

**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 -**

**2003 TIMBERCORP OLIVE PROJECT (ARSN 104 648 473)**

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Date of document: June 2009

Filed on behalf of: the Plaintiffs

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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**). Other 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 2003 Timbercorp Olive Project which has the Australian Registered Scheme Number 104 648 473 (**2003 Olive Scheme**).
- 5 **2003 Olive Scheme Documents**
- 5.1 The 2003 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 along with an index to the documents on that computer disc. 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 2003 Olive Scheme is constituted by the following key documents:
- (a) the constitution dated 6 May 2003 (O 2003 001) and supplemental deeds dated 15 May 2003 (O 2003 002), 29 November 2004 (O 2003 002A), 5 May 2005 (O 2003 002B), 13 October 2006 (O 2003 002C) and 19 August 2008 (O 2003 002D), which bind TSL (in its capacity as responsible entity for each scheme) and each of the Growers (**Constitution**);
  - (b) a prospectus dated 15 May 2003 (O 2003 000) in respect of the 2003 Olive Scheme lodged with the Australian Securities and Investments Commission on, and dated, 15 May 2003 which includes a summary of the key documents

for the 2003 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 custody agreement dated 16 December 2002 (O 2003 005) between Permanent Trustee Company Limited ACN 000 000 993 and TSL (in its capacity as the responsible entity), by which TSL agreed to appoint Permanent Trustee Company Ltd as custodian to hold the Scheme Assets (**Custody Agreement**);
- (d) a lease dated 15 May 2003 (O 2003 006) between TSL (in its capacity as responsible entity) and the owner of the land on which the crop was to be grown, Olivecorp Land Pty Ltd ACN 090 141 512, (**the Land**, 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 CD 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;
- (e) a sub-lease undated (O 2003 008) between TSL (in its capacity as responsible entity), the Landowner and the Growers, by which each Grower sub-leases parcels of the Land of approximately ¼ of a hectare (known as **Grovelots**) to use and occupy for the cultivation of olives and production of olive oil (**Sub-Lease**);
- (f) a grower agreement undated (O 2003 009) (referred to as the Grovelot Management Agreement) amended by Deed Poll dated 8 June 2006 (O 2003 009A) and supplemental deed dated 1 October 2008 (O 2003 009B), between each Grower with the Landowner by which the Growers appointed TSL to cultivate and maintain the crop grown on the Land, harvest and procure the processing of the crop and sell it on behalf of the grower (**Grower Agreement**);
- (g) a management agreement undated (O 2003 007), by which TSL engaged Olivecorp Management Limited (ACN 089 542 343) (Administrators

Appointed) (**OML**) to manage the Grovelots on which the 2003 Olive Scheme is conducted (**Management Agreement**);

- (h) an option agreement dated 15 May 2003 (O 2003 004) amended by agreement dated 16 August 2006 (O 2003 004A), by which Grovelot Holdings (2003 Project) Limited (ACN 104 445 034) (Administrators Appointed) agreed to take and the Landowner agreed to grant an option to purchase an interest in the Land, water rights and capital works (**Option Agreement**);
- (i) a processing agreement dated 14 July 2005 (O 2003 011) and supplemental deed dated 12 June 2008 (O 2003 011A), by which Boort Estate Pty Ltd (ACN 101 679 716) engaged Boundary Bend Management (Boort) Pty Ltd (ACN 110 670 285) to manage the processing facility, and process the olives from the Grovelots (**Processing Agreement**);
- (j) a distribution agreement dated 20 May 2006 (O 2003 013), by which OML engaged Boundary Bend Marketing Pty Ltd (ACN 118 216 863) (**BBM**) as the exclusive distributor of olive oil sourced from or produced from the Land (**Distribution Agreement**); and
- (k) olive oil purchase agreement dated 23 June 2008 (O 2003 014), by which TSL (in its capacity as responsible entity) authorised the Supplier to market and sell the olive oil on behalf of Growers to Timbercorp Limited (**Purchase Agreement**).

#### (Key Scheme Documents)

- 5.3 Now produced and shown to me marked **MAK-3** is a structure diagram for the 2003 Olive Scheme.
- 5.4 There are 532 Growers in the 2003 Olive Scheme and a total of 2,503 Grovelots. There are two projects within the 2003 Olive Scheme. There are 2,153 Grovelots in the first scheme (**2003 Olive Early**) and 350 Grovelots in the second scheme (**2003 Olive Post June**). Now produced and shown to me marked **MAK-4** is a confidential exhibit (on computer disc) listing the Growers for the 2003 Olive Scheme.

6 **Growers' contributions to the 2003 Olive Scheme**

- 6.1 The Growers' obligations to contribute to the 2003 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 In order for an applicant to become a Grower the applicant 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) had 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 Sub-Lease (clause 9.3(a)).
- 6.4 Each Grower under the 2003 Olive Scheme entered into the Sub-Lease with the Landowner and TSL (in its personal capacity). Under the Sub-Lease, each Grower (amongst other things):
- (a) must pay annual rent per Grovelot to TSL (clause 7.1); and
  - (b) must, at its own expense, perform the Grove Services which include (amongst other things) complying or procuring compliance with the Grower Agreement (clause 8.2(j)).
- 6.5 Under the Grower Agreement, the Growers must pay annual management fees and charges to TSL (in its capacity as responsible entity) (clause 10.3).
- 6.6 Under the Constitution, TSL (as responsible entity) is required pay into a separate account (the **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 Grower's Sub-Lease;

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

**(Deductions)**

- 6.8 The Grower authorises TSL (as responsible entity) to make the Deductions and pay the deducted amounts (clause 13.7(b)).
- 6.9 TSL (in its capacity as responsible entity) generally has a right of indemnity out of the Agency Account for any amounts for which it is entitled to be indemnified (clause 23.2(a)).

**7 Solvency of the 2003 Olive Scheme**

- 7.1 The solvency of the 2003 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 2003 Olive Scheme is represented by a collection of contracts which create rights and impose obligations.
- 7.2 To analyse whether the 2003 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 2003 Olive Scheme. Now produced and shown to me marked **MAK-6** is the Solvency Analysis (**Solvency Analysis**). Information about both the 2003 Olive Early project (shown as 2003E) and 2003 Olive Post June (shown as 2003P) project for the 2003 Olive Scheme appears in this 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 2003 Olive Scheme began on a financial year basis (July 1 to June 30). For the financial years 2003 to 2009, both the 2003 Olive Early project and the 2003 Olive Post June project had negative net 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 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 2003 Olive Scheme from the first crop in 2005 up to the estimate for 2010 is summarised below:

Crop Year	2003	2004	2005	2006	2007	2008	2009	2010F*
Yield Total								
2003 Olive Early			67,197	214,132	506,112	626,244	906,625	1,165,852
Yield Total 2003								
Olive Post June			10,924	34,810	82,275	101,805	147,385	189,525
*Forecast								

- (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 in 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	2010F*
Price per litre (\$)	5.94	5.00	4.92	5.20	4.65	4.50	4.30	4.55

\*Forecast

#### *Scheme Costs - Explanation, Variables and Assumptions*

- 9.4 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).
- 9.5 In addition, the following fees are deducted before proceeds are distributed to Growers:
- (a) Processing Fee - 12.5% 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;
  - (c) TIM Variable Management Fee that TSL charges the Growers to manage the lot on the Growers' behalf. It is charged at 3.25% of the Growers' net sales proceeds.
- 9.6 The Grower's are responsible for the payment of operating expenditure. Even though the Timbercorp Group can no longer provide services for the 2003 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 2003 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 0840 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 - Boundary Bend Estate Management Pty Ltd** ACN 080 184 925, a wholly owned subsidiary of Boundary Bend Ltd ACN 115 131 667 (**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:

<b>Crop Year</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010F</b>
Total – Goulburn Allocation	57%	100%	100%	100%	95%	43%	35%	40%
*Forecast								

- (f) Rent (referred to as "Licence fee per lot" in the Solvency Analysis) - rent is referred to in the Prospectus. It is payable for the use of and occupancy of the Grovelot under the Sub-lease. The Growers pay rent 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 - the cashflow has been prepared on the basis of a 2.5% increase in the Consumer Price Index.

9.7 The operational costs are charged in accordance with the 2003 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)*

- 9.8 The conclusion from this analysis is that for the 2010 Harvest Result the Growers will have to meet a shortfall of (approximately) \$1,595,092 in relation to the 2003 Olive Early project and \$295,304 in relation to the 2003 Olive Post June project as project costs are greater than gross proceeds.
- 9.9 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 those 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.

9.10 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 2003 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*

9.11 In addition to the operating expenditure, the 2003 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.

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

9.13 There is expected expenditure for water related infrastructure, referred to in the Solvency Analysis as "Non Water Capital Expenditure" of \$40,661 (approximately) for both projects. 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 2003 Olive Scheme terminate their participation in the 2003 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    Timbercorp, Timbercorp Finance Pty Ltd (Administrators Appointed) ACN 054 581 190 (**Timbercorp Finance**) and Timbercorp Lot Investments Pty Ltd (Administrators appointed) ACN 125 427 492, each of which are Timbercorp Group companies, hold in aggregate approximately 8.4% of the total number of Grovelots in the 2003 Olives Early project. None of these companies has sufficient resources to meet the fees which would be payable in respect of their ongoing participation in the 2003 Olives Early project, and have indicated they intend to terminate their participation on 30 June 2009, unless the 2003 Olive Early and 2003 Olive Post June projects were terminated by special resolution or Court order.

10.3    In addition, we consider it likely that some Growers in the 2003 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 project invoices - in October 2008, Growers were invoiced a total of \$5.5m for the 2003 Olive Early project and \$100,000 for the 2003 Olive Post June project, of which \$0.9m (17%) and \$0.1m (84%) respectively of the total remains unpaid;
- (b)     loans in arrears - 6.1% of growers in the 2003 Olive Early project and 7.6% of growers in the 2003 Olive Post June project have taken out loans with Timbercorp Finance. \$1.1m (60%) and \$0.1m (29%) respectively 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 0 in March 2009 to 4 in May 2009 for the

2003 Olive Early project and was unchanged at 2 in March 2009 and May 2009 for the 2003 Olive Post June project;

- 10.4 Furthermore, Timbercorp Finance is no longer in a position to provide finance to Growers to meet their obligations in the 2003 Olive Scheme.
- 10.5 For these reasons I consider that not all Growers will continue to participate or meet their obligations as they fall due.
- 10.6 TSL is insolvent and unable to absorb these costs.

#### *Defaults in other Olive Schemes*

- 10.7 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 2003 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 2003 Olive Scheme over its life.
- 11.2 The Viability Analysis is based on Timbercorp management's cashflow model for the 2003 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 for the 2010 crop and increase to \$4.75 for 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 \$0.03m in relation to the 2003 Olive Early project, and \$0.01m in relation to the 2003 Olive Post June project, 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 mentioned at 9.13, we note the potential for difficulties in binding Growers to additional cost commitments.

## 12 Sale of Olives

- 12.1 On 12 May 2009, TSL, amongst others, 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 2003 Olive Scheme is to be wound up in accordance with the Constitution, most of the Key Scheme Documents also end. Upon termination of the Scheme, the following agreements will automatically end:

- (a) Grower Agreement (cl 2.1);
- (b) Head Lease (cl 12); and
- (c) Sub-Lease (cl 4.1(b)(iv)).

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

**14 Encumbrances on land title**

- 14.1 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**).

- 14.2 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) ACN 098 581 081 (**Olivecorp Processing**) the sum of \$50,000,000.

- 14.3 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.

- 14.4 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**).

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

## 15 Impediments to Restructure

15.1 Based on legal advice I believe that the structure of the 2003 Olive Scheme means that there are a number of impediments to restructuring it. I discuss these below.

### *Encumbrances on water rights*

15.2 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 2003 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.

15.3 The Water Rights are encumbered by mortgages from Almond Land Pty Ltd (Administrators Appointed) (**Almond Land**) to BOSI Security Services Ltd ACN 009 413 852 (**BOS**) and from the Landowner to CBA.

15.4 The Mortgage over the Water Rights held by Almond Land and utilised in the 2003 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 ACN 066 601 250, Westpac Banking Corporation and Australia and New Zealand Banking Group Limited (collectively **the Syndicate**) agreed to advance Timbercorp the sum of \$200,000,000.

15.5 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.



15.6 The Mortgage over the Water Rights held by the Landowner are subject to the CBA Facility as described in paragraph 17 above.

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

16.1 As I deposed in my Directions Affidavit, I consider that TSL is insolvent. If the Court does not wind up the 2003 Olive Scheme then TSL will default on its obligations under the 2003 Olive Scheme. Based on legal advice, I believe that if TSL does default then:

- (a) the Landowner has a right to re-enter and terminate the Head Lease (clause 11). Upon termination of the Head Lease, the Landowner consents to allowing the Growers the right to occupy and use the land under the Sub-Lease (clause 10.2). If the Growers continue to use and occupy the Land under the Sub-Lease, they will be obliged to pay rent directly to the Landowner.
- (b) this obligation is subject to the ability of each Grower to terminate its Sub-Lease due to TSL's liquidation or TSL ceasing to carry on its business (clause 10.1 of the 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 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 olives and will likely incur costs and suffer damages.

16.2 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 June 2009                 )

\_\_\_\_\_

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

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**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**



**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**

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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  
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Level 21  
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Solicitor's Code: 54  
DX 38455 Melbourne  
Tel: 9229 9999  
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Ref: 011499489  
(Leon Zwier)

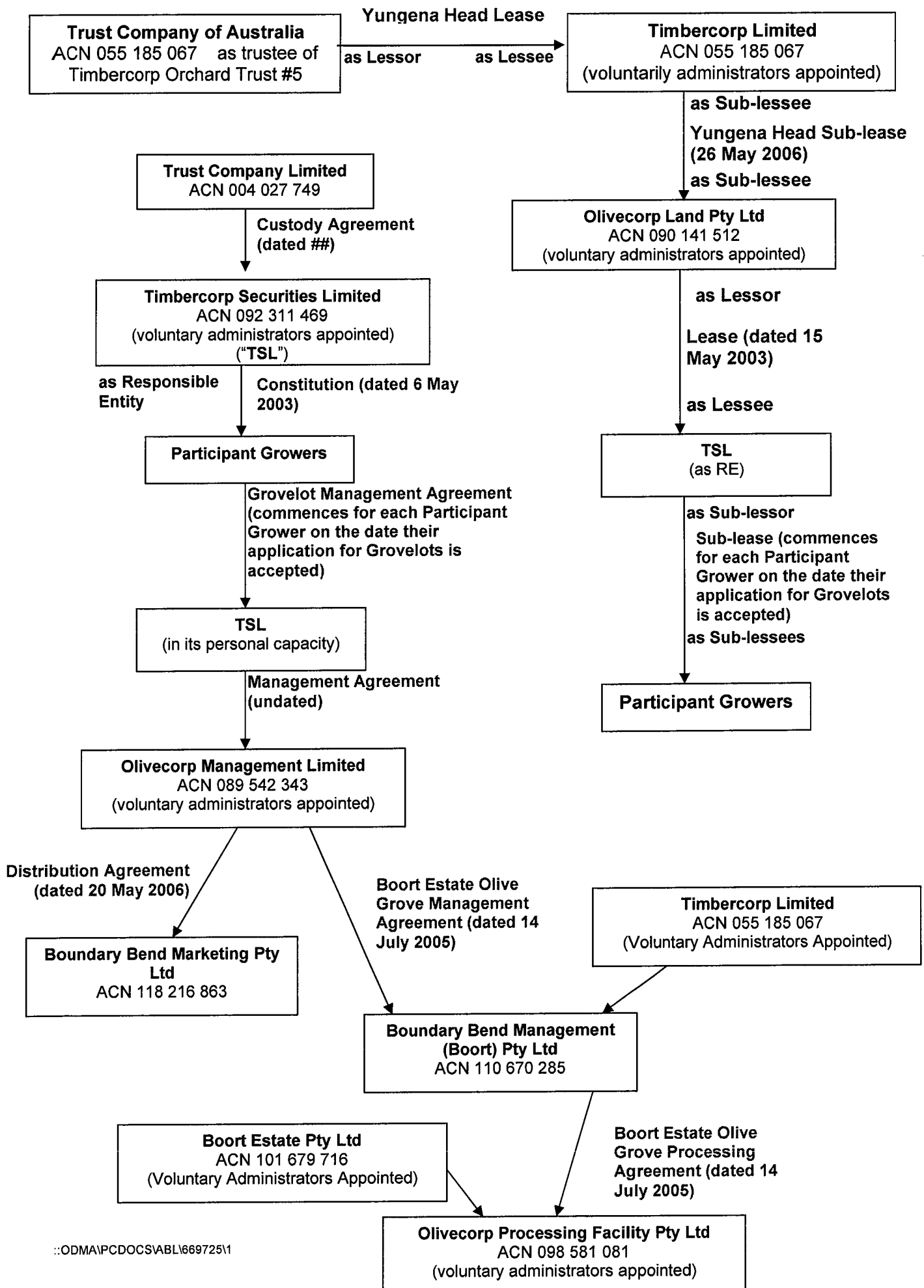
---

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 2003 Olive Scheme**

"mak-3"  
STRUCTURE DIAGRAM  
2003 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  
and Sale Agreements for the 2003 Olive Scheme**



**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  
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Solicitor's Code: 54  
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Tel: 9229 9999  
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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"

2003 CCI

## CONSTITUTION

2003 TIMBERCORP OLIVE PROJECT

Timbercorp Securities Limited  
(ACN 092 311 469)

Grovelot Holdings (2003 Project) Limited  
(ACN 104 445 034)

Each Participant Grower

**[EXECUTION COPY]**

**NM TAYLOR**  
LAWYERS

Level 7  
350 Collins Street  
MELBOURNE VIC 3000

Telephone: 9600 3525  
Facsimile: 9600 3527

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## 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 Sub-lease Agreement and Grovelot Management Agreement are in the form required by this Deed and have been duly entered into by all parties;
- (b) the Responsible Entity has the capacity to grant the Sub-lease;
- (c) all necessary condition precedents to the grant of the Sub-lease pursuant to the Sub-lease Agreement and entry into the Sub-lease Agreement and Grovelot Management Agreement have been satisfied;
- (d) all necessary consents to the grant of the Sub-lease pursuant to the Sub-lease Agreement and entry into the Sub-lease Agreement and Grovelot Management Agreement have been obtained or will be obtained;
- (e) the Land the subject of the Sub-lease 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;
- (f) any other matter required to be attended to, which is necessary for the creation of the Sub-lease Agreement and the effective vesting in the Participant Grower of its Sub-lease Agreement and Grovelot Management Agreement, whether by reason of this Deed or otherwise, has been attended to; and
- (g) there are no outstanding material breaches of any of the provisions of this Deed which are detrimental to the interests of the Participant Growers whose Application Money is to be allocated pursuant to clause 9.3.

## 9.3 Release of Application Money

### (a) Release of Application Money

In relation to each Application which is either expressed to be not subject to finance or (if subject to finance) is unconditional because finance has been approved, the Responsible Entity must within 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 Sub-lease 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.

### (b) Refund if no release within 13 months

If the Participant Grower's Application Money to be released pursuant to paragraph 9.3(a) 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 Participant Grower the whole of the Application Money paid with any interest earned in relation to that Application Money (each Participant Grower receiving its share of the aggregate interest earned in relation to all Participant Growers in the proportion that the money of the Participant Growers bears to the money held on behalf of all Participant Growers calculated from day to day) and without any deduction except for bank fees and government charges.

### (c) Extinguishment of Sub-lease Agreement and Grovelot Management Agreement

Upon the refund of the moneys referred to in paragraph 9.3(b), the Sub-lease

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### **6.3 How to Apply**

Every Applicant must deliver to the Responsible Entity or to the duly authorised lawful agents of the Responsible Entity at the place set out in the Prospectus or any other place or places as the Responsible Entity may from time to time determine the following:

- (a) an Application for Grovelots, incorporating an offer to become a Participant Grower under this Deed and the grant of the Call Option, being in the form attached to the Prospectus, and signed or executed by the Applicant and the Applicant's Associate, if one is specified;
- (b) a Power of Attorney, being in the form attached to the Prospectus, signed or executed by the Applicant, appointing the Custodian or the Responsible Entity (whichever is so authorised) to be the Applicant's attorney and, on the Applicant's behalf, to execute the Sub-lease Agreement, the Grovelot Management Agreement and any other documents which are ancillary or related to the Sub-lease Agreement or Grovelot Management Agreement, or contemplated by the provisions of the Sub-lease Agreement or Grovelot Management Agreement; and
- (c) as required by the Prospectus but subject to clauses 6.4 and 6.5, a cheque for the Application Money for each Grovelot being the amount set out in the First Schedule.

### **6.4 Payment in Full or by Instalments**

- (a) Subject to clauses 6.5 and 7.1 and subject to the Responsible Entity electing to make available to Applicants a facility to pay the Application Moneys by instalments, at the option of any Applicant, the Application Money for each Grovelot may be payable in full at the time of application or may be payable by instalments. If the Applicant elects to pay the Application Money by instalments, the Applicant must pay at the time of delivering of the Application the amount shown in the application as the "DEPOSIT", and the balance of the Application Money must be paid by the Applicant (or Participant Grower, if that Applicant has become a Participant Grower in accordance with the provisions of this Deed), to the Responsible Entity by the date specified in the Application (if any) and if no such date is specified, by such date as the Responsible Entity may, in its absolute discretion, determine, provided that in its absolute discretion, the Responsible Entity may extend that date to such later day as the Responsible Entity determines.
- (b) If an Applicant, or Participant Grower, whichever is the case, fails to pay the amount shown in the Application against the words "BALANCE" (or any part of it) by the day specified in the Application, or by any other date determined by the Responsible Entity, for payment of it, the Responsible Entity is authorised to exercise all or any of the remedies below (in addition to and without prejudice to any rights at law or in equity or pursuant to this Deed). The Responsible Entity is entitled to recover from the Applicant (or Participant Grower, whichever is the case) the balance together with interest on the balance outstanding at the rate for the time being fixed under section 2 of the Penalty Interest Rates Act 1983 (Victoria) as at the date specified in the Application for payment, from the day so specified in the Application until payment; and either
  - (i) the Responsible Entity may sue the Applicant (or Participant Grower, whichever is the case) for specific performance of its agreement; or
  - (ii) the Responsible Entity may terminate all the right, title and interest of the Applicant (or Participant Grower, whichever is the case) pursuant

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to the provisions of this Deed and any Agreement and the Applicant (or Participant Grower, whichever is the case) must forfeit the deposit money paid, provided the Responsible Entity has first given the Applicant (or Participant Grower, whichever is the case) a notice in writing informing the Applicant (or Participant Grower, whichever is the case) of the default and giving the Applicant (or Participant Grower, whichever is the case) a period of 10 days from the date of posting of the notice to remedy the breach.

- (c) If the Responsible Entity exercises its right under paragraph 6.4(b)(ii), then within 14 days of exercising that right, the Responsible Entity must make an appropriate notation in the Register.

## **6.5 Condition as to Finance**

If an amount is shown in an Application against the words "LESS amount subject to finance" (if those words appear in the Application), the Application will only be accepted by the Responsible Entity on condition that a person (which person may include the Responsible Entity) agrees to lend that amount to the Applicant. The Responsible Entity does not warrant, undertake, covenant or agree that such finance will be provided or procured.

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## **7. REFUSAL OF APPLICATIONS**

### **7.1 Refusal of Application**

The Responsible Entity may in its absolute discretion, but only within 15 Business Days after receipt of an Application, give notice in writing to any Applicant to the effect that its Application has been refused.

### **7.2 Notice of Refusal**

The notice provided for in clause 7.1 may specify that the Application has been refused:

- (a) wholly in relation to the Application; or
- (b) partly, that is, with respect to a proportion of the Application Money contributed with the Application;

without giving any reasons for the refusal.

### **7.3 Repayment to Applicant**

Upon the Responsible Entity having given notice to an Applicant that its Application has been refused, the Applicant will be entitled to be repaid the amount paid by the Applicant with respect to the Application so refused with interest (if any) earned in relation to that amount (each Applicant so refused receiving its share of the aggregate interest earned in relation to all relevant Applicants in the proportion that the money of the Applicant bears to the money held on behalf of all relevant Applicants calculated from day to day) and without any deduction except for bank fees and government charges.

### **7.4 Applicant ceases to be an Applicant**

If any Application is wholly refused then upon repayment of any money payable to the Applicant under clause 7.3, the Applicant will also cease to be an Applicant under this

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referred to in the request.

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

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

- (a) subject to the requirements of ASIC and of the Corporations Act, to receive and hold the Application Money;
  - (b) to invest moneys standing in the Agency Account in any Authorised Investment in accordance with clause 16;
  - (c) to use the Application Money of the Participant Grower in discharging the Participant 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 Crop 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 the Participant Grower and to exercise all rights and powers of the Participant Grower under any Project Documents;
  - (g) 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 Participant Grower;
  - (h) 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 Crop and Product from the Project;
  - (i) 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 Agreement or Project Document, to take legal or other arbitral or alternative dispute resolution proceedings on behalf of the Participant Grower, and to defend or compromise any claim or legal or arbitral proceedings arising out of the interest of the Participant Grower and relating to any Agreement;
  - (j) to execute any deed, agreement, certificate or other document and to do all such things as are necessary or desirable further of the powers granted to the Responsible Entity in this clause 11, including for the purposes of protecting, insofar as is legally possible, the Participant Grower's tenure to its Grovelots; and
  - (k) to lease the Land from the owner of the Land, and sub-lease it to the Participant Grower.
-

- 
- (a) procure the processing of its Participating Interest in the Crop, or so much of it as the Responsible Entity in its absolute discretion considers desirable;
  - (b) enter into any crushing or processing agreement as agent and attorney for the Participant Grower; and
  - (c) store its Participating Interest in the Product.

### **13.4 Sale of Crop and Product**

Each Participant Grower severally authorises and requests the Responsible Entity to sell:

- (a) its Participating Interest in that part of the Crop that is not processed by the Responsible Entity in accordance with clause 13.3; and
- (b) its Participating Interest in the Product,

using the Responsible Entity's best endeavours to maximise returns to the Participant Grower, 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 Participant Grower's Participating Interest in the Product and any unprocessed Crop as agent and attorney for the Participant Grower.

### **13.5 Records**

The Responsible Entity must keep full and complete records of the sale of the Participant Grower's Participating Interest in the Product and any unprocessed Crop and separately account to the Participant Grower for the sale of the Participant 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 Participant Growers' Grovelots to which the Participating Grower is entitled;
- (b) proceeds from the sale of Product produced from the Olives and Crop attributable to the Participant Growers' Grovelots to which the Participating Grower is entitled;
- (c) proceeds of any insurance policy to which the Participant Growers are entitled to benefit; and
- (d) any other amount properly related to the proceeds from the Participant Growers' Grovelots to which the Participating Growers are entitled.

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

- (a) A Participant Grower is entitled to the money in the Agency Account which represents its 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 Participant Grower's Sub-lease Agreement plus interest;
  - (ii) any fees payable under the Participant Grower's Grovelot Management Agreement plus interest; and
  - (iii) any other amounts or adjustments payable by the Participant Grower under this Deed, the Participant Grower's Grovelot Management Agreement and the Participant Grower's Sub-lease Agreement plus

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interest.

- (b) The Participant Grower authorises the Responsible Entity to make the deductions and adjustments listed in paragraph 13.7(a) and pay such 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 Participant Grower.
- (c) If, in any Financial Year in which there is a Production Period, there is insufficient money to make all the required payments then the deductions or adjustments 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 Participant Grower after all deductions and adjustments are made by the Responsible Entity must be paid by the Responsible Entity to the relevant Participant Grower. The payment must be made within five months after 30 June each year in which there is a Production Period.
- (e) If there are any accruals of amounts to be paid in any of the categories listed in paragraph 13.7(a) 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 Crop and Product of the Participant Grower which is sold by or on behalf of the Participant Grower. The policy must be in the names of the Responsible Entity and the Participant Grower.

### **13.9 Proceeds from Insurance**

- (a) This clause 13.9 applies where insurance proceeds are paid in respect of only some of the Grovelots of Participant Growers in the Project.
- (b) Where there is an event which only affects some Grovelots of Participant Growers in the Project and insurance proceeds are paid in respect of that event, the proceeds are divided between those Participant Growers in the Project only and according to the proportion that the area of each Grovelots affected bears to the total area of the Grovelots affected.
- (c) In the event this clause 13.9 is operative, the Participant Growers in the Project who receive their proportion of the insurance proceeds are not to receive any part of the other Proceeds in respect of the Production Periods to which the claim relates and accordingly, the Participating Interest of the Participant Growers in the other Proceeds is to be recalculated with the area of the affected Grovelots excluded.

### **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 Participant 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 Participant Grower, the amount of any tax or duty which is paid or payable by the Responsible Entity in respect of the Participant Grower.



- 
- (i) the election of the chair of a meeting; or
    - (ii) the adjournment of a meeting.
  - (f) in relation to section 253L(2) of the Corporations Act, at a meeting of Participant Growers, a poll may be demanded by:
    - (i) at least 1 Participant Grower concerned holding or representing by proxy at least 10% of the aggregate number of relevant Grovelots for the time being on issue to the Participant Growers concerned and entitling the holders to vote on the resolution; or
    - (ii) the chair.
- 

## **23. LIABILITIES AND INDEMNITIES OF RESPONSIBLE ENTITY**

### **23.1 Liability of Responsible Entity**

- (a) To the extent permitted by the Corporations Act, the Responsible Entity is not liable for any loss or damage to any person (including any Participant Grower) arising out of any matter unless, in respect of that matter, it acted both:
  - (i) otherwise than in accordance with this Deed and its duties; and
  - (ii) without a belief held in good faith that it was acting in accordance with this Deed and its duties.
- (b) In particular, the Responsible Entity is not liable for any loss or damage to any person arising out of any matter where, in respect of that matter:
  - (i) to the extent permitted by the Corporations Act, it relied in good faith on the services of, or information or advice from, or purporting to be from, any person appointed by the Responsible Entity;
  - (ii) it acted as required by Law;
  - (iii) it relied in good faith upon any signature, marking or document; or
  - (iv) it followed a direction given to it by a resolution passed at a duly convened meeting of Participant Growers.
- (c) The Responsible Entity may decide how and when to exercise its powers in its absolute discretion.

### **23.2 Indemnity of Responsible Entity**

- (a) In addition to any indemnity under any Law, the Responsible Entity has a right of indemnity out of the Agency Account on a full indemnity basis in respect of a matter unless, in respect of that matter, the Responsible Entity has acted negligently, fraudulently or in breach of its duties.
- (b) Such right of indemnity in respect of a matter ("**Indemnified Matter**") will not be lost or impaired by reason of a separate matter (whether before or after the Indemnified Matter) in breach of this Deed.
- (c) The right of indemnity continues to be available after the Responsible Entity retires or is removed as Responsible Entity.
- (d) The Responsible Entity may pay out of the Agency Account any amount for

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which the Responsible Entity would be entitled to be indemnified under paragraph 23.2(a).

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## **24. LIABILITIES AND INDEMNITIES OF PARTICIPANT GROWERS**

### **24.1 Liability Limited**

Except as provided by any express indemnity given by any Participant Grower to the Responsible Entity, and except as provided in clause 26.7, the entire liability of each Participant Grower is limited to the balance of any Application Money owing (if any) and the Participant Grower's Participating Interest in the Proceeds, and no Participant Grower will have any liability to make any further contribution to the Project or payment to the Responsible Entity in respect of the Project, other than the payments required under clause 17.1.

### **24.2 Indemnity of each Participant Grower by Responsible Entity**

The Responsible Entity indemnifies each Participant Grower against all debts and liabilities which may be incurred by the Participant Grower at any time in relation to the Project or otherwise in any way as a result of or arising out of any act, default or omission of the Responsible Entity.

### **24.3 No Indemnity by any Grower**

Despite any other provision of this Deed or provisions deemed to be included in this Deed, no Participant Grower will, by reason of this Deed or by reason of the relationship created under this Deed with the Responsible Entity, be under any obligation personally to indemnify the Responsible Entity in the event of there being any deficiency in relation to the Project except, in respect of the relevant Grovelots, out of any Application Money of the Participant Grower or other moneys held in the Agency Account in relation to the Participant Grower, or the payments required under clause 17.1.

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## **25. COMPLAINTS PROCEDURE**

### **25.1 Procedure**

Subject to the guidelines of the external complaints resolution scheme of which the Responsible Entity is a member in accordance with paragraph 25.6(a), complaints made by any Participant Grower in relation to the Project or the Responsible Entity ("**complaints**") must be dealt with in the manner set out in this clause.

### **25.2 Complaints Officer**

- (a) The Responsible Entity must appoint an internal complaints officer ("**Complaints Officer**") with authority to review any complaints from Participant Growers.
- (b) The roles and responsibilities of the Complaints Officer include:
  - (i) to receive and process verbal and written complaints from Participant Growers, at no charge to Participant Growers;

2003 008

**Sub-lease Agreement**

**Olivecorp Land Pty Ltd**

**Timbercorp Securities Limited**

**Each several Participant Grower  
named in Schedule to this  
Agreement**

**2003 Timbercorp Olive Project**

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

Level 7  
350 Collins Street  
MELBOURNE VIC 3000

Telephone: 9600 3525  
Facsimile: 9600 3527

- 
- (b) not store or use any chemical, inflammable, noxious or dangerous substances in a manner which is likely to result in damage to vegetation, crops or water reserves on the Grovelots;
  - (c) comply with the provisions of the Head Lease;
  - (d) not create any encumbrances over the Land or the Grovelots or any part of the Land or the Grovelots ranking in priority to the interests of the Participant Growers under this Agreement other than the agreements referred to in clause 6.1;
  - (e) take all necessary measures to ensure that any fires which may occur or be lit on any neighbouring land owned or occupied by the Responsible Entity are properly controlled and supervised; and
  - (f) comply with all laws and regulations relating to the use and occupancy of any neighbouring land occupied by the Responsible Entity or other persons.

## **5.2 Rights**

The Responsible Entity:

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

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## **6. CONDITIONS PRECEDENT**

### **6.1 Conditions Precedent**

This Agreement is subject to and conditional on:

- (a) the Participant Grower entering into the Grovelot Management Agreement with the Responsible Entity; and
- (b) the Responsible Entity entering into the Head Lease with the Land Owner, on or before the Commencement Date in respect of the relevant Grovelots.

### **6.2 Reasonable Endeavours**

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

## **7. RENT**

### **7.1 Fee**

- (a) Where the Participant Grower is an Early Grower, the Participant Grower must

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pay to the Responsible Entity rent of \$727.27 per Grovelot for each of the following periods:

- (i) from the Commencement Date until 30 June 2003, payable on or before the Commencement Date;
- (ii) for the financial year ending 30 June 2004, payable on 31 October 2003;
- (iii) for the financial year ending 30 June 2005, payable on 31 October 2004.

Thereafter, the Participant Grower must pay an annual rent in accordance with clause 7.2 payable on 31 October of each subsequent year during the Term, commencing on 31 October 2005.

- (b) Where the Participant Grower is a Post 30 June Grower, the Participant Grower must pay to the Responsible Entity rent of \$727.27 per Grovelot for each of the following periods:

- (i) from the Commencement Date until 30 June 2004, payable on or before the Commencement Date;
- (ii) for the financial year ending 30 June 2005, payable on 31 October 2004.

Thereafter, the Participant Grower must pay an annual rent in accordance with clause 7.2 payable on 31 October of each subsequent year during the Term, commencing on 31 October 2005.

- (c) All amounts of rent under this Agreement are payable solely by the Participant Grower and the Land Owner will not be required to pay or contribute to any rent at any time during the Term of this Agreement.

## **7.2 Adjustments to rent**

The rent payable by the Participant Grower on 31 October 2005 in respect of the Financial Year ending 30 June 2006 and each anniversary thereafter during the Term will be the rent payable on the immediately preceding 31 October, Indexed.

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

- (a) If the Consumer Price Index (All Groups) Weighted Average of Eight Capital Cities is discontinued or suspended, such other index number that most closely reflects changes in the cost of living for the eight capital cities of Australia as is mutually agreed between the Responsible Entity and the Participant Grower will replace it as the new "CPI" or, if they fail to agree, such alternative index number, as in the opinion of an expert appointed by the President for the time being of the Institute of Chartered Accountants (Victorian Division) at the request of either of them most closely reflects changes in the cost of living for the eight capital cities of Australia will replace it as the new "CPI".
  - (b) The cost of any expert determination carried out under this clause 7.3 must be borne equally between the Responsible Entity and the Participant Grower.
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## **8. GROWER'S OBLIGATIONS**

### **8.1 Permitted use**

The Participant Grower must only use the Grovelots solely for the purpose of the Grovelot Operations.

### **8.2 Grower's duties**

The Participant Grower must, at its expense:

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

### **8.3 Delegation by the Participant Grower**

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

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

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

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2003 CO9

**Grovelot Management  
Agreement**

**Timbercorp Securities Limited**

**Each several Participant Grower  
named in Schedule to this  
Agreement**

**2003 Timbercorp Olive Project**

**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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## **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 relevant Grovelots.

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

### **10.1 Annual Fee and Charges (Payable by Early Growers)**

Where the Participant Grower is an Early Grower, the Participant Grower will pay the Responsible Entity the following management fees and charges in respect of the Grove Services and all other services to be provided under this Agreement:

- (a) in respect of services to be provided in the period commencing on the Commencement Date and ending on 30 June 2003 an amount of \$3181.82 per relevant Grovelot payable in advance on or before the Commencement Date; and
- (b) in respect of services to be provided in the period 1 July 2003 to 30 June 2004 - \$2,100.00 per relevant Grovelot payable on 31 October 2003; and
- (c) in respect of services to be provided in the period 1 July 2004 to 30 June 2005 - \$2,100.003 per relevant Grovelot payable on 31 October 2004; and
- (d) thereafter, in respect of services to be provided in each subsequent Financial Year during the Term, the fees specified in clauses 10.3 and 10.4.

### **10.2 Annual Fee and Charges (Payable by Post 30 June Growers)**

Where the Participant Grower is a Post 30 June, the Participant Grower will pay the Responsible Entity the following management fees and charges in respect of the Grove Services and all other services to be provided under this Agreement:

- (a) in respect of services to be provided in the period commencing on the Commencement Date and ending on 30 June 2004 an amount of \$3181.82 per relevant Grovelot payable in advance on or before the Commencement Date; and
- (b) in respect of services to be provided in the period 1 July 2004 to 30 June 2005 - \$3,181.82 per relevant Grovelot payable on 31 October 2004; and
- (c) thereafter, in respect of services to be provided in each subsequent Financial Year during the Term, the fees specified in clauses 10.3 and 10.4.

### **10.3 Additional Management Fees**

- (a) The Responsible Entity will be entitled to be paid on 31 October 2005 and each subsequent 31 October in a Financial Year by the Participant Growers, an amount equal to the reasonable costs of operating the relevant Grovelots for that Financial Year as estimated by the Responsible Entity (which will include an allocation of overhead costs incurred by the Responsible Entity or



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its contractors that will not exceed \$70 per relevant Grovelot Indexed adopting 30 June 2003 as the Base Date).

- (b) The Responsible Entity will be entitled to be paid as an additional management fee in a Financial Year by the Participant Grower, out of, and immediately prior to, any distribution of Proceeds, 4.5% of the Gross Proceeds in that Financial Year.
- (c) The Responsible Entity will, when notifying the Participant Grower under paragraph 10.3(a) of the estimated costs payable on 31 October for that Financial Year:
  - (i) notify the Participant Grower of the reasonable costs of operating the relevant Grovelots (including the overhead costs incurred by the Responsible Entity or its contractors) for the preceding Financial Year incurred by the Responsible Entity on a per Grovelot basis; and
  - (ii) either deduct the surplus per Grovelot from, or add the excess per Grovelot to, the fees estimated and payable for that Financial Year, depending on whether they are more or less than the costs estimated by the Responsible Entity for the preceding Financial Year under paragraph 10.3(a), unless the surplus per Grovelot has been added, or the excess per Grovelot deducted, from any distribution of Proceeds made to the Participant Grower following the end of the preceding Financial Year.

#### **10.4 Incentive Fee**

- (a) The Responsible Entity will be entitled to be paid as an incentive fee in a Financial Year by the Participant Grower out of, and immediately prior to, any distribution 25% of so much of the annual Net Proceeds received by the Participant Grower in a Financial Year as exceeds the Incentive Fee Threshold.
- (b) But, if in the immediately preceding Financial Year, the Net Proceeds received by the Participant Grower were less than the Incentive Fee Threshold the amount of the deficit must be deducted from the Net Proceeds when calculating the fee payable to the Responsible Entity under this clause 10.4 in respect of the Financial Year to which reference is first made.

#### **10.5 Discontinuance or suspension of CPI**

- (a) If the Consumer Price Index (All Groups, Weighted Average of Eight Capital Cities) is discontinued or suspended, such other index number that most closely reflects changes in the cost of living for the eight capital cities of Australia as is mutually agreed between the Responsible Entity and the Participant Grower will replace it as the new "CPI" or, if they fail to agree, such alternative index number, as in the opinion of an expert appointed by the President for the time being of the Institute of Chartered Accountants (Victorian Division) at the request of either of them most closely reflects changes in the cost of living for the eight capital cities of Australia will replace it as the new "CPI".
  - (b) The cost of any expert determination carried out under this clause 10.5 must be borne equally between the Responsible Entity on the one part and the Participant Grower on the other.
-

**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)

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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"

Provisional Report Pending Validation

2003 Olive Scheme - Forecast 2010 Harvest Result

2003 Timbercorp Olive Project (ARSN 104 648 473)

Gross Sales	5,537,797	900,246	6,438,043
less: JV Partners Share	0	0	0
Gross Grower Proceeds	5,537,797	900,246	6,438,043
less: Sales & Related Costs	(234,628)	(38,142)	(272,770)
less: Processing Fee	(662,896)	(107,763)	(770,659)
less: Storage Fee	(30,444)	(4,949)	(35,393)
Growers Net Proceeds	4,609,829	749,392	5,359,221
TIM Mgmt Fee	(150,809)	(24,516)	(175,325)
Admin Fee	(183,642)	(29,854)	(213,495)
Farm Operating Costs	(2,995,765)	(487,003)	(3,482,768)
Technical Fee	(71,578)	(11,636)	(83,214)
BB Management Fee	(348,927)	(56,723)	(405,649)
Temp Water	(621,679)	(101,063)	(722,741)
Licence Fee	(1,824,448)	(296,589)	(2,121,038)
AOA Levy	(8,074)	(1,313)	(9,386)
Total Operating Expenditure	(6,204,922)	(1,008,696)	(7,213,618)
Grower Net Operating Cashflow before CAPEX	(1,595,092)	(259,304)	(1,854,397)
Water Capital Expenditure	0	0	0
Non Water Capital Expenditure	(34,975)	(5,686)	(40,661)
2010 Capital Expenditure	(34,975)	(5,686)	(40,661)
Net Operating Cashflow after CAPEX	(1,630,067)	(264,990)	(1,895,058)

2010 Crop Variables

a	Litres per Ha (4 lots per hectare)	2,166	2,166
a	Litres per Lot	542	542
b	Wholesale Price (litre) \$	4.75	4.75
c	Net Sales Price (litre) \$ - Wholesale less sales & related costs	4.55	4.55
d	Sold Area (Ha)	538.25	87.50
e	Water Allocation	40%	40%
e	Temp Water Price \$	350	350
f	TIM Variable Mgmt Fee (PDS)	3.25%	3.25%
g	JV Share	0%	0%
h	Processing Fee (% of Wholesale proceeds less sales & related costs)	12.5%	12.5%
i	Base Admin Fee per Lot (Adjusted annually for CPI from Project C'ment)	70	70
j	Licence Fee per Lot (FY10 Rate - FY09 + CPI assumption) (per PDS)	847	847
k	CPI Assumption	2.5%	2.5%

Net Operating Cashflow Incurred to Date

2003	(8,416,271)		(8,416,271)
2004	(6,087,134)	(1,368,182)	(7,455,315)
2005	(6,075,467)	(1,366,288)	(7,441,755)
2006	(3,456,052)	(561,829)	(4,017,881)
2007	(3,410,077)	(554,355)	(3,964,432)
2008	(741,916)	(120,609)	(862,525)
2009	(4,959,931)	(806,306)	(5,766,236)
Total	(33,146,847)	(4,777,569)	(37,924,416)
Number of Grovelots	2,153	350	2,503
Cumulative Cashflow per Grovelot			
2003	(3,909)		(3,362)
2004	(2,827)	(3,909)	(2,979)
2005	(2,822)	(3,904)	(2,973)
2006	(1,605)	(1,605)	(1,605)
2007	(1,584)	(1,584)	(1,584)
2008	(345)	(345)	(345)
2009	(2,304)	(2,304)	(2,304)
Total	(15,396)	(13,650)	(15,152)

**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-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**

" MAK -7 "

Project: 2003 Olive Early – 2,153 lots					
Grower Obligations	Total Arrears	Amount Invoiced (Oct 2008)	Amount Outstanding	% Outstanding	
	\$1,409,609	\$5,455,924	\$914,637	17%	
Timbercorp Finance Funding	Amount Borrowed	Value of loans in arrears	% of loans in arrears		
	\$1,782,902	\$1,066,830	59.8%		
Percentage of growers with loans <sup>1</sup>	6.1%				
Failed Direct Debits	Pre Appointment (March) #	Pre Appointment Value	Post Appointment (May) #	Post Appointment Value	
	0	\$0	4	\$2,543	
1. This is funding provided by Timbercorp Finance. Status of loans provided by other lenders is unknown.					
Lots held by Timbercorp Group					
Timbercorp Ltd		▪	24		
Timbercorp Finance Ltd		▪	0		
Timbercorp Lot Investments		▪	157		

Project: 2003 Olive Post June – 350 lots					
Grower Obligations	Total Arrears	Amount Invoiced (Oct 2008)	Amount Outstanding	% Outstanding	
	\$886,936	\$113,106	\$94,680	84%	
Timbercorp Finance Funding	Amount Borrowed	Value of loans in arrears	% of loans in arrears		
	\$389,008	\$113,530	29.1%		
Percentage of growers with loans <sup>1</sup>	7.6%				
Failed Direct Debits	Pre Appointment (March) #	Pre Appointment Value	Post Appointment (May) #	Post Appointment Value	
	2	\$1,143	2	\$1,210	
1. This is funding provided by Timbercorp Finance. Status of loans provided by other lenders is unknown.					
Lots held by Timbercorp Group					
Timbercorp Ltd		▪	0		
Timbercorp Finance Ltd		▪	0		
Timbercorp Lot Investments		▪	0		



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

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Date of document: June 2009  
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(Leon Zwier)

---

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**

2003 Timbercorp Olive Project (ARSN 104 648 473) - 2003 Olive Early 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
Base	-\$2,788.92	-\$2,915.67	-\$2,832.68	(1,600)	(943)	(805)	(596)	(541)	(288)	14	15	15	16	16	17	17	18	18	19	3,310	1,357
\$ 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
4.00	-\$5,312.45	-\$4,691.38	-\$4,150.04	(1,735)	(1,156)	(1,030)	(851)	(813)	(604)	(354)	(363)	(372)	(381)	(391)	(401)	(410)	(421)	(431)	(442)	2,838	1,164
5.00	-\$1,278.24	-\$1,838.80	-\$2,022.43	(1,461)	(821)	(675)	(449)	(385)	(105)	227	233	239	245	251	257	264	271	278	285	3,583	1,469
6.00	\$2,755.96	\$1,013.78	\$105.18	(1,188)	(485)	(320)	(46)	42	395	809	829	850	871	893	915	938	962	986	1,011	4,327	1,774
7.00	\$6,790.17	\$3,866.36	\$2,232.79	(914)	(149)	35	356	470	894	1,390	1,425	1,461	1,497	1,535	1,573	1,613	1,653	1,695	1,737	5,071	2,079
8.00	\$10,824.38	\$6,718.93	\$4,360.40	(640)	186	390	759	897	1,394	1,972	2,021	2,072	2,124	2,177	2,231	2,287	2,345	2,403	2,463	5,816	2,385

2003 Timbercorp Olive Project (ARSN 104 648 473) - 2003 Olive Early																					
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
-15%	-\$4,530.51	-\$3,993.48	-\$3,527.58	(1,600)	(943)	(805)	(596)	(541)	(515)	(373)	(383)	(392)	(402)	(412)	(422)	(433)	(443)	(454)	(466)	2,814	1,154
Base	-\$2,788.92	-\$2,915.67	-\$2,832.68	(1,600)	(943)	(805)	(596)	(541)	(288)	14	15	15	16	16	17	17	18	18	19	3,310	1,357
15%	-\$1,047.34	-\$1,837.85	-\$2,137.77	(1,600)	(943)	(805)	(596)	(541)	(61)	402	412	423	433	444	456	467	479	491	503	3,807	1,561

2003 Timbercorp Olive Project (ARSN 104 648 473) - 2003 Olive Early 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
Base	-\$2,788.92	-\$2,915.67	-\$2,832.68	(1,600)	(943)	(805)	(596)	(541)	(288)	14	15	15	16	16	17	17	18	18	19	3,310	1,357
40%	-\$4,396.19	-\$4,065.36	-\$3,686.09	(1,600)	(1,030)	(1,003)	(856)	(801)	(548)	(245)	(245)	(245)	(244)	(244)	(243)	(243)	(242)	(242)	(241)	3,310	1,357
60%	-\$3,718.46	-\$3,549.57	-\$3,279.39	(1,513)	(943)	(916)	(769)	(715)	(461)	(159)	(158)	(158)	(157)	(157)	(157)	(156)	(155)	(155)	(154)	3,310	1,357
80%	-\$3,040.73	-\$3,033.79	-\$2,869.69	(1,426)	(857)	(830)	(682)	(628)	(374)	(72)	(72)	(71)	(71)	(70)	(70)	(69)	(69)	(68)	(68)	3,310	1,357

#### 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 \$0.03m 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.

2003 Timbercorp Olive Project (ARSN 104 648 473) - 2003 Olive Post June																						
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	-\$3,442.89	-\$3,289.32	-\$3,052.55	(1,906)	(963)	(467)	(328)	(284)	(230)	(227)	(233)	(238)	(244)	(250)	(256)	(263)	(269)	(276)	(283)	(290)	3,597	1,475
\$ 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	-\$6,418.17	-\$5,388.73	-\$4,618.10	(2,047)	(1,221)	(792)	(673)	(645)	(610)	(618)	(633)	(649)	(665)	(681)	(698)	(716)	(734)	(752)	(770)	(790)	3,085	1,265
5.00	-\$1,669.16	-\$2,023.40	-\$2,096.90	(1,762)	(814)	(280)	(128)	(76)	(11)	(2)	(2)	(2)	(2)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	3,893	1,596
6.00	\$3,079.86	\$1,341.93	\$424.30	(1,476)	(406)	232	417	494	588	614	630	646	662	678	696	713	731	749	768	787	4,701	1,927
7.00	\$7,828.88	\$4,707.26	\$2,945.50	(1,190)	1	745	962	1,064	1,187	1,230	1,261	1,293	1,325	1,358	1,392	1,427	1,463	1,500	1,537	1,576	5,509	2,259
8.00	\$12,577.90	\$8,072.59	\$5,466.70	(904)	408	1,257	1,507	1,633	1,786	1,846	1,893	1,940	1,989	2,038	2,089	2,142	2,195	2,250	2,307	2,364	6,318	2,590

2003 Timbercorp Olive Project (ARSN 104 648 473) - 2003 Olive Post June																						
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%	-\$5,383.70	-\$4,473.72	-\$3,808.37	(1,906)	(963)	(467)	(328)	(284)	(471)	(638)	(654)	(670)	(687)	(704)	(722)	(740)	(758)	(777)	(796)	(816)	3,058	1,254
Base	-\$3,442.89	-\$3,289.32	-\$3,052.55	(1,906)	(963)	(467)	(328)	(284)	(230)	(227)	(233)	(238)	(244)	(250)	(256)	(263)	(269)	(276)	(283)	(290)	3,597	1,475
15%	-\$1,502.07	-\$2,104.93	-\$2,296.74	(1,906)	(963)	(467)	(328)	(284)	10	184	189	194	199	204	209	214	220	225	231	237	4,137	1,696

2003 Timbercorp Olive Project (ARSN 104 648 473) - 2003 Olive Post June																						
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	-\$3,442.89	-\$3,289.32	-\$3,052.55	(1,906)	(963)	(467)	(328)	(284)	(230)	(227)	(233)	(238)	(244)	(250)	(256)	(263)	(269)	(276)	(283)	(290)	3,597	1,475
40%	-\$5,285.87	-\$4,593.59	-\$4,017.14	(1,906)	(1,059)	(687)	(616)	(573)	(519)	(516)	(521)	(527)	(533)	(539)	(545)	(551)	(558)	(565)	(571)	(578)	3,597	1,475
60%	-\$4,513.79	-\$4,011.55	-\$3,557.58	(1,810)	(963)	(591)	(520)	(476)	(423)	(420)	(425)	(431)	(437)	(443)	(449)	(455)	(462)	(468)	(475)	(482)	3,597	1,475
80%	-\$4,426.29	-\$3,927.86	-\$3,477.37	(1,714)	(963)	(591)	(520)	(476)	(423)	(420)	(425)	(431)	(437)	(443)	(449)	(455)	(462)	(468)	(475)	(482)	3,597	1,475

#### 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 \$0.01m 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

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-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"

0 2003 006

**Lease Agreement**  
[2003 Timbercorp Olive Project]

Timbercorp Securities Limited

Olivecorp Land Pty Limited

**[EXECUTION COPY]**

**NM TAYLOR**  
LAWYERS

Level 7  
350 Collins Street  
MELBOURNE VIC 3000  
Telephone: 9600 3525  
Facsimile: 9600 3527

---

to Growers under paragraph 10.2(b).

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## **12. TERMINATION**

- (a) If the Project ends then this Lease Agreement is automatically terminated and the Lessor and the Lessee appoint each other as their attorney to do all things and sign all documents necessary to give effect to the termination of this Lease Agreement under this clause 12.
- (b) Notwithstanding any other provision of this Lease Agreement, in the event that a Grower ceases to participate in the Project due to a termination of its Grovelot Management Agreement and Sub-Lease Agreement ("**Past Grower**"):
  - (i) the Lessor and the Lessee by mutual agreement may terminate this Lease as it relates to that part of the Land that was occupied by the Past Grower under its Sub-Lease Agreement, with the intent that the Lessee will no longer be able to have the benefit of this Lease Agreement in respect of that part of the Land after termination;
  - (ii) termination of the Lease Agreement as to part of the Land under this paragraph 12(b) is without prejudice to any rights and obligations that may have accrued prior to the date of termination as to that as to part of the Land.

---

## **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 Agreement including all registration fees and stamp duty payable and including the cost of obtaining any necessary consents.

---

## **15. NOTICES**

### **15.1 Form of Notice**

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

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

to such address or fax number of the party to whom the notice is directed as the

2003 008

## **Sub-lease Agreement**

**Olivecorp Land Pty Ltd**

**Timbercorp Securities Limited**

**Each several Participant Grower  
named in Schedule to this  
Agreement**

## **2003 Timbercorp Olive Project**

**NM TAYLOR**  
LAWYERS

Level 7  
350 Collins Street  
MELBOURNE VIC 3000

Telephone: 9600 3525  
Facsimile: 9600 3527

---

## **4. TERM OF AGREEMENT**

### **4.1 Term of Agreement**

- (a) This Agreement will commence on the Commencement Date.
- (b) Subject to clauses 6, 10.1 to 10.3 and clauses 10.5 and 12, this Agreement will continue until the earlier of:
  - (i) the date which is one day before the expiry or termination of the lease between the Responsible Entity and the Land Owner;
  - (ii) termination of the Participating Grower's Participating Interest in the Project;
  - (iii) 30 June 2026; and
  - (iv) termination of the Project.

### **4.2 Grower's Obligations Upon Termination**

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

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## **5. RESPONSIBLE ENTITY'S OBLIGATIONS AND RIGHTS**

### **5.1 Obligations**

The Responsible Entity must:

- (a) maintain for the Term of the Project all local, State and Commonwealth government approvals, licences or permits required for the establishment and ownership of all the Grovelots;
- (b) allow the Participant Grower to peaceably and quietly hold and enjoy the Grovelots without any interruption by the Responsible Entity or any person claiming through or under the Responsible Entity;

2003 009

**Grovelot Management  
Agreement**

**Timbercorp Securities Limited**

**Each several Participant Grower  
named in Schedule to this  
Agreement**

**2003 Timbercorp Olive Project**

**NM TAYLOR**  
LAWYERS

Level 7  
350 Collins Street  
MELBOURNE VIC 3000  
Telephone: 9600 3525  
Facsimile: 9600 3527

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

### **1.5 Delegation**

The Responsible Entity will be entitled to:

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

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

### **2.1 Term**

- (a) This Agreement will commence on the Commencement Date.
- (b) Subject to clauses 14.1 to 14.3, this Agreement will continue until the earlier of:
  - (i) termination of the Participant Grower's Participating Interest in the Project;
  - (ii) 30 June 2026;
  - (iii) termination of the Sub-lease Agreement; and
  - (iv) termination of the Project.

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

### **3.1 No Partnership etc**

The relationship amongst the Participant Growers and between the Participant Growers 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, association or joint venture.

### **3.2 Project**

The Parties expressly agree and acknowledge that:

- (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

**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-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**



**2003 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"

0 2003 005

**Lease Agreement**  
[2003 Timbercorp Olive Project]

Timbercorp Securities Limited

Olivecorp Land Pty Limited

**[EXECUTION COPY]**

**NM TAYLOR**  
LAWYERS

Level 7  
350 Collins Street  
MELBOURNE VIC 3000  
Telephone: 9600 3525  
Facsimile: 9600 3527

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Land without the prior written consent of the Lessor, which consent is not to be unreasonably withheld.

## **10.2 Lessor consents to Lessee sub-letting**

- (a) The Lessor consents and authorises the Lessee to enter into the Sub-lease Agreements with each of the Growers.
- (b) Upon this Lease Agreement terminating for whatever reason, the Lessor irrevocably authorises and consents to the granting or continuation (or both) by the Growers of a right to occupy or use the Land granted under the Sub-lease Agreements.

## **10.3 Lessee must not mortgage its interest**

The Lessee must not mortgage, charge or otherwise encumber its estate or interest in this Lease Agreement without prior written consent of the Lessor. The consent may be granted conditionally or refused if the security documents entitle the mortgagee to enter into possession of the Land. In any other case, the consent must not be unreasonably withheld by the Lessor.

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# **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 Agreement:

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

## **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 Agreement 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 Agreement.

## **11.5 Lessor's rights subject to Growers' rights**

The Lessor's rights under this clause 11 are subject to the rights granted by the Lessor

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to Growers under paragraph 10.2(b).

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## **12. TERMINATION**

- (a) If the Project ends then this Lease Agreement is automatically terminated and the Lessor and the Lessee appoint each other as their attorney to do all things and sign all documents necessary to give effect to the termination of this Lease Agreement under this clause 12.
- (b) Notwithstanding any other provision of this Lease Agreement, in the event that a Grower ceases to participate in the Project due to a termination of its Grovelot Management Agreement and Sub-Lease Agreement ("**Past Grower**"):
  - (i) the Lessor and the Lessee by mutual agreement may terminate this Lease as it relates to that part of the Land that was occupied by the Past Grower under its Sub-Lease Agreement, with the intent that the Lessee will no longer be able to have the benefit of this Lease Agreement in respect of that part of the Land after termination;
  - (ii) termination of the Lease Agreement as to part of the Land under this paragraph 12(b) is without prejudice to any rights and obligations that may have accrued prior to the date of termination as to that as to part of the Land.

---

## **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.

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## **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 Agreement including all registration fees and stamp duty payable and including the cost of obtaining any necessary consents.

---

## **15. NOTICES**

### **15.1 Form of Notice**

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

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

to such address or fax number of the party to whom the notice is directed as the

2003 008

**Sub-lease Agreement**

**Olivecorp Land Pty Ltd**

**Timbercorp Securities Limited**

**Each several Participant Grower  
named in Schedule to this  
Agreement**

**2003 Timbercorp Olive Project**

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

### **9.1 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.

### **9.2 Rights**

The Land Owner:

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

---

## **10. TERMINATION OF AGREEMENT**

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

The Participant Grower may terminate this Agreement by notice in writing to the Responsible Entity immediately, if:

- (a) the Responsible Entity goes into liquidation, other than for the purposes of reconstruction or amalgamation, or a Controller or Administrator is appointed in relation to the undertaking of the Land Owner or the Responsible Entity or any part of its undertaking;
- (b) the Responsible Entity ceases to carry on business; or
- (c) either the Land Owner or the Responsible Entity fails or neglects to pay any moneys due to the Participant Grower, or is in default of any material obligation under this Agreement and such default continues for a period of 3 months after receipt by the Land Owner or the Responsible Entity, as appropriate, of written notice from the Participant Grower specifying the default and requesting that the default be remedied, except where the Land Owner or the Responsible Entity, as appropriate, has advised the Participant Grower of a plan of remedial action to satisfy any such duty and has substantially completed such plan.

### **10.2 Termination of Agreement by the Responsible Entity**

- (a) Subject to paragraph 10.2(b) and without prejudice to the Responsible Entity's rights under clause 12, the Responsible Entity may terminate this Agreement in respect of all the Grovelots of the Participant Grower, with immediate effect, if the Participant Grower fails to make a payment within the time required under this Agreement in relation to any Grovelot of the Participant Grower or

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the Constitution or commits a material breach of this Agreement in relation to any Grovelot of the Participant Grower or the Constitution and fails to remedy the breach or make reasonable compensation in money within 30 days after the Responsible Entity has served a written notice on the Participant Grower requiring the Participant Grower to remedy the breach.

- (b) The written notice referred to in paragraph 10.2(a) must specify the breach and request the breach to be remedied.
- (c) The Agreement will terminate if the Responsible Entity exercises its rights under clause 12.

### **10.3 Damage to Grovelots**

If, in respect of the relevant Grovelots:

- (a) the whole or a substantial part of the relevant Grovelots is damaged or destroyed whether by fire or any other cause whatsoever; or
- (b) an independent horticultural consultant jointly commissioned by the Participant Grower and the Responsible Entity reasonably determines that the whole or a substantial part of the relevant Grovelots is no longer commercially viable,

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

### **10.4 Reduction of Grovelots**

If, in respect of the relevant Grovelots:

- (a) part of the relevant Grovelots is damaged or destroyed whether by fire or any other cause whatsoever; or
- (b) an independent horticultural consultant jointly commissioned by the Participant Grower and the Responsible Entity reasonably determines that part of the relevant Grovelots is no longer commercially viable,

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

### **10.5 Effect of Termination**

- (a) Termination of this Agreement under clauses 10.1, 10.2 or 10.3 or reduction of the relevant Grovelots under clause 10.4 is without prejudice to any rights and obligations that may have accrued prior to the date of termination.
- (b) Termination of this Agreement in respect of any number of all of the relevant Grovelots or part of the relevant Grovelots under this clause 10 does not affect the rights or obligations of the parties in respect of any other Grovelots or any other part of the reduced relevant Grovelots.
- (c) If this Agreement is terminated under clause 10.2 in relation to all of the Grovelots of the Participant Grower, the Participant Grower, and its associate, if any, loses all rights and interest as a participant in the Project, including the call options to acquire shares in Grovelot Holdings (2003 Project) Limited, and the procedures for consequences of default and termination as set out in the Constitution and, if applicable, clause 12 of this Agreement, may be followed.