

**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 -

2004 TIMBERCORP OLIVE PROJECT (ARSN 108 744 378)

Date of document: June 2009

Filed on behalf of: the Plaintiffs

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A 2004 Timbercorp Olive Project (ARSN 108 744 378)

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 (Administrators Appointed) (ACN 092 311 469) (**TSL**) with Leanne Kylie Chesser. Except where I otherwise indicate, I make this affidavit from my own knowledge. Where I depose to matters from information or belief, I believe those matters to be true. I am authorised by Ms Chesser to make this affidavit on her behalf. References

in this affidavit to “we”, “us”, “our” or “ourselves” are references to Ms Chesser and me.

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

3 In this affidavit I refer to two other affidavits:

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

4 TSL is the responsible entity for a number of forestry and horticultural schemes which are registered managed investment schemes, including the 2004 Timbercorp Olive Project, which has the Australian Registered Scheme Number 108 744 378 (**2004 Olive Scheme**).

5 2004 Olive Scheme Documents

5.1 The 2004 Olive Scheme documents are voluminous. Shown to me marked **MAK-1** is a computer disc of all the documents I refer to in this affidavit. Where I refer to specific pages in these documents I exhibit them separately in hard copy to this affidavit. I am told by Antony Munro that the documents contained in the computer disc marked MAK-1 were posted on the Arnold Bloch Leibler website on 23 June 2009 and on the KordaMentha website on 24 June 2009.

5.2 The 2004 Olive Scheme is constituted by the following documents:

- (a) the constitution dated 15 April 2004 (O 2004 001) and supplemental deeds dated 30 April 2004 (O 2004 001A), 5 May 2005 (O 2004 001B) and 19 August 2008 (O 2004 001C), which bind TSL (in its capacity as responsible entity for each scheme) and each of the Growers (**Constitution**);

- (b) a product disclosure statement dated 3 May 2004 (O 2004 000) describing the 2004 Olive Scheme including a summary of the key documents and application and power of attorney forms (**PDS**);
- (c) a lease for the land on which the 2004 Olive Scheme is conducted (the **Land**). Olivecorp Land Pty Ltd (ACN 090 141 512) (Administrators Appointed), a company within the Timbercorp Group, owns the Land (**Landowner**). The lease dated 4 May 2004 (O 2004 005) is between TSL (in its personal capacity) and the Landowner (**Head Lease**). Title searches have been conducted in respect of each certificate of title that comprises the Land. Copies of the title searches have been copied onto the computer disc marked MAK-1. Now produced and shown to me marked **MAK-2** is a table prepared by my solicitors setting out the title particulars for the Land. Where the volume and folio number or certificate of title for the relevant section of Land has changed since the Head Lease between the Landowner and TSL was entered into, the new volume and folio numbers are set out in MAK-2;
- (d) a surrender of lease dated 12 February 2007 (O 2004 005A), by which TSL agreed to surrender its existing lease over land known as 'Pinks' in exchange for a similar but not identical lease to be granted by the Landowner in respect of the same land (**Surrender of Lease**);
- (e) a surrender and re-grant of the Head Lease dated February 2007 (O 2004 005B), by which TSL (**Lessee**) agreed to completely surrender the Head Lease to enable a regrant of the same lease, including a later completion date for the Scheme than previously existed (**Surrender and Regrant of Head Lease**);
- (f) a subsequent lease, dated 12 February 2007 (O 2004 005C) over the same land (Volume 6150 Folio 835), between the Landowner and TSL;
- (g) an undated sublease (O 2004 006), between TSL (in its personal capacity), 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**);
- (h) a management agreement dated 3 May 2004 (O 2004 004), by which TSL (in its capacity as responsible entity) engaged Olivecorp Management Limited (Administrators Appointed) (ACN 089 542 343) (**Olivecorp**) to cultivate and

maintain the olive trees on, and generally manage, the Grovelots
(Management Agreement);

- (i) a grower agreement undated (O 2004 007) (referred to as the Grovelot Management Agreement) amended by agreement on 8 June 2006 (O 2004 007A) and supplemental deed dated 1 October 2008 (O 2004 007B), by which the Growers engaged TSL to manage, cultivate, harvest, process and market the crop grown on the 2004 Olive Scheme Grovelots, and to do other things
(Grower Agreement);
- (j) a management agreement dated 14 July 2005 (O 2004 010), by which Olivecorp (as a subsidiary of Timbercorp) engaged Boundary Bend Management (Boort) Pty Ltd (ACN 110 670 285) (**BBMB**) to manage the 2004 Olive Scheme Grovelots, a task that included harvesting (**Olive Grove Management Agreement**);
- (k) a processing agreement dated 14 July 2005 (O 2004 009) and supplemental deed dated 12 June 2008 (O 2004 009A), by which Boort Estate Pty Ltd (Administrators Appointed) (ACN 101 679 716) engaged BBMB to manage the processing facility on the Grovelots, and process the olives from the 2004 Olive Scheme Grovelots (**Processing Agreement**);
- (l) a merchandise supply agreement dated 20 May 2005 (O 2004 008), between Landmark Operations Limited and various Timbercorp Group companies
(Merchandise Supply Agreement);
- (m) a distribution agreement dated 20 May 2006 (O 2004 011), by which the Manager appointed Boundary Bend Marketing Pty Ltd (ACN 118 216 863) (**BBM**) as the worldwide exclusive distributor of the olive oil sourced from, or produced from the Land (**Distribution Agreement**); and
- (n) a custody agreement date 23 April 2004 (O 2004 003) between Trust Company of Australia Limited (ACN 004 027 749) and TSL (in its capacity as the responsible entity), by which TSL agreed to appoint Trust Company of Australia Ltd as custodian to hold the Scheme Assets (**Custody Agreement**).

(Key Scheme Documents)

- 5.3 Now produced and shown to me marked **MAK-3** is a structure diagram for the 2004 Olive Scheme.

- 5.4 There are 95 Growers in the 2004 Olive Scheme and 623 grovelots. Now produced and shown to me marked **MAK-4** is a confidential exhibit (on computer disc) listing the Growers for the 2004 Olive Scheme.

6 Growers' contributions to the 2004 Olive Scheme

- 6.1 The Growers' obligations to contribute to the 2004 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) has irrevocable power as agent, representative and attorney, to (amongst other things) use the Application Moneys in discharging the Grower's obligations under the Grower Agreement or under the Constitution (clause 11(c)).
- 6.3 Once the necessary Scheme documents were executed, TSL released the Application Moneys and applied them to pay the fees owing under the Grower Agreement and Sub-Lease (clause 9.3(a)).
- 6.4 Each Grower under the 2004 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);
 - (b) must, at its own expense, undertake the Grovelot Operations, which include the growing and cultivation of Olives on, and the management of, the relevant Grovelots (cl 8.2(a)); and
 - (c) 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 personal capacity) (clauses 10.3 and 10.7).
- 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 2004 Olive Scheme

7.1 The solvency of the 2004 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 2004 Olive Scheme is represented by a collection of contracts which create rights and impose obligations.

7.2 To analyse whether the 2004 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 2004 Olive Scheme. Now produced and shown to me marked **MAK-6** is the Solvency Analysis (**Solvency Analysis**).

8 Cashflow - Historic

8.1 The final section of the Solvency Analysis shows the net operating cashflow to date for the years since the 2004 Olive Scheme began on a financial year basis (July 1 to June 30). For each of the financial years since the 2004 Olive Scheme began it has had a 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 (from the sales of olives) 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 2004 Olive Scheme from the first crop in 2006 up to the estimate for 2010 is summarised below:

Yield Litres	2003	2004	2005	2006	2007	2008	2009F	2010F*
Yield Total 2004				5,629	77,850	121,756	154,300	239,850
*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 - 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 Olivecorp and forwarded to the processor of the olives;
 - (b) Storage Fee - fee for storing oil in excess of the contracted volume of storage the processor has available. The fee varies from year to year depending on production and sales programs and is charged at \$0.15/ltr;
 - (c) TIM Variable Management Fee that TSL charges the Growers to manage the lot on the Growers' behalf. It is charged at 5% 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 2004 Olive Scheme, I have assumed an alternative provider will charge a like fee. They key variables and assumptions underpinning the expenses analysis are:
- (a) Base Admin Fee per Lot - this fee is billed by TSL to administer the 2004 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 Pty Ltd (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 Olivecorp as project manager. It has been included in the 2010 crop return on the basis that Olivecorp does not have the financial capacity to meet any financial costs in the future and therefore needs to be invoiced to the Growers. It is charged on a per hectare basis increasing annually for the CPI. The base fee at the beginning of the Scheme was \$585/Ha.
- (e) Temporary Water and Permanent Water allocation - There are permanent water rights in place to meet the Project's water requirements (5.5 ml/ ha at Boort and 7 ml/ha for mature groves). However, during drought years, the relevant water authorities apply a set allocation to the permanent water rights that limits the amount of water available to be used during the year. The allocation determined by the water authority is based on available water in the system. Management's FY2010 forecast assumes an allocation of 40% which is consistent with current allocations. As a result of the 40% allocation of permanent water rights, there will be a requirement to purchase temporary water to meet the shortfall. Temporary water is estimated to cost \$350 per mega litre which is based on the current cost. The percentage allocation for water historically are:

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

- (f) Licence fee per lot - The licence fee is referred to in the Prospectus. It is payable for the use of and occupancy of the Grovelot under the Joint Venture Agreement. The Growers pay the licence fee on the basis that the Landowner provides the entire necessary infrastructure and other capital works to operate a commercial olive grove.
- (g) AOA Levy - This is a voluntary levy paid to Australian Olive Association (AOA). TSL collects the AOA levy along with the Farm Operating costs. The olive industry, unlike other horticulture industries, is not subject to a statutory levy collected by Horticulture Australia, for research and development. AOA fulfils this role in the olive industry.
- (h) CPI Assumption - 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 2004 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 \$931,425 (approximately) 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 2004 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 2004 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 \$10,121. 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 2004 Olive Scheme terminate their participation in the 2004 Olive Scheme or default in payment of amounts owing by them; and
- (b) no Growers in any of the other Olive Schemes terminate their participation in the relevant Olive Scheme or default in payment of amounts owing by them.

10.2 We consider it likely that some Growers in the 2004 Olive Scheme and the other Olive Schemes will terminate their participation or default in payment. Now produced and shown to me marked **MAK-7** is a summary of the Grower's defaults on loans and payment of obligations that has been prepared using figures provided by Timbercorp Group Management. It shows:

- (a) level of unpaid scheme invoices - Growers were invoiced a total of \$1.5m in October 2008 of which \$0.1m or 8% of the total remains unpaid for the 2004 Olive Scheme costs;
- (b) loans in arrears - 21% of Growers in the 2004 Olive Scheme have taken out loans with Timbercorp Finance Pty Ltd (Administrators Appointed) (ACN 054 581 190) (**Timbercorp Finance**) and \$0.4m (53%) 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 zero in March 2009 to 1 in May 2009 for the 2004 Olive Scheme.

10.3 Furthermore, Timbercorp Finance is no longer in a position to provide finance to Growers to meet their obligations in the 2004 Olive Scheme.

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

10.5 TSL is insolvent and unable to absorb these costs.

Defaults in other Olive Schemes

10.6 The costs included in the Solvency Analysis include a portion of fixed costs across this or other Olive Schemes, which will remain constant despite a reduction in the number of participating Grovelots or an increase in the number of defaulting Growers.

In the event these additional costs could not be passed on to Growers (due to constraints of the Key Scheme Documents or other reasons) the liability could fall to TSL, and it is unable to absorb any costs.

11 Long term viability

11.1 I have asked my staff to prepare a long term viability analysis for the schemes across their lives (**Viability Analysis**). Now produced and shown to me marked **MAK-8** is the viability analysis for the 2004 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 2004 Olive Scheme over its life.

11.2 The Viability Analysis is based on Timbercorp management's cashflow model for the 2004 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 \$6/litre and \$7/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 \$0.01m 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 discussed above, we note the potential for difficulties in binding Growers to additional cost commitments.

12 Sale of olives

- 12.1 On 12 May 2009, TSL, 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 2004 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) Head Lease (as surrendered and regranted) (cl 11.1);
 - (b) Sub-Lease (cl 4.1(b)(iv));
 - (c) Grower Agreement (cl 2.1(b)(iv));
 - (d) Management Agreement (cl 2.2); and

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

14 Impediments to Restructure

14.1 Based on legal advice I believe that the structure of the 2004 Olive Scheme means that there are a number of impediments to restructuring it. I discuss these below.

Encumbrances on land title

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

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

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

14.5 The CBA Facility is secured by:

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

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

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

Encumbrances on water rights

- 14.7 Now produced and shown to me marked **MAK-10** is a table prepared by my solicitors (based on information provided by Timbercorp Group management) setting out the details of the water rights (**Water Rights**) utilised by the 2004 Olive Scheme, along with details of the registered instruments by which the Water Rights are encumbered. The Water Rights are leased, along with the Land, pursuant to the Head Lease and Sub-Lease.
- 14.8 The Water Rights are encumbered by mortgages from Almond Land Pty Ltd (Administrators Appointed) (ACN 091 460 392) (**Almond Land**) to BOSI Security Services Ltd (**BOS**) and from the Landowner to CBA.
- 14.9 The Mortgage over the Water Rights held by Almond Land and utilised in the 2004 Olive Scheme has been granted as security for the BOS Syndicate Facility (**BOS Syndicated Facility**). By Syndicated Loan Agreement dated 15 December 2006, as amended and restated on 30 December 2008, BOS International (Australia) Limited, Westpac Banking Corporation and Australia and New Zealand Banking Group Limited (collectively **the Syndicate**) agreed to advance Timbercorp the sum of \$200,000,000.
- 14.10 The BOS Syndicated Facility is secured by, amongst other things, water mortgages granted by Almond Land (collectively the **BOS Securities**). The appointment of administrators to Timbercorp constitutes an event of default under relevant provisions of the BOS Syndicated Facility and BOS Securities.
- 14.11 The Mortgage over the Water Rights held by the Landowner are subject to the CBA Facility as described in part A.3 above.

15 Grower obligations in the event TSL defaults

- 15.1 As I deposed in my Directions Affidavit and Olives and Almonds Affidavit, I consider that TSL is insolvent. If the Court does not wind up the 2004 Olive Scheme then TSL will default on its obligations under the 2004 Olive Scheme. Based on legal advice, I believe that if TSL does default then:
- (a) under the Surrender and Regrant of Head Lease agreement, then the Landowner has a right to re-enter and presumably terminate the Surrender and Regrant of Head Lease (clause 10.2). Upon termination of the Surrender and Regrant of Head Lease, the Landowner consents to allowing the Growers

the right to occupy and use the land under the Sublease and specifically accepts the obligations of TSL under the Sublease (under clause 9.2(b));

- (b) 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;
- (c) the above is subject to the ability of the Grower to terminate the Sub-Lease for TSL's liquidation or TSL ceasing to carry on its business contained in clause 10.1 of the Sub-Lease;
- (d) additionally, as TSL is insolvent and can no longer carry on its business, the Growers will be adversely affected. The Growers have entered into a Grower Agreement with TSL under which TSL agrees to cultivate and manage the growth of the olives and eventually produce olive oil from the olives for commercial sale. The Growers are entitled to the proceeds of such sale. As TSL is insolvent and can no longer perform its duties under the Grower Agreement, the Growers will have to seek a new manager for the olive groves and will likely suffer damages.

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

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

Before me: _____

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

LIST E

No 7114 of 2009

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

ACN 092 311 469

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

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

CERTIFICATE IDENTIFYING EXHIBIT

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

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

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

Before me:

Exhibit "MAK-1"
CD of Key Scheme Documents

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

LIST E

No 7114 of 2009

IN THE MATTER OF TIMBERCORP SECURITIES LIMITED
(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
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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-2**" now produced and shown to **MARK ANTHONY KORDA** at
the time of swearing his affidavit on June 2009.

Before me:

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

" MAK - 2 "

2004 OLIVE PROJECT

Land Owner		Title Particulars (derived from Scheme lease documents)	Title Particulars (derived from Titles Office searches)	Mortgagee	Mortgage ID
Timbercorp	Non-Timbercorp				
Olivecorp Land Pty Ltd		Vol 6150 Fol 835	Vol 6150 Fol 835	Commonwealth Bank of Australia	AD627415B

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

LIST E

No 7114 of 2009

**IN THE MATTER OF TIMBERCORP SECURITIES LIMITED
(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)

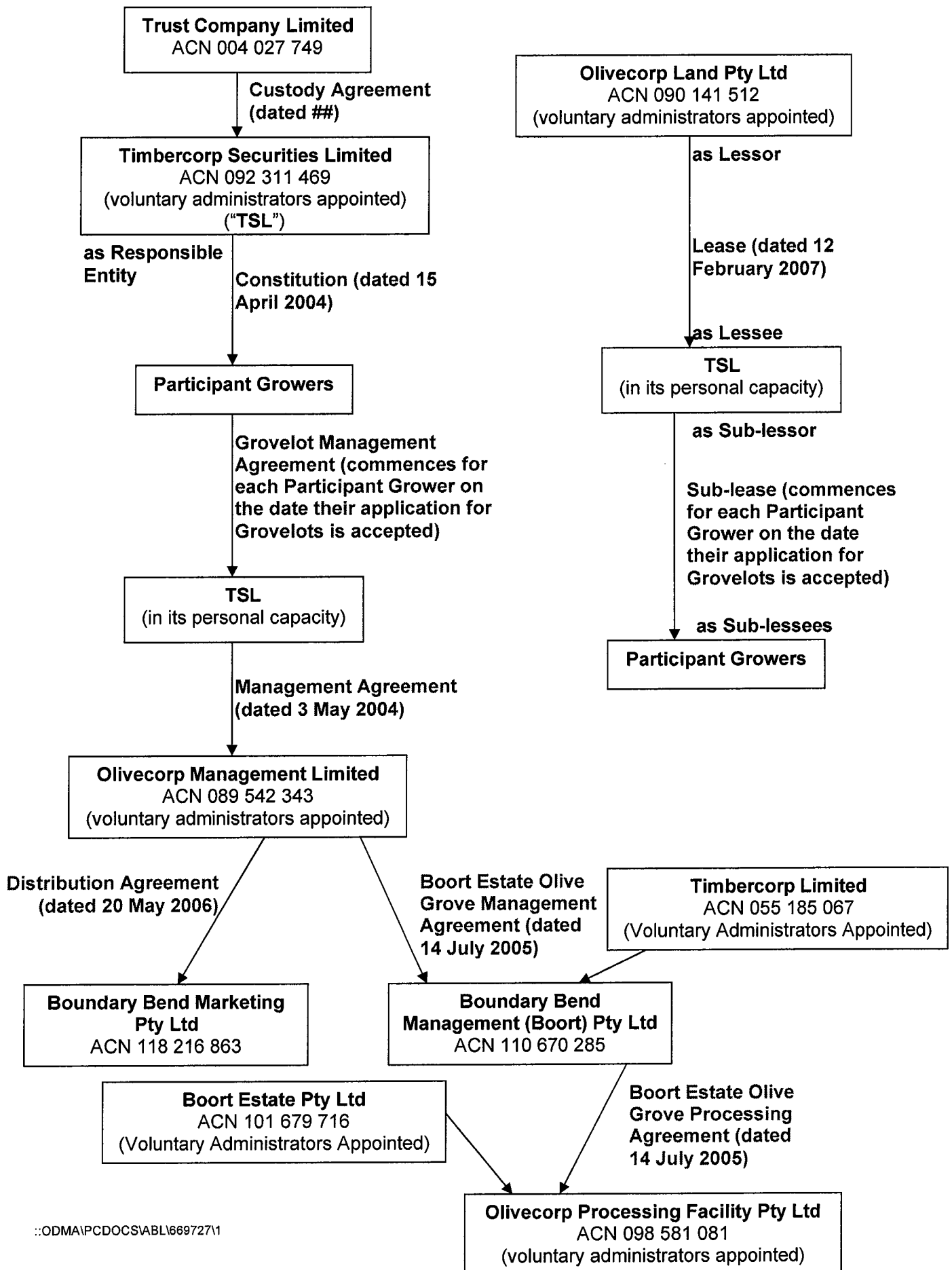
This is the exhibit marked "**MAK-3**" now produced and shown to **MARK ANTHONY KORDA** at
the time of swearing his affidavit on June 2009.

Before me:

Exhibit "MAK-3"
Structure diagram for the 2004 Olive Scheme

" MAK - 3 "

STRUCTURE DIAGRAM 2004 TIMBERCORP OLIVE PROJECT



r43.06

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

LIST E

No 7114 of 2009

IN THE MATTER OF TIMBERCORP SECURITIES LIMITED
(UNDER ADMINISTRATION)

ACN 092 311 469

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

MARK ANTHONY KORDA and LEANNE KYLIE CHESSER
Second and Third Plaintiffs

CERTIFICATE IDENTIFYING EXHIBIT

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 2004 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

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-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 "

2004-01
CONSTITUTION

2004 TIMBERCORP OLIVE PROJECT

Timbercorp Securities Limited
(ACN 092 311 469)

Each Participant Grower

NM TAYLOR
LAWYERS

Level 7
350 Collins Street
MELBOURNE VIC 3000

Telephone: 9600 3525
Facsimile: 9600 3527

Agreement and any other documents which are ancillary or related to the Sub-lease or Grovelot Management Agreement, or contemplated by the provisions of the Sub-lease or Grovelot Management Agreement; and

- (c) as required by the PDS 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 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 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

-
- (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 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 of Application Moneys**

Where the Responsible Entity does not issue a Grovelot to an applicant within the time required by the Corporations Act, the Responsible Entity must refund to the applicant the relevant Application Money paid with any interest earned in relation to that Application Money (each applicant receiving its share of the aggregate interest earned in relation to all applicants in the proportion that the money of the applicants bears to the money held on behalf of all applicants calculated from day to day) and without any deduction except for bank fees and government charges.

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

Upon the refund of the moneys referred to in paragraph 9.3(b), the Sub-lease and Grovelot Management Agreement of the Participant Grower will be extinguished and the Responsible Entity will make an entry in the Register noting the extinguishment.

(d) **Transfer Interest to Responsible Entity**

In accordance with clause 4.4, the Responsible Entity may transfer to itself the interest component (if any) from the Application Money at any time, but not before the first transfer of Application Money is made pursuant to paragraph 9.3(a).

9.4 Compliance with AFSL Requirements

In the course of and in accordance with its duties as responsible entity and in order to:

- (a) comply with its AFSL; and
(b) protect the interests of Participant Growers in the Project,

the Responsible Entity must lodge the Head Leases for registration in its name beneficially under the land titles law of the State or Territory in which the Grovelots are situated.

10. GROVELOT STATEMENTS AND REGISTER

10.1 Issue of Grovelot Statements

Within 2 months after the allotment of Grovelots to a Participant Grower, the allocation

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 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 plus 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).

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

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

2004 006
Sub-lease

Olivecorp Land Pty Ltd

Timbercorp Securities Limited

**Each several Participant Grower
named in Schedule to this Sub-
lease**

2004 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) 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 Timbercorp Securities, 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 Timbercorp Securities reasonably considers appropriate.
-

6. CONDITIONS PRECEDENT

6.1 Conditions Precedent

This Deed is subject to and conditional on:

- (a) the Participant Grower entering into the Grovelot Management Agreement with Timbercorp Securities; and
- (b) Timbercorp Securities 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 Timbercorp Securities, 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 pay Timbercorp Securities the following rent per Grovelot:
 - (i) for the period from the Commencement Date until 30 June 2004, \$81.82 payable on or before the Commencement Date;
 - (ii) for each of the financial years ending 30 June 2005, 2006, 2007, 2008 and 2009, \$981.82 payable on 31 October 2004, 2005, 2006, 2007 and 2008 respectively.

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 2009.

- (b) Where the Participant Grower is a **Post 30 June Grower**, the Participant Grower must pay Timbercorp Securities the following rent per Grovelot:
 - (i) for the period from the Commencement Date until 30 June 2005, \$490.91 payable on or before the Commencement Date;
 - (ii) for each of the financial years ending 30 June 2006, 2007, 2008 and 2009, \$981.82 payable on 31 October 2005, 2006, 2007 and 2008 respectively.

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 2009.

7.2 Adjustments to rent

The rent payable by the Participant Grower on 31 October 2009 in respect of the Financial Year ending 30 June 2010 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 Timbercorp Securities and the Participant Grower will replace it as the new "CPI" or, if they fail to agree, such alternative index number, as in the opinion of an expert appointed by the President for the time being of the Institute of Chartered Accountants (Victorian Division) at the request of either of them most closely reflects changes in the cost of living for the eight capital cities of Australia will replace it as the new "CPI".
- (b) The cost of any expert determination carried out under this clause 7.3 must be borne equally between Timbercorp Securities and the Participant Grower.

7.4 Capacity

All rent and other amounts paid to Timbercorp Securities under this Deed are paid to Timbercorp Securities in its personal capacity.

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 Best Horticultural Practice;
- (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 Timbercorp Securities 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 Timbercorp Securities 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 Deed 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 Deed;
- (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 Deed, engage any person as an agent and all rights granted and obligations imposed on the Participant Grower under this Deed 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 Deed.

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 Deed with or without vehicles to the Grovelots along any road or track or any neighbouring land owned or occupied by Timbercorp Securities, 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 Timbercorp Securities, the Land Owner, other Participant Growers or any other person.
-

2004 007
**Grovelot Management
Agreement**

Timbercorp Securities Limited

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

2004 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

by Timbercorp Securities as the Responsible Entity (less any deductions and adjustments permitted under this Agreement, the Constitution, the Sub-lease and the Project Documents); and

- (d) thereafter, in respect of services to be provided under this Agreement in each subsequent Financial Year during the Term, the fees specified in clauses 10.3.

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

Where the Participant Grower is a Post 30 June Grower, the Participant Grower will pay Timbercorp Securities 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 2005 an amount of \$3,227.27 per relevant Grovelot payable in advance on or before the Commencement Date; and
- (b) in consideration of the Grove Services and all other services to be provided under this Agreement in the period 1 July 2005 to 30 June 2006:
- (i) \$1,090.91 per Grovelot payable on 31 October 2005; and
- (ii) for each relevant Grovelot an amount equal to 4% of the Gross Proceeds of the sale of Crop and Product in each Financial Year of the Project payable out of and at the time the Proceeds are received by Timbercorp Securities as the Responsible Entity (less any deductions and adjustments permitted under this Agreement, the Constitution, the Sub-lease and the Project Documents); 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.

10.3 Management Fees Payable by all Growers

- (a) For each Financial Year after 30 June 2006, Timbercorp Securities will be entitled to be paid in respect of all the Participant Grower's relevant Grovelots the following fees and costs:
- (i) on 31 October 2006 and each subsequent 31 October, the estimated costs of operating the relevant Grovelot (which will include an allocation of overhead costs incurred by Timbercorp Securities or its contractors that will not exceed \$70 per relevant Grovelot Indexed (adopting 30 June 2004 as the base date)), as adjusted under paragraph 10.3(b); and
- (ii) an amount equal to 1% of the Participant Grower's Participating Interest of the Gross Proceeds from the sale of Crop and Product in that Financial Year payable out of, and at the time the Proceeds are received by Timbercorp Securities as the Responsible Entity (less any deductions and adjustments permitted under this Agreement, the Constitution, the Sub-lease and the Project Documents).
- (b) Timbercorp Securities will:
- (iii) when notifying the Participant Grower under paragraph 10.3(a) of the estimated costs of operating the relevant Grovelots, notify the Participant Grower of its Participating Interest of the actual costs of Timbercorp Securities operating the relevant Grovelots for the preceding Financial Year, including overhead costs incurred by Timbercorp Securities or its contractors; and
- (iv) adjust the estimated costs of operating the relevant Grovelots for the

current Financial Year by the difference between the actual costs and the costs estimated by Timbercorp Securities under paragraph 10.3(a)(i) for the preceding Financial Year unless the surplus per relevant Grovelot has been added, or the excess per relevant Grovelot has been deducted, from any distribution of Proceeds made to the Participant Grower following the end of the preceding Financial Year.

10.4 Responsible Entity to make certain payments

The Participant Grower agrees and acknowledges that the Responsible Entity is authorised to:

- (c) deduct from the Proceeds to which the Participant Grower is entitled, any amounts payable by the Participant Grower under this Agreement, the Sub-lease, the Project Documents and the Constitution including any amounts which are outstanding and in arrears; and
- (d) pay the deducted amounts to the persons entitled to them.

10.5 Incentive Fee

- (a) Timbercorp Securities 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 Timbercorp Securities under this clause 10.5 in respect of the Financial Year to which reference is first made.

10.6 Discontinuance or suspension of CPI

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

10.7 Capacity

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

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

LIST E

No 7114 of 2009

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

ACN 092 311 469

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

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

CERTIFICATE IDENTIFYING EXHIBIT

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

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

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

Before me:

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

"max-6"

2004 Olive Scheme - Forecast 2010 Harvest Result

2004 Timbercorp Olive Project (ARSN 108 744 378)

Gross Sales	1,139,288
less: JV Partners Share	0
Gross Grower Proceeds	1,139,288
less: Sales & Related Costs	(48,270)
less: Processing Fee	(136,377)
less: Storage Fee	(6,263)
Growers Net Proceeds	948,377
TIM Mgmt Fee	(47,732)
Admin Fee	(51,894)
Farm Operating Costs	(849,305)
Technical Fee	(20,712)
BB Management Fee	(100,967)
Temp Water	(179,891)
Licence Fee	(626,966)
AOA Levy	(2,336)
Total Operating Expenditure	(1,879,803)
Grower Net Operating Cashflow before CAPEX	(931,425)
Water Capital Expenditure	0
Non Water Capital Expenditure	(10,121)
2010 Capital Expenditure	(10,121)
Net Operating Cashflow after CAPEX	(941,546)

2010 Crop Variables

a	Litres per Ha (4 lots per hectare)	1,540
a	Litres per Lot	385
b	Wholesale Price (litre) \$	4.75
c	Net Sales Price (litre) \$ - Wholesale less sales & related costs	4.55
d	Sold Area (Ha)	155.75
e	Water Allocation	40%
e	Temp Water Price \$	350
f	TIM Variable Mgmt Fee (PDS)	5.00%
g	JV Share	0%
h	Processing Fee (% of Wholesale proceeds less sales & related costs)	12.5%
i	Base Admin Fee per Lot (Adjusted annually for CPI from Project C'ment)	70
j	Licence Fee per Lot (FY10 Rate - FY09 + CPI assumption) (per PDS)	1,006
k	CPI Assumption	2.5%

Net Operating Cashflow Incurred to Date

2004	(2,061,563)
2005	(1,291,311)
2006	(1,291,311)
2007	(1,272,783)
2008	(1,168,704)
2009	(1,191,536)
Total	(8,277,208)
Number of Grovelots	623
Cumulative Cashflow per Grovelot	
2004	(3,309)
2005	(2,073)
2006	(2,073)
2007	(2,043)
2008	(1,876)
2009	(1,913)
Total	(13,286)

r43.06

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

LIST E

No 7114 of 2009

IN THE MATTER OF TIMBERCORP SECURITIES LIMITED
(UNDER ADMINISTRATION)

ACN 092 311 469

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

MARK ANTHONY KORDA and LEANNE KYLIE CHESSER
Second and Third Plaintiffs

CERTIFICATE IDENTIFYING EXHIBIT

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**

2004 Timbercorp Olive Project (ARSN 108 744 378)

" MAK-7 "

Project: 2004 Olive Early – 623 lots					
Grower Obligations	Total Arrears	Amount Invoiced (Oct 2008)	Amount Outstanding	% Outstanding	
	\$167,647	\$1,532,207	\$121,698	8%	
Timbercorp Finance Funding					
Amount Borrowed	Value of loans in arrears		% of loans in arrears		
	\$824,537	\$438,955	53.2%		
Percentage of growers with loans ¹		21.1%			
Failed Direct Debits	Pre Appointment # (March)	Pre Appointment Value	Post Appointment # (May)	Post Appointment Value	
	0	\$0	1	\$6,792	
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				



KordaMentha

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**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

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

Before me:

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

"MAK-8"

2004 Timbercorp Olive Project (ARSN 108 744 378) - 2004 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	2028	2029
Base	\$-6,378.10	\$-5,500.12	\$-4,830.40	(2,409)	(1,724)	(873)	(416)	(400)	(437)	(447)	(459)	(470)	(482)	(493)	(506)	(518)	(531)	(544)	(558)	(572)	(586)	3,636	1,491
\$ per litre		4.49	4.75	4.87	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	7.05	7.05	7.05
4.00	\$9,241.89	\$7,478.70	\$6,277.28	(2,496)	(1,896)	(1,160)	(773)	(770)	(812)	(833)	(853)	(875)	(896)	(919)	(942)	(965)	(989)	(1,014)	(1,039)	(1,065)	(1,091)	3,118	1,278
5.00	\$4,690.45	\$4,324.70	\$3,963.15	(2,319)	(1,625)	(708)	(210)	(187)	(220)	(225)	(231)	(236)	(242)	(248)	(254)	(261)	(267)	(274)	(280)	(287)	(294)	3,934	1,613
6.00	\$-139.01	\$-1,170.70	\$-1,649.02	(2,142)	(1,354)	(256)	353	395	373	382	392	402	412	422	433	444	455	466	478	490	503	4,751	1,948
7.00	\$4,412.43	\$1,983.30	\$665.11	(1,965)	(1,082)	196	916	978	965	990	1,014	1,040	1,066	1,093	1,120	1,148	1,177	1,207	1,237	1,268	1,300	5,568	2,283
8.00	\$8,963.87	\$5,137.29	\$2,979.24	(1,788)	(811)	648	1,479	1,560	1,558	1,597	1,637	1,678	1,720	1,763	1,807	1,853	1,899	1,947	1,995	2,045	2,097	6,385	2,618

2004 Timbercorp Olive Project (ARSN 108 744 378) - 2004 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	2028	2029
-15%	\$8,578.78	\$6,874.79	\$5,732.19	(2,409)	(1,724)	(873)	(416)	(632)	(832)	(853)	(874)	(896)	(918)	(941)	(964)	(989)	(1,013)	(1,038)	(1,064)	(1,091)	(1,118)	3,090	1,267
Base	\$-6,378.10	\$-5,500.12	\$-4,830.40	(2,409)	(1,724)	(873)	(416)	(400)	(437)	(447)	(459)	(470)	(482)	(493)	(506)	(518)	(531)	(544)	(558)	(572)	(586)	3,636	1,491
15%	\$-4,177.42	\$-4,125.44	\$-3,928.61	(2,409)	(1,724)	(873)	(416)	(1,689)	(41)	(42)	(43)	(44)	(45)	(46)	(47)	(48)	(49)	(50)	(51)	(53)	(54)	1,714	1,491

2004 Timbercorp Olive Project (ARSN 108 744 378) - 2004 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	2028	2029
Base	\$-6,378.10	\$-5,500.12	\$-4,830.40	(2,409)	(1,724)	(873)	(416)	(400)	(437)	(447)	(459)	(470)	(482)	(493)	(506)	(518)	(531)	(544)	(558)	(572)	(586)	3,636	1,491
40%	\$-8,273.01	\$-6,827.72	\$-5,805.83	(2,409)	(1,820)	(1,093)	(705)	(689)	(725)	(736)	(747)	(759)	(770)	(782)	(794)	(807)	(820)	(833)	(847)	(860)	(875)	3,636	1,491
60%	\$-7,483.63	\$-6,237.90	\$-5,342.66	(2,313)	(1,724)	(997)	(609)	(593)	(629)	(640)	(651)	(662)	(674)	(686)	(698)	(711)	(724)	(737)	(750)	(764)	(778)	3,636	1,491
80%	\$-6,694.24	\$-5,648.08	\$-4,879.48	(2,216)	(1,628)	(901)	(512)	(496)	(533)	(544)	(555)	(566)	(578)	(590)	(602)	(615)	(627)	(641)	(654)	(668)	(682)	3,636	1,491

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 2013 and produce 640 litres per lot.
- 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"
LESSEE'S COPY

AC871146V



2004 005

Lease

Section 66(1) Transfer of Land Act 1958

Lodged at the Land Titles Office by:

Name: Stedman Cameron

Phone: 9670 7211

Address: 446 Collins Street, Melbourne (DX 217)

Ref: D Whiting A40227 (PINKS LEASE)

Customer Code: 1608A



The Lessor leases to the Lessee the land for the term and yearly rental specified subject to the encumbrances affecting the land including any created by dealings lodged for registration before the lodging of this lease and subject to the covenants and conditions contained in this lease.

Land: (volume and folio reference)

Volume 6150 Folio 835.

Lessor: (full name)

OLIVECORP LAND PTY LTD ACN 090 141 512 Level 8, 461 Bourke Street Melbourne, Victoria, 3000

Lessee: (full name and address including postcode)

TIMBERCORP SECURITIES LTD ACN 092 311 469 Level 8, 461 Bourke Street Melbourne, Victoria, 3000

Term: (number of years, or commencement to completion date)

from the Commencement Date to 30 June 2024

Commencement date:

4 May 2004

Rental:

\$557,190.43 per annum

Covenants: (set out any further covenants and conditions and the extent (if any) to which the covenants and powers implied under the Transfer of Land Act 1958 are to be negatived or modified)

As appears from the annexure of 12 pages, making 14 in total

Dated: 4 May 2004

The signing clauses for the Lessor and the Lessee are on the annexure pages

Australia and New Zealand Banking Group Limited, being mortgagee under Mortgage AB10312G consents to the within lease.

To the Registrar of Titles

Please register *Lease*
And on completion issue Certificate of
Title to Gadens lawyers.

Per *[Signature]*
Gadens Lawyers 027C
Current Practitioners within the meaning
Of the Legal Practice Act 1996 for the
Mortgagee: *ANZ BANK Limited*

To: Registrar of Titles

Please register the within lease, and upon completion return C/T 6150/835 to ANZ Bank, and lease to lodging party

ANZ Cust No:

EXECUTED by AUSTRALIA AND NEW
ZEALAND BANKING GROUP LIMITED

By being SIGNED by its Attorney Partner
Of Gadens Lawyers

Peter Daniel Moore
Under Power of Attorney dated 01/01/2001

A certified copy of which is filed
in the permanent order Book Number 277

Page 016 and Power of Attorney
Dated 28/06/2001 a certified copy of which

is filed in Permanent order Book Number
277 as page 017 in the presence of:

[Signature]

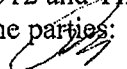
ANNEXURE PAGE

Approved Form A1
Victorian Land Titles Office

Transfer of Land Act 1958

This is page 8 of *Approved Form 26 (Lease)* dated 26 March 2004 between OLIVECORP LAND PTY LTD ACN 090 141 512 and TIMBERCORP SECURITIES LTD ACN 092 311 469

Signatures of the parties:


for and on behalf of Timbercorp Securities Limited


For and on behalf of Olivecorp Land Pty Ltd

10.3. Re-entry does not prejudice Lessor's rights

Should the Lessor exercise its rights under clause 10.2, it will do so without prejudice to any action or other remedy, which the Lessor has for arrears of rent or breach of covenant or for damages as a result of any breach of the terms of this Lease by the Lessee.

10.4. Lessor discharged from obligations

Where the Lessor exercises its rights under clause 10.2, 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.

10.5. Lessor's rights subject to Growers' rights

The Lessor's rights under this clause 10 are subject to the rights granted by the Lessor to Growers under paragraph 9.2(b).

11. TERMINATION

11.1. If the Project ends then this Lease 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 under this clause 11.

11.2. Despite any other provision of this Lease, in the event that a Grower ceases to participate in the Project due to a termination of its Grovelot Management Agreement and Sub-Lease ("Past Grower"):

- (a) 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, with the intent

Approval No. 330036A

A1



1. If there is insufficient space to accommodate the required information in a panel of the Approved Form insert the words "See Annexure Page 2" (or as the case may be) and enter all the information on the Annexure Page under the appropriate panel heading. **THE BACK OF THE ANNEXURE PAGE IS NOT TO BE USED**
2. If multiple copies of a mortgage are lodged, original Annexure Pages must be attached to each.
3. The Annexure Pages must be properly identified and signed by the parties to the *Approved Form* to which it is attached.
5. All pages must be attached together by being stapled in the top left corner.

ANNEXURE PAGE

Approved Form A1
Victorian Land Titles Office

Transfer of Land Act 1958

This is page 9 of *Approved Form 26 (Lease)* dated 26 March 2004 between OLIVECORP LAND PTY LTD ACN 090 141 512 and TIMBERCORP SECURITIES LTD ACN 092 311 469

Signatures of the parties:


for and on behalf of Timbercorp Securities Limited


For and on behalf of Olivecorp Land Pty Ltd

that the Lessee will no longer be able to have the benefit of this Lease in respect of that part of the Land after termination;

- (b) termination of the Lease as to that part of the Land under this paragraph 11.2 is without prejudice to any rights and obligations that may have accrued prior to the date of termination as to that part of the Land.

12. 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.

13. LEGAL COSTS

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

14. NOTICES

14.1. Form of Notice

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

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

Approval No. 330036A

A1



1. If there is insufficient space to accommodate the required information in a panel of the Approved Form insert the words "See Annexure Page 2" (or as the case may be) and enter all the information on the Annexure Page under the appropriate panel heading. **THE BACK OF THE ANNEXURE PAGE IS NOT TO BE USED**
2. If multiple copies of a mortgage are lodged, original Annexure Pages must be attached to each.
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5. All pages must be attached together by being stapled in the top left corner.

2004 006
Sub-lease

Olivecorp Land Pty Ltd

Timbercorp Securities Limited

**Each several Participant Grower
named in Schedule to this Sub-
lease**

2004 Timbercorp Olive Project

NM TAYLOR
LAWYERS

Level 7
350 Collins Street
MELBOURNE VIC 3000

Telephone: 9600 3525
Facsimile: 9600 3527

Grower takes from Timbercorp Securities a sub-lease, effective from the Commencement Date, to use and occupy the relevant Grovelots for the sole purpose of conducting the Grovelot Operations.

- (b) Timbercorp Securities represents and warrants that:
- (i) as at the date of execution of this Deed, the Head Lease is valid and subsisting;
 - (ii) the Responsible Entity is entitled under the Head Lease to grant the sub-lease under this Deed; and
 - (iii) any consents which may be required to the granting of the sub-lease under this Deed, have been obtained.

3.2 Water Licences

- (a) The Land Owner must:
- (i) do all things necessary to ensure that its rights under the Water Licences are fully exploited to maximise the use and enjoyment of them by all Participant Growers in the Project;
 - (ii) take all steps to avoid interfering with the supply of water to the relevant Grovelots and to avoid any actions that would prejudice the Participant Grower's rights under this Deed; and
 - (iii) purchase and maintain the Water Licences during the term of the Project.
- (b) The Participant Grower acknowledges that:
- (i) the Land Owner may purchase water licences and provide water to the Responsible Entity to meet its obligations under the Grovelot Management Agreement; and
 - (ii) such additional water licences do not attach to the Grovelots of any of the Participant Growers, are not attributable to the Project and will at all times remain the property of the Land Owner.

4. TERM OF Deed

4.1 Term of Deed

- (a) This Deed will commence on the Commencement Date.
- (b) Subject to clauses 6, 10.1 to 10.3 and clauses 10.5 and 12, this Deed will continue until the earlier of:
- (i) the date which is one day before the expiry or termination of the lease between Timbercorp Securities and the Land Owner;
 - (ii) termination of the Participating Grower's Participating Interest in the Project;
 - (iii) 30 June 2027; and
 - (iv) termination of the Project.

4.2 Grower's Obligations Upon Termination

- (a) At the end of this Deed, 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) 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 Timbercorp Securities, 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 Timbercorp Securities reasonably considers appropriate.
-

6. CONDITIONS PRECEDENT

6.1 Conditions Precedent

This Deed is subject to and conditional on:

- (a) the Participant Grower entering into the Grovelot Management Agreement with Timbercorp Securities; and
- (b) Timbercorp Securities 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 Timbercorp Securities, 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 pay Timbercorp Securities the following rent per Grovelot:
 - (i) for the period from the Commencement Date until 30 June 2004, \$81.82 payable on or before the Commencement Date;
 - (ii) for each of the financial years ending 30 June 2005, 2006, 2007, 2008 and 2009, \$981.82 payable on 31 October 2004, 2005, 2006, 2007 and 2008 respectively.

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 2009.

- (b) Where the Participant Grower is a **Post 30 June Grower**, the Participant Grower must pay Timbercorp Securities the following rent per Grovelot:
 - (i) for the period from the Commencement Date until 30 June 2005, \$490.91 payable on or before the Commencement Date;
 - (ii) for each of the financial years ending 30 June 2006, 2007, 2008 and 2009, \$981.82 payable on 31 October 2005, 2006, 2007 and 2008 respectively.

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 2009.

10. TERMINATION OF AGREEMENT

10.1 Termination of Agreement by the Participant Grower

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

- (a) Timbercorp Securities goes into liquidation, other than for the purposes of reconstruction or amalgamation, or a Controller or Administrator is appointed in relation to the undertaking of the Land Owner or Timbercorp Securities or any part of its undertaking;
- (b) Timbercorp Securities ceases to carry on business; or
- (c) either the Land Owner or Timbercorp Securities fails or neglects to pay any moneys due to the Participant Grower, or is in default of any material obligation under this Deed and such default continues for a period of 3 months after receipt by the Land Owner or Timbercorp Securities, 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 Timbercorp Securities, 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 Deed by Timbercorp Securities

- (a) Subject to paragraph 10.2(b) and without prejudice to Timbercorp Securities' rights under clause 12, Timbercorp Securities may terminate this Deed 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 Deed in relation to any Grovelot of the Participant Grower or the Constitution or commits a material breach of this Deed 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 Timbercorp Securities 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 Timbercorp Securities 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 Timbercorp Securities reasonably determines that the whole or a substantial part of the relevant Grovelots is no longer commercially viable,

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

10.4 Reduction of 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 Timbercorp Securities reasonably determines that part of the relevant Grovelots is no longer commercially viable,

the Participant Grower may terminate this Deed 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 Timbercorp Securities. Termination under this clause takes effect on and from the 30 June next following the expiration of the period of notice.

10.5 Effect of Termination

- (a) Termination of this Deed 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 Deed 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 Deed is terminated under clause 10.2 in relation to all of the Grovelots of the Participant Grower, the Participant Grower, loses all rights and interest as a participant in the Project, and the procedures for consequences of default and termination as set out in the Constitution and, if applicable, clause 12 of this Deed, may be followed.
- (d) The termination of this Deed will terminate the rights and obligations of the parties under this Deed except to the extent that those rights and obligations are expressed to survive termination.

11. EXCUSES FOR NON PERFORMANCE

11.1 Force Majeure

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

11.2 Lack or unavailability of funds

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

11.3 Liability

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

11.4 Definition of Force Majeure

For the purposes of this Deed, "**Force Majeure**" means any event or circumstance not reasonably within the control of Timbercorp Securities or the Land Owner, as the case requires, or which Timbercorp Securities or the Land Owner, as the case requires, is

not reasonably able to prevent. It includes:

- (a) pestilence, vermin, disease, fire, acts of God, landslide, earthquake, flood, washout, lightning, storm, drought, seasonal and climatic conditions and the elements;
- (b) strikes, lock-outs, bans, work limitations, boycotts and industrial disturbances or action;
- (c) act of the enemies, wars, blockades, insurrection, riots and civil disturbances;
- (d) orders of any court or the order, act or omission or failure to act of any government or governmental authority or instrumentality (including any failure to grant or any withdrawal of any licences, consent or authority);
- (e) epidemic or quarantine;
- (f) shortage or unavailability of equipment, materials or labour or any restriction on equipment, materials or labour or on the use of equipment, materials or labour;
- (g) delays in transportation or communication; and
- (h) breakage or breakdown of, or damage to, equipment or machinery, or the necessity to repair equipment or machinery to prevent its breakdown.

Each of these paragraphs and each of the terms within each paragraph are to be construed separately and independently. None of them is to limit the generality of any other.

12. RENT AND EXPENSES

12.1 Failure to Pay

If the Participant Grower fails or neglects to pay:

- (a) the rent payable under this Deed; or
- (b) any amount due and payable by the Participant Grower under the Grovelot Management Agreement; or
- (c) any amount due and payable by the Participant Grower under the Constitution in respect of the Grovelots,

by the due date, Timbercorp Securities may, after giving the Participant Grower 30 days' prior written notice, terminate this Deed under clause 10.2 and exercise either of the remedies set out in clauses 12.2 and 12.3 (in addition to and without prejudice to any other rights of Timbercorp Securities).

12.2 Timbercorp Securities may pay on Behalf of Defaulting Grower

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

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

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

13. ASSIGNMENT

13.1 Assignment by Land Owner or Timbercorp Securities

- (a) Subject to clause 13.2, the Land Owner and Timbercorp Securities may freely assign any of their rights and interests under this Deed so long as the Land Owner or Timbercorp Securities (as the case requires) does not assign its interest in this Deed in any way without first entering a deed with the person with whom the Land Owner or Timbercorp Securities is dealing ("**the Grantee**"). The deed must contain a covenant by the Grantee in favour of the Participant Grower to observe and perform all or any of the covenants:
 - (i) contained or implied in this Deed and the Grovelot Management Agreement; and
 - (ii) required to be observed or performed by the Land Owner or Timbercorp Securities (as the case requires).
- (b) Paragraph 13.1(a)(i) also applies if the Land Owner sells the Land and the obligations of the Land Owner are read as applying to the purchaser of the Land.

13.2 Agreements with Contractors

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

13.2 Land Owner, Timbercorp Securities or Grantee to pay for deed

The cost of any deed required under clause 13.1 must be paid by the Land Owner, Timbercorp Securities or the Grantee, but not the Participant Grower.

13.3 Assignment by the Participant Grower

- (a) Subject to the requirements of the Constitution, the Participant Grower may only assign its rights under this Deed if the Participant Grower:
 - (i) first obtains a deed of covenant signed by the proposed assignee in favour of the Land Owner and Timbercorp Securities stating that the assignee will at all times during the remainder of the Term observe and perform all and any of the terms and conditions of this Deed and of the Grovelot Management Agreement applying to the Participant Grower's Grovelots being assigned; and
 - (ii) is not in default of any of its obligations under this Deed, the Constitution and the Grovelot Management Agreement applying to the relevant Grovelots or any other agreement to which the Participant Grower is a party in respect of the Project.
- (b) The proposed assignee is deemed to have entered into a Grovelot Management Agreement and this Deed, with the same terms and conditions as those applying to the Grovelots being assigned to it by the Participant Grower immediately before the date of the assignment, on and from the date of the assignment.

2004 004
Management Agreement
[2004 Timbercorp Olive Project]

Timbercorp Securities Limited

Olivecorp Management Limited

NM TAYLOR
LAWYERS

Level 7
350 Collins Street
MELBOURNE VIC 3000

Telephone: 9600 3525
Facsimile: 9600 3527

-
- (f) a reference to a person includes the person's legal personal representatives, successors, substitutes (including persons taking by novation) and permitted assigns and transferees;
 - (g) a reference to a gender includes the other genders;
 - (h) a reference to a clause, recital or schedule is to a clause, recital or schedule in or to this Agreement;
 - (i) if a party comprises two or more persons, this Agreement binds them jointly and each of them severally and it also binds the executors, administrators and permitted assigns of them and of each of them and of any two or more of them jointly and each of them severally; and
 - (j) the word "**include**" or "**includes**" is to be read as if the expression "**(but is not limited to)**" immediately followed such word and the word "**including**" is to be read as if the expression "**(but not limited to)**" immediately followed such word..

1.3 Headings

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

1.4 Capacity of Timbercorp Securities

Timbercorp Securities enters into this Agreement in its personal capacity.

1.5 Management Agreement is not Scheme Property

This Management Agreement is not "Scheme Property" or any part of it, as defined in section 9 of the Corporations Act, of the Project.

2. TERM

2.1 Commencement Date

This Agreement will commence on the Commencement Date.

2.2 Termination Date

Subject to clause 15, this Agreement will terminate on the earlier of:

- (a) termination of the Project; and
- (b) 30 June 2027.

3. AGREEMENT TO MANAGE

3.1 Engagement of Olivecorp

TSL engages Olivecorp and Olivecorp accepts its engagement as independent contractor, on the terms and conditions set out in this Agreement to:

- (a) cultivate and manage the Grove;
- (b) procure the processing of the Olives into olive oil; and

15. TERMINATION

15.1 Termination of Agreement by TSL or Olivecorp

Either party may terminate this Agreement if the other party commits a breach of any of its obligations under this Agreement and the default has not been remedied within 30 days after receiving notice notifying it of the breach and requesting it to be remedied.

15.2 Termination by TSL

TSL may terminate this Agreement without notice in its absolute discretion if at any time it considers such termination to be in the interests of the Growers of the Project.

15.3 Change of Responsible Entity

- (a) This Agreement will terminate immediately if TSL ceases to be the single responsible entity of the Project for any reason.
- (b) Immediately prior to:
 - (i) a meeting of Growers being called relating to the retirement or removal of TSL from the office of single responsible entity of the Project and a resolution being passed to that effect;
 - (ii) an application being made to the Court for the appointment of a temporary responsible entity to replace TSL; or
 - (iii) this Agreement being terminated under this clause 15,

TSL will be deemed to have exercised any rights of step-in which it is entitled to exercise under any contract between Olivecorp and any other contractor relating to the Grove Services and other services under this Agreement.

15.4 Effect of Termination

The termination of this Agreement will terminate the rights and obligations of the parties under this Agreement except to the extent that those rights and obligations are expressed to survive termination. The termination of this Agreement will not prejudice any right, power or remedy to the extent that it accrued prior to or on termination.

16. INDEMNITY

Subject to this Agreement and the law, Olivecorp must indemnify and keep indemnified TSL against any liability, demand, loss, costs, charges and expenses which may be incurred by TSL as a result of any breach of Olivecorp's obligations under this Agreement, or any neglect or fraud on the part of Olivecorp or any of its employees, servants or agents.

17. GST

- (a) If any supply made by a party ("**Supplier**") to the other ("**Recipient**") under this Agreement is a taxable supply (according to GST Law) so that the Supplier is liable to GST, the parties agree that the consideration payable for that taxable

**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

**2004 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
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Tel: 9229 9999
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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"
LESSEE'S COPY

AC871146V



2004 005

Lease

Section 66(1) Transfer of Land Act 1958

Lodged at the Land Titles Office by:

Name: Stedman Cameron

Phone: 9670 7211

Address: 446 Collins Street, Melbourne (DX 217)

Ref: D Whiting A40227 (PINKS LEASE)

Customer Code: 1608A



The Lessor leases to the Lessee the land for the term and yearly rental specified subject to the encumbrances affecting the land including any created by dealings lodged for registration before the lodging of this lease and subject to the covenants and conditions contained in this lease.

Land: (volume and folio reference)

Volume 6150 Folio 835.

Lessor: (full name)

OLIVECORP LAND PTY LTD ACN 090 141 512 Level 8, 461 Bourke Street Melbourne, Victoria, 3000

Lessee: (full name and address including postcode)

TIMBERCORP SECURITIES LTD ACN 092 311 469 Level 8, 461 Bourke Street Melbourne, Victoria, 3000

Term: (number of years, or commencement to completion date)

from the Commencement Date to 30 June 2024

Commencement date:

4 May 2004

Rental:

\$557,190.43 per annum

Covenants: (set out any further covenants and conditions and the extent (if any) to which the covenants and powers implied under the Transfer of Land Act 1958 are to be negatived or modified)

As appears from the annexure of 12 pages, making 14 in total

Dated: 4 May 2004

The signing clauses for the Lessor and the Lessee are on the annexure pages

Australia and New Zealand Banking Group Limited, being mortgagee under Mortgage AB10312G consents to the within lease.

To the Registrar of Titles

Please register *lease*
And on completion issue Certificate of
Title to Gadens lawyers.

Per *[Signature]*
Gadens Lawyers 027C
Current Practitioners within the meaning
Of the Legal Practice Act 1996 for the
Mortgagee: *ANZ Bank Limited*

To: Registrar of Titles

Please register the within lease, and upon completion return C/T 6150/835 to ANZ Bank, and lease to lodging party

ANZ Cust No:

EXECUTED by AUSTRALIA AND NEW
ZEALAND BANKING GROUP LIMITED
By being SIGNED by it's Attorney Partner
Of Gadens Lawyers
Peter Daniel Moore
Under Power of Attorney Dated 28/06/2001
A certified copy of which is filed
in the permanent order Book Number 277
Page 016 and Power of Attorney
Dated 28/06/2001 a certified copy of which
is filed in Permanent order Book Number
277 as page 017 in the presence of:

[Signature]

ANNEXURE PAGE

Approved Form A1
Victorian Land Titles Office

Transfer of Land Act 1958

This is page 6 of *Approved Form 26 (Lease)* dated 26 March 2004 between OLIVECORP LAND PTY LTD ACN 090 141 512 and TIMBERCORP SECURITIES LTD ACN 092 311 469

Signatures of the parties:

for and on behalf of Timbercorp Securities Limited

For and on behalf of Olivecorp Land Pty Ltd

7. INSPECTION OF LAND

The Lessor may, at all reasonable times, enter upon the Land and view its state of repair.

8. QUIET ENJOYMENT

The Lessee may, during the term of this Lease, possess the Land without interruption from the Lessor or any person claiming through it, except to the extent that the interruption is expressly permitted by this Lease.

9. ASSIGNMENTS, SUB-LEASES AND MORTGAGES

9.1. Assignment by Lessee

Subject to clause 9.2, the Lessee must not assign its interest under this Lease or transfer, sublet or part with possession of the Land or any part of the Land without the prior written consent of the Lessor, which consent is not to be unreasonably withheld in the case of an assignment of the whole of its interest.

9.2. Lessor consents to Lessee sub-letting

- (a) The Lessor consents and authorises the Lessee to enter into Sub-leases with Growers.
- (b) Upon this Lease 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-leases, whether before or after the execution of this Lease, and with the Lessor accepting the obligations of the Lessee to the Growers under the Sub-leases..

Approval No. 330036A

A1



1. If there is insufficient space to accommodate the required information in a panel of the Approved Form insert the words "See Annexure Page 2" (or as the case may be) and enter all the information on the Annexure Page under the appropriate panel heading. **THE BACK OF THE ANNEXURE PAGE IS NOT TO BE USED**
2. If multiple copies of a mortgage are lodged, original Annexure Pages must be attached to each.
3. The Annexure Pages must be properly identified and signed by the parties to the *Approved Form* to which it is attached.
5. All pages must be attached together by being stapled in the top left corner.

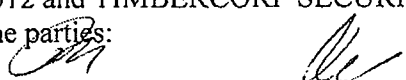
ANNEXURE PAGE

Approved Form A1
Victorian Land Titles Office

Transfer of Land Act 1958

This is page 7 of *Approved Form 26 (Lease)* dated 26 March 2004 between OLIVECORP LAND PTY LTD ACN 090 141 512 and TIMBERCORP SECURITIES LTD ACN 092 311 469

Signatures of the parties:


for and on behalf of Timbercorp Securities Limited


For and on behalf of Olivecorp Land Pty Ltd

9.3. Lessee must not mortgage its interest

The Lessee must not mortgage, charge or otherwise encumber its estate or interest in this Lease without prior written consent of the Lessor. The consent may be granted conditionally or may be 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.

10. DEFAULT AND RE-ENTRY

10.1. Default by Lessee

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

- (a) the Rent due under Clause 3 remains unpaid for a period of six months after demand.; 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.

10.2. Re-entry by Lessor

The Lessor will have the right to re-enter the Land if an act of default in clause 10.1 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.

Approval No. 330036A

A1



1. If there is insufficient space to accommodate the required information in a panel of the Approved Form insert the words "See Annexure Page 2" (or as the case may be) and enter all the information on the Annexure Page under the appropriate panel heading. **THE BACK OF THE ANNEXURE PAGE IS NOT TO BE USED**
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3. The Annexure Pages must be properly identified and signed by the parties to the *Approved Form* to which it is attached.
5. All pages must be attached together by being stapled in the top left corner.

2004 006
Sub-lease

Olivecorp Land Pty Ltd

Timbercorp Securities Limited

**Each several Participant Grower
named in Schedule to this Sub-
lease**

2004 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

10. TERMINATION OF AGREEMENT

10.1 Termination of Agreement by the Participant Grower

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

- (a) Timbercorp Securities goes into liquidation, other than for the purposes of reconstruction or amalgamation, or a Controller or Administrator is appointed in relation to the undertaking of the Land Owner or Timbercorp Securities or any part of its undertaking;
- (b) Timbercorp Securities ceases to carry on business; or
- (c) either the Land Owner or Timbercorp Securities fails or neglects to pay any moneys due to the Participant Grower, or is in default of any material obligation under this Deed and such default continues for a period of 3 months after receipt by the Land Owner or Timbercorp Securities, 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 Timbercorp Securities, 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 Deed by Timbercorp Securities

- (a) Subject to paragraph 10.2(b) and without prejudice to Timbercorp Securities' rights under clause 12, Timbercorp Securities may terminate this Deed 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 Deed in relation to any Grovelot of the Participant Grower or the Constitution or commits a material breach of this Deed 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 Timbercorp Securities 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 Timbercorp Securities 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 Timbercorp Securities reasonably determines that the whole or a substantial part of the relevant Grovelots is no longer commercially viable,

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

10.4 Reduction of Grovelots

If, in respect of the relevant Grovelots: