manage and administer the Project, manage, direct and conduct the Project Operations on behalf of the Grower and perform the Grove Services.

### **4.2 Responsible Entity to Carry out Grove Services as Independent Contractor**

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action to satisfy any such duty and has substantially completed such plan); or

- (b) 6 months (or such shorter period as the Responsible Entity and the Growers agree) after the Growers by Special Resolution at a meeting of Growers resolve to terminate the engagement of the Responsible Entity under the Agreement.

#### **14.2 Termination by Responsible Entity**

- (a) If the Grower fails to make a payment within the required time under this Agreement then the Responsible Entity may terminate this Agreement, but only after giving the Grower 30 days' notice to make the payment.
- (b) If this Agreement is terminated under paragraph 14.2(a) then:
  - (i) the Grower loses all rights as a participant in the Project;
  - (ii) the Grower remains liable for payment of all fees in respect of work done by the Responsible Entity, and
  - (iii) the procedure for the consequence of termination as set out in the Constitution must be followed.

#### **14.3 Termination of Licence and Joint Venture Agreement**

This Agreement terminates in respect of the Grower immediately if the Licence and Joint Venture Agreement is terminated in respect of the Grower for any reason.

#### **14.4 Responsible Entity to Relinquish Property and Books and Records**

Provided that the Growers have paid all of the fees and other moneys due to the Responsible Entity and it is not otherwise in breach of any of its obligations under this Agreement, the Responsible Entity must relinquish custody and control to the Growers or as the Growers direct, of all property of the Growers held by the Responsible Entity under this Agreement and all books and records and documents kept under this Agreement upon cancellation of the engagement of the Responsible Entity or termination of this Agreement, other than those which the Responsible Entity is required by law to keep.

#### **14.5 Effect of Termination**

The termination of this Agreement (whether under this clause or under any other clause) 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. The termination of this Agreement will not prejudice any right, power or remedy to the extent that it accrued prior to or on termination.

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### **15. EXCUSES FOR NON PERFORMANCE**

#### **15.1 Force Majeure**

A Party 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.

#### **15.2 Lack or unavailability of funds**

Performance or fulfilment of an obligation is not to be taken to be prevented by Force

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

**LIST E**

No 7114 of 2009

**IN THE MATTER OF TIMBERCORP SECURITIES LIMITED  
(UNDER ADMINISTRATION)**

**ACN 092 311 469**

**TIMBERCORP SECURITIES LIMITED  
(UNDER ADMINISTRATION) ACN 092 311 469  
IN ITS CAPACITY AS RESPONSIBLE ENTITY OF EACH OF THE MANAGED  
INVESTMENTS SCHEMES LISTED IN SCHEDULE 1  
First Plaintiffs**

**MARK ANTHONY KORDA and LEANNE KYLIE CHESSE**  
Second and Third Plaintiffs

**CERTIFICATE IDENTIFYING EXHIBIT**

---

Date of document: June 2009  
Filed on behalf of: the Plaintiffs  
Arnold Bloch Leibler  
Lawyers and Advisers  
Level 21  
333 Collins Street  
MELBOURNE 3000

Solicitor's Code: 54  
DX 38455 Melbourne  
Tel: 9229 9999  
Fax: 9229 9900  
Ref: 011499489  
(Leon Zwier)

---

This is the exhibit marked "**MAK-10**" now produced and shown to **MARK ANTHONY KORDA**  
at the time of swearing his affidavit on June 2009.

Before me: .....

**Exhibit "MAK-10"**  
**Table concerning water rights**



**2001 OLIVE PROJECT  
WATER ENCUMBRANCES**

Property	Owner	Water Share ID	Volume	First Mortgagee	Mortgage ID
Boort	Almond Land Pty Ltd	WEE022387	139.6	BOSI Security Services Ltd	MOR001572
Boort	Almond Land Pty Ltd	WEE036985	72.0		
Boort	Almond Land Pty Ltd	WEE037068	313.2		
Boort	Almond Land Pty Ltd	WEE037101	50.0	BOSI Security Services Ltd	MOR001572
Boort	Almond Land Pty Ltd	WEE037268	468.5		
Boort	Almond Land Pty Ltd	WEE037948	101.5		
Boort	Almond Land Pty Ltd	WEE038055	360.4	BOSI Security Services Ltd	MOR001572
Boort	Olivecorp Land Pty Ltd	WEE039264	15438.6	Commonwealth Bank of Australia	AD627415B

" MAK-10 "

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

**LIST E**

No 7114 of 2009

**IN THE MATTER OF TIMBERCORP SECURITIES LIMITED  
(UNDER ADMINISTRATION)**

**ACN 092 311 469**

**TIMBERCORP SECURITIES LIMITED  
(UNDER ADMINISTRATION) ACN 092 311 469  
IN ITS CAPACITY AS RESPONSIBLE ENTITY OF EACH OF THE MANAGED  
INVESTMENTS SCHEMES LISTED IN SCHEDULE 1  
First Plaintiffs**

**MARK ANTHONY KORDA and LEANNE KYLIE CHESSER  
Second and Third Plaintiffs**

**CERTIFICATE IDENTIFYING EXHIBIT**

---

Date of document: June 2009  
Filed on behalf of: the Plaintiffs  
Arnold Bloch Leibler  
Lawyers and Advisers  
Level 21  
333 Collins Street  
MELBOURNE 3000

Solicitor's Code: 54  
DX 38455 Melbourne  
Tel: 9229 9999  
Fax: 9229 9900  
Ref: 011499489  
(Leon Zwier)

---

This is the exhibit marked "**MAK-11**" now produced and shown to **MARK ANTHONY KORDA**  
at the time of swearing his affidavit on June 2009.

Before me: .....

**Exhibit "MAK-11"**  
**Clauses relevant to TSL Default**

" MAK - 11 "

20001002

**Licence and Joint  
Venture Agreement**

**Olivecorp Land Pty Ltd**

**Timbercorp Securities Limited**

**The Grower named in Schedule 1  
to this Agreement**

**NM TAYLOR**  
LAWYERS

Level 7  
350 Collins Street  
MELBOURNE VIC 3000

Telephone: 9600 3525  
Facsimile: 9600 3527

---

Grower. The Land Owner will not be liable for any loss or damage incurred by the Grower arising from any delay in so doing caused for any reason other than the negligence of the Land Owner, its officers, employees or agents.

- 2.4 The Grower acknowledges that the Capital Works on, and the Water Rights attaching to, the Grower's Grovelot are, and will at all times remain, the property of the Land Owner.

---

### **3. GRANT**

#### **3.1 Grant of Licence**

The Land Owner grants to the Grower and the Grower takes from the Land Owner a licence, effective from the Commencement Date, to use and occupy the JV Grovelots (in joint venture with the Land Owner) for the purpose only of cultivating and harvesting Olives and producing olive oil for the Term.

#### **3.2 No right of exclusive occupation**

The right granted to the Grower under clause 3.1 confers no right of exclusive occupation in the JV Grovelots.

#### **3.3 Water Rights**

The Land Owner must:

- do all things necessary to ensure that its rights under the Water Rights are fully exploited to maximize the use and enjoyment of them by the Grower;
- take all steps to avoid interfering with the supply of water to the Grower's Grovelots and to avoid any actions that would prejudice the Grower's rights under this Agreement; and
- purchase and maintain the Water Rights during the Project and purchase any additional water rights on a temporary or permanent basis that may be required from time to time in order to irrigate the Grove.

---

### **4 TERM**

#### **4.1 Term of Agreement**

- (a) This Agreement will commence on the Commencement Date.
- (b) Subject to clauses 10.1-10.3 and clause 12, this Agreement will continue until the earlier of:
- (i) termination of the Joint Venturers' Participating Interest in the Project; and
  - (ii) 30 June 2024.

#### **4.2 Removal of Olive Trees and equipment**

- (a) At the end of this Agreement, the Grower must return the JV Grovelots to the Land Owner in good condition but the Grower is not required to remove Olive Trees or restore the JV Grovelots to their original condition.
- (b) Any structures or plant and equipment of any description which belong to the Joint Venture must be removed from the JV Grovelots within 30 days after the end of this Agreement. If the parties do not comply with this requirement then, as between the Land Owner and the Grower, all structures and plant and equipment remaining on the JV Grovelots at the time will become the absolute property of

- 
- the Land Owner.
- (c) The Land Owner has no obligation to pay the Grower any compensation.
- 

## **5. GOVERNMENT APPROVALS**

The Responsible Entity must 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 Grovelots.

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## **6. CONDITION PRECEDENT**

This Agreement is subject to and conditional on the Joint Venturers entering into the Grovelot Management Agreement with the Responsible Entity prior to or on the Commencement Date.

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## **7. LICENCE FEE**

### **7.1 Fee**

- (a) The Grower must pay to the Land Owner a licence fee of \$400 per JV Grovelot for the period from the Commencement Date until 30 June 2001. Thereafter, the Grower must pay an annual licence fee in accordance with clause 7.2 payable on 30 November 2001 and 30 November 2002 and on 30 September of each subsequent year during the life of the Project.
- (b) All licence fees under this agreement are payable solely by the Grower and the Land Owner will not be required to pay or contribute to any licence fees at any time during the term of this Agreement.

### **7.2 Adjustments to licence fee**

The licence fee will be reviewed on 30 June 2001 and each anniversary thereafter during the Term. The licence fee payable on and from each review date is the greater of:

- (a) the licence fee payable immediately prior to the relevant review date; and
- (b) the amount calculated in accordance with the following formula:

$$NL = L \times \frac{NCPI}{CPI}$$

Where:

**NL** is the annual licence fee payable on and from the relevant review date.

**L** is the annual licence fee payable immediately prior to the relevant review date.

**NCPI** is the Consumer Price Index (All Groups) Weighted average of eight capital cities (or any substitute accepted by the government of the Commonwealth of Australia) as last published by the Australian Bureau of Statistics prior to the relevant review date.

**CPI** is the Consumer Price Index (All Groups) Weighted average of eight capital cities (or any substitute accepted by the government of the Commonwealth of Australia) as last published by the Australian Bureau of Statistics prior to the