

**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 -**

**2006 TIMBERCORP OLIVE PROJECT (ARSN 119 182 179)**

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Date of document: June 2009

Filed on behalf of: the Plaintiffs

Prepared by:

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(Leon Zwier)

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

- 1 I am the voluntary administrator of the first plaintiff Timbercorp Securities Limited (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) and I were appointed as voluntary administrators of Timbercorp Limited (ACN 055 185 067) (**Timbercorp**) and 39 of its wholly owned subsidiaries (**Timbercorp Group**).

3 In this affidavit I refer to two other affidavits:

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

4 TSL is the responsible entity for a number of forestry and horticultural schemes which are registered managed investment schemes, including the 2006 Timbercorp Olive Project, which has the Australian Registered Scheme Number 119 182 179 (**2006 Olive Scheme**).

## 5 **2006 Olive Scheme Documents**

5.1 The 2006 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 2006 Olive Scheme is constituted by the following documents:

- (a) the constitution dated 6 April 2006 (O 2006 001) which binds TSL (in its capacity as responsible entity for each scheme) and each of the Growers (**Constitution**);
- (b) a product disclosure statement dated 1 May 2006 (O 2006 000) describing the 2006 Olive Scheme including a summary of the key documents and application and power of attorney forms (**PDS**);

- (c) the 2006 Olive Scheme is operated at three properties on which the crop is grown (collectively the **Land**), each with a lease agreement. Leases were entered into between TSL (in its personal capacity) and the land owner B.B. Olives Pty Ltd (Administrators Appointed) (ACN 083 992 367) (**Landowner**) for each property. Those were:
- (i) a lease dated 27 April 2006 (O 2006 004A) by which TSL (in its personal capacity) leased the Grove 58, Kooloonong property from the Landowner; and
  - (ii) a lease dated 27 April 2006 (O 2006 004B) by which TSL (in its personal capacity) leased the Grove 200, Anderson property from the Landowner; and
  - (iii) a lease dated 27 April 2006 (O 2006 004C) by which TSL (in its personal capacity) leased the Grove 452, Kooloonong property from the Landowner,
- (collectively the **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 Land Owner and TSL was entered into, the new volume and folio numbers are set out in MAK-2;

- (d) an undated sublease (O 2006 005) between TSL (in its personal capacity), the Landowner and the Growers, by which each Grower sub-leases parcels of the Land of approximately  $\frac{1}{4}$  of a hectare (known as **Grovelots**), to use and occupy for the cultivation of olives and production of olive oil (**Sub-Lease**);
- (e) a custody agreement dated 3 April 2006 (O 2006 003) between Trust Company of Australia Ltd and TSL (**Custody Agreement**);
- (f) a grower agreement undated (O 2006 006) (referred to as the Grovelot Management Agreement) amended by agreement dated 8 June 2006 (O 2006 006A) and supplemental deed dated 1 October 2008 (O 2006 008A),

by which the Growers appointed TSL (in its personal capacity) as attorney for and on behalf of the Growers, to cultivate and harvest the crop (**Grower Agreement**);

- (g) a management agreement dated 1 May 2006 (O 2006 007), by which TSL engaged Olivecorp Management Limited (Administrators Appointed) (ACN 089 542 343) (**OML**) to manage the Land, procure the processing of the olives grown on the Land and market the olive oil (**Management Agreement**);
- (h) an olive grove management agreement dated 1 May 2006 (O 2006 008), by which OML engaged Boundary Bend Estate Management Pty Ltd (ACN 080 184 925) (**BBEM**) to harvest and process the olives, and store the olive oil (**Olive Grove Management Agreement**);
- (i) a distribution agreement dated 20 May 2006 (O 2006 012) by which OML engaged Boundary Bend Marketing Pty Ltd (ACN 118 216 863) (**BBM**) as exclusive distributor of the products of the 2006 Olive Scheme (**Distribution Agreement**); and
- (j) an olive tree supply agreement dated 1 May 2006 (O 2006 009), in which the Landowner agreed to purchase olive trees from Pengala Pty Ltd (ABN 79 084 730 101) (**Olive Tree Supply Agreement**);
- (k) a capital works agreement dated 1 May 2006 (O 2006 010), between the Landowner and BBEM, in which the Land Owner (as a wholly owner subsidiary of Timbercorp Ltd) engages BBEM as an independent contractor to undertake certain capital works (**Capital Works Agreement**);

**(Key Scheme Documents)**

- 5.3 Now produced and shown to me marked **MAK-3** is a structure diagram for the 2006 Olive Scheme.
- 5.4 There are 351 Growers in the 2006 Olive Scheme and 2,795 grovelots. Now produced and shown to me marked **MAK-4** is a confidential exhibit (on computer disc) listing the Growers for the 2006 Olive Scheme.

6 **Growers' contributions to the 2006 Olive Scheme**

- 6.1 The Growers' obligations to contribute to the 2006 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, the Sub-Lease or the Constitution (clause 11(d)).
- 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 2006 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 (in its personal capacity) (clause 7.1);
  - (b) must, at its own expense, perform the Grove Services which include the growing and cultivation of Olives on, and the management of, the relevant Grovelots (clause 8.2(a)); and
  - (c) must, at its own expense, comply with or procure 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 11.3 and 11.7).
- 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 Accounts for any amounts for which it is entitled to be indemnified (clause 23.2(a)).

**7 Solvency of the 2006 Olive Scheme**

7.1 The solvency of the 2006 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 2006 Olive Scheme is represented by a collection of contracts which create rights and impose obligations.

7.2 To analyse whether the 2006 Olive Scheme is solvent I have instructed my staff to prepare an expected 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 2006 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 2006 Olive Scheme began on a financial year basis (July 1 to June 30). For each of the financial years since 2006 when the 2006 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 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 2006 Olive Scheme from the first crop in 2007 up to the estimate for 2010 is summarised below:

Crop Year	2003	2004	2005	2006	2007	2008	2009F	2010F*
Yield Total 2006					39,757	323,065	760,972	307,305
*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 Farmgate 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:

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

#### *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 TIM Variable Management Fee that TSL charges the Growers to manage the lot on the Growers' behalf. It is charged at 4% 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 2006 Olive Scheme, I have assumed an alternative provider will charge a like fee. The key variables and assumptions underpinning the expenses analysis are:
- (a) Processing fee - a fee of \$165 per tonne adjusted annually for the Consumer Price Index
  - (b) Base Admin Fee per Lot - this fee is billed by TSL to administer the 2006 Olive Scheme. It is calculated as a fixed charge per lot of \$70 (base) and adjusted annually for the Consumer Price Index;
  - (c) 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.
  - (d) 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.

- (e) BB Management Fee - BBEM, a wholly owned subsidiary of Boundary Bend Ltd (ACN 115 131 667) (**BB**), provides grove management services. It has been included in the 2010 crop return on the basis that OML does not have the financial capacity to meet any financial costs in the future and therefore needs to be invoiced to the Growers. It is charged on a per hectare basis increasing annually for the CPI. The base fee at the beginning of the Scheme was \$585/Ha.
- (f) 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 at Boundary Bend 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 – Murray Allocation					29%	57%	33%	40%

- (g) 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 a licence agreement.
- (h) 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.

- (i) 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 2006 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 \$3,305,801 (approximately) as project costs are greater than gross proceeds. This assumed all Growers pay their expected project costs.
- 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 2006 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 2006 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 expected capital expenditure expected of \$2,532,322 for water for the 2010 Harvest Result, referred to in the Solvency Analysis as "Water Capital Expenditure".
- 9.13 There is expected expenditure for water related infrastructure, referred to in the Solvency Analysis as "Non Water Capital Expenditure" of \$412,053. 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 2006 Olive Scheme terminate their participation in the 2006 Olive Scheme or default in payment of amounts owing by them; and
  - (b) no Growers in any of the other Olive Schemes terminate their participation in the relevant Olive Scheme or default in payment of amounts owing by them.
- 10.2 Timbercorp and Timbercorp Lot Investments Pty Ltd (ACN 125 427 492) (Administrators appointed), both of which are Timbercorp Group companies, hold in

aggregate approximately 0.1% of the total number of Grovelots in the Schemes. As neither company has sufficient resources to meet the fees which would be payable in respect of their ongoing participation in the Schemes, both have indicated they intend to terminate their participation on 30 June 2009, unless the Schemes are terminated by special resolution or Court order.

10.3 We consider it likely that some Growers in the 2006 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 \$5.7m in October 2008 of which \$0.7m or 12% of the total remains unpaid for the 2006 Olive Scheme costs;
- (b) loans in arrears - 44% of Growers in the 2006 Olive Scheme have taken out loans with Timbercorp Finance Pty Ltd (ACN 091 460 356) (Administrators Appointed) (**Timbercorp Finance**) and \$3m (44%) 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 5 in March 2009 to 87 in May 2009 for the 2006 Olive Scheme.

10.4 Furthermore, Timbercorp Finance is no longer in a position to provide finance to Growers to meet their obligations in the 2006 Olive Scheme.

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

10.6 TSL is insolvent and unable to absorb these costs.

#### *Defaults in other Olive Schemes*

10.7 The costs included in the Solvency Analysis include a portion of fixed costs across this or other Olive Schemes, which will remain constant despite a reduction in the number of participating Grovelots or an increase in the number of defaulting Growers. In the event these additional costs could not be passed on to Growers (due to

constraints of the Key Scheme Documents or other reasons) the liability could fall to TSL, and it is unable to absorb any costs.

## 11 Long term viability

- 11.1 I have asked my staff to prepare a long term viability analysis for the schemes across their lives (**Viability Analysis**). Now produced and shown to me marked **MAK-8** is the viability analysis for the 2006 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 2006 Olive Scheme over its life.
- 11.2 The Viability Analysis is based on Timbercorp management's cashflow model for the 2006 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 \$4.06m is still required for this scheme in addition to the cash flows identified above. As such, the actual NPV for the scheme, from a grower perspective, will be lower than the amounts included in the sensitivity analysis to the extent growers need to make additional contributions to meet the capital expenditure requirements.
- 11.7 As mentioned at 9.13, we note the potential for difficulties in binding Growers to additional cost commitments.

## **12 Sale of Olives**

- 12.1 On 12 May 2009, TSL, amongst others, entered into a sale of crop agreement (**Sale of Crop Agreement**) pursuant to which the 2009 olive crop was sold to BBM. A copy of the Sale of Crop Agreement, which is a confidential exhibit, is located on the CD 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 2006 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) the Management Agreement (cl 2.2(a));
- (b) the Head Leases (cl 11.1);
- (c) the Sub-Lease (cl 4.1(b)(iv); and
- (d) the Grower Agreement (cl 2.1(b)(iv)).

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

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

14.1 Based on legal advice I believe that the structure of the 2006 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 BOSI Security Services Ltd ABN 63 009 413 852 (**BOSI**).

14.3 The Mortgage over the Land has been granted as security for the BOS Syndicated Facility (**BOS Facility**). By Syndicated Loan Agreement dated 15 December 2006, as amended and restated on 30 December 2008, BOS International (Australia) Limited, Westpac Banking Corporation and Australia and New Zealand Banking Group Limited (collectively the **Syndicate**) agreed to advance Timbercorp Limited the sum of \$200,000,000.

14.4 The BOS Facility is secured by:

- (a) a featherweight fixed and floating dated 29 January 2007 granted by Timbercorp Limited in favour of BWA Custodians Ltd in its capacity as Security Trustee;
- (b) various fixed charges;
- (c) real property mortgages over land owned by Almond Land Pty Ltd (Administrators appointed) (**Almond Land**) and the Landowner;
- (d) water mortgages granted by Almond Land and the Landowner;
- (e) unlimited guarantees and indemnities by a number of companies in the Timbercorp Group;

(collectively the **BOS Securities**).

14.5 The appointment of administrators to Timbercorp constitutes an event of default under relevant provisions of the BOS Facility and BOS Securities.

*Encumbrances on water rights*

14.6 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 2006 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.

14.7 The Water Rights are also encumbered by a mortgage which has been granted as security for the BOS Facility.

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

15.1 As I deposed in my Directions Affidavit, I consider that TSL is insolvent. If the Court does not wind up the 2006 Olive Scheme then TSL will default on its obligations under the 2006 Olive Scheme. Based on legal advice, I believe that if TSL does default then:

- (a) under clause 9.3 of each Head Lease, if the Head Lease terminates (due to TSL's default or otherwise) the Landowner agrees to step into the shoes of TSL under the Sub-Lease and allow each Grower to continue to use the land as contemplated under the Sub-Lease (a "**Step In Provision**"). Under the Step In Provision, all obligations of the Growers under the Sub-Lease will presumably be owed to and are enforceable by the Landowner (including payment of the licence fee (clause 3.1) and performance of maintenance services by the Growers);
- (b) therefore, the Growers will continue to be obligated to continue to pay fees under the Sub-Lease, subject to the ability of the Grower to terminate the Sub-Lease for TSL's liquidation or TSL ceasing to carry on its business (see clause 10.1 of the Sub-Lease);
- (c) additionally, as TSL is insolvent and can no longer carry on its business, the Growers will be adversely affected. The Growers have entered into a Grower Agreement with TSL under which TSL agrees to cultivate and manage the growth of the olives and eventually produce olives for commercial sale. The Growers are entitled to the proceeds of such sale. As TSL is insolvent and can no longer perform its duties under the Grower Agreement, the Growers



will have to seek a new manager for the olives and will likely incur costs and suffer damages.

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

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

\_\_\_\_\_

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

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

**LIST E**

No 7114 of 2009

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

**ACN 092 311 469**

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

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

**CERTIFICATE IDENTIFYING EXHIBIT**

---

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

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

---

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

Before me: .....

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

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

**LIST E**

No 7114 of 2009

**IN THE MATTER OF TIMBERCORP SECURITIES LIMITED  
(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 CRESSER  
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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(Leon Zwier)

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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"

2006 OLIVE PROJECT

Land Owner		Land Identity	Title Particulars (derived from Scheme lease documents)	Title Particulars (derived from Titles Office searches)	Mortgagee	Mortgage ID
Timbercorp	Non-Timbercorp					
B B Olives Pty Ltd		Boundary Bend - Vic - Grove 58 (Kooloonong)	Lot 2 of Vol 10707 Fol 617 (cancelled title)	Vol 11031 Fol 470		
		Boundary Bend - Vic - Grove 452 (Kooloonong)	Vol 10707 Fols 612, 613, 614 and 615	Vol 10707 Fols 612, 613, 614 and 615	BOSI Security Services Ltd	AG323075S
		Boundary Bend - Vic - Grove 2007700 (Andersons)	Vol 10193 Fols 951 and 952	Vol 10193 Fols 951 and 952	BOSI Security Services Ltd	AG323075S

**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)**

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

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

**CERTIFICATE IDENTIFYING EXHIBIT**

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

Solicitor's Code: 54  
DX 38455 Melbourne  
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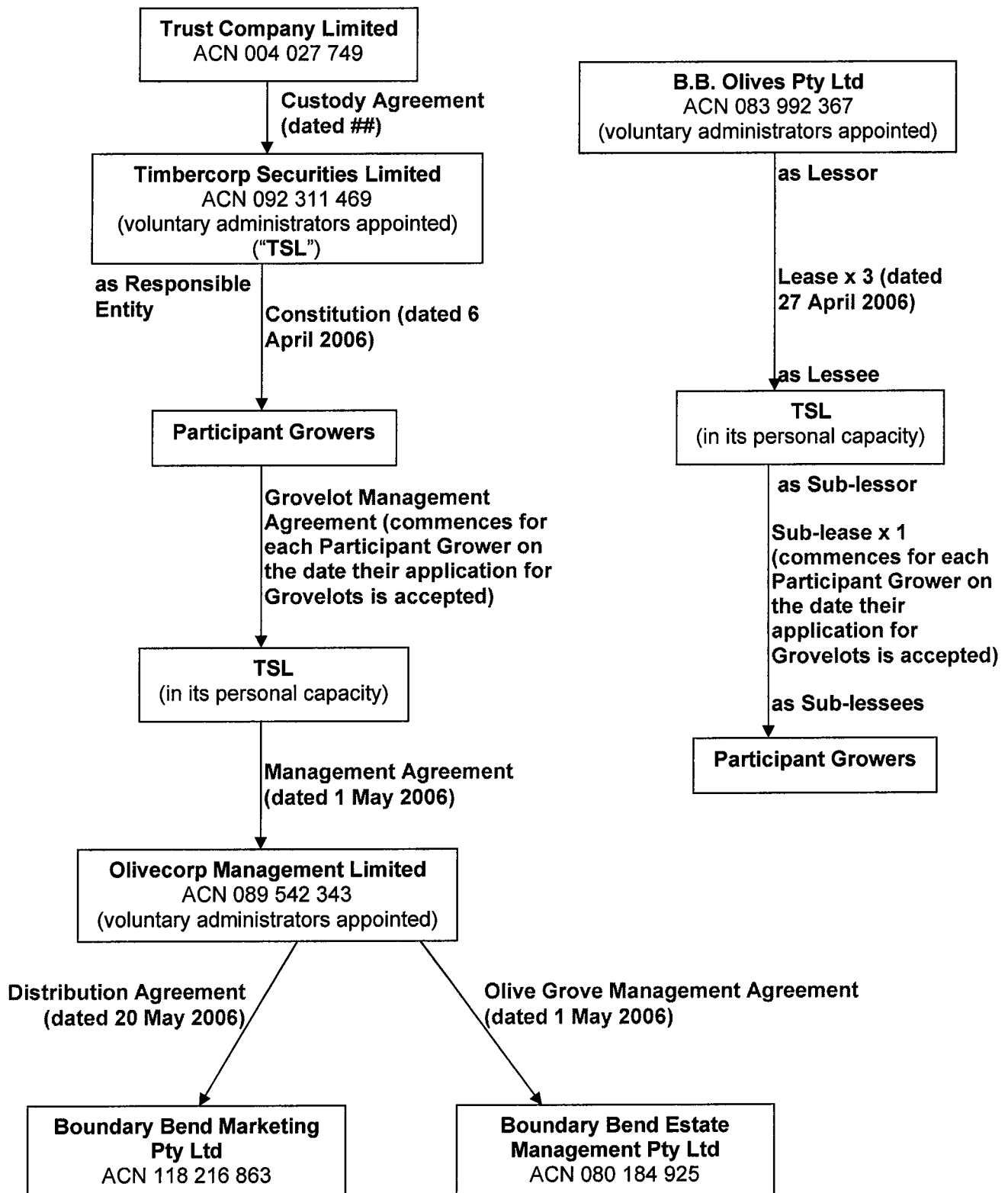
---

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 2006 Olive Scheme**

## STRUCTURE DIAGRAM 2006 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 CHESSE**  
Second and Third Plaintiffs

**CERTIFICATE IDENTIFYING EXHIBIT**

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

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

---

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

Before me: .....

**Exhibit "MAK-4"**  
**Confidential exhibit - CD of Register of Growers  
and Sale Agreements for the 2006 Olive Scheme**

r43.06

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

**LIST E**

No 7114 of 2009

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

**ACN 092 311 469**

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

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

**CERTIFICATE IDENTIFYING EXHIBIT**

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Date of document: June 2009  
Filed on behalf of: the Plaintiffs  
Arnold Bloch Leibler  
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---

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**



"max-5"

## **CONSTITUTION**

**2006 Timbercorp Olive Project**

**Timbercorp Securities Limited  
(ACN 092 311 469) &  
Each Participant Grower**

**2006 Timbercorp Olive Project**

- 
- (b) a Power of Attorney, being in the form attached to the PDS, signed or executed by the Applicant, appointing the Responsible Entity to be the Applicant's attorney and, on the Applicant's behalf, to execute the Agreements and any other documents which are ancillary or related to the Agreements, or contemplated by the provisions of the Agreements; 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 Grovelot may be payable in full at the time of application or may be payable by instalments. If the Applicant elects to pay the Application Money by instalments, the Applicant must pay at the time of delivering of the Application the amount shown in the application as the "DEPOSIT", and the balance of the Application Money must be paid by the Applicant (or Participant Grower, if that Applicant has become a Participant Grower in accordance with the provisions of this Deed), to the Responsible Entity by the date specified in the Application (if any) and if no such date is specified, by such date as the Responsible Entity may, in its absolute discretion, determine, provided that in its absolute discretion, the Responsible Entity may extend that date to such later day as the Responsible Entity determines.
- (b) If an Applicant, or Participant Grower, whichever is the case, fails to pay the amount shown in the Application against the words "BALANCE" (or any part of it) by the day specified in the Application, or by any other date determined by the Responsible Entity, for payment of it, the Responsible Entity is authorised to exercise all or any of the remedies below (in addition to and without prejudice to any rights at law or in equity or pursuant to this Deed). The Responsible Entity is entitled to recover from the Applicant (or Participant Grower, whichever is the case) the balance together with interest on the balance outstanding at the rate of not more than 600 basis points above the rate of interest 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 and accruing on a daily basis, 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 TEN (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.

- 
- (e) the Land the subject of the Sub-lease is not subject to any encumbrance or restriction which detrimentally affects the interests of the Applicant;
  - (f) any other matter required to be attended to, which is necessary for the creation of the Sub-lease and the effective vesting in the Participant Grower of its Sub-lease and Grovelot Management Agreement, whether by reason of this Deed or otherwise, has been attended to; and
  - (g) there are no outstanding material breaches of any of the provisions of this Deed which are detrimental to the interests of the Participant Growers whose Application Money is to be released pursuant to clause 9.3.

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

#### **(a) Release of Application Money**

In relation to each Application that is unconditional as to finance, or is subject to finance and for which finance is 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 Money**

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, the amount of such interest to be calculated in accordance with clause 7.3.

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

Upon the refund of the moneys referred to in paragraph 9.3(b), the Participant Grower's Sub-lease and Grovelot Management Agreement 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.

---

## 11. RESPONSIBLE ENTITY'S POWERS

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

- (a) subject to the requirements of ASIC and of the Corporations Act, to receive and hold the Application Money;
- (b) to invest any money held in a Special Trust Account in any Authorised Investment;
- (c) to invest moneys standing in the Agency Account in any Authorised Investment in accordance with clause 16;
- (d) to use the Application Money of the Participant Grower in discharging the Participant Grower's obligations under the Agreements or under this Deed;
- (e) to prepare reports and accounts in relation to the Grove Services and in relation to the processing of Crop and the sale of Product or Crop;
- (f) to monitor the performance of all parties to the Project Documents;
- (g) to appoint agents to enter into the Project Documents on behalf of a Participant Grower and to exercise all rights and powers of the Participant Grower under any Project Documents;
- (h) generally to enter, make or engage in transactions, undertakings, activities and arrangements of every kind and nature which a natural person of full age and capacity could enter, make or engage in and which constitute or are part of or relate to or are incidental to the Grove Services on behalf of the Participant Grower;
- (i) to appoint auditors to audit and/or monitor the accounting records and other records of the Responsible Entity and any party to a Project Document in relation to the Crop and Product from the Project;
- (j) subject to there being adequate moneys in respect of any costs or expenses (or indemnities satisfactory to the Responsible Entity instead of them), to make claims and bring legal or arbitration proceedings against any person who is a party to any Agreement or Project Document, to take legal or other arbitral or alternative dispute resolution proceedings on behalf of the Participant Grower or Participant Growers and to defend or compromise any claim or legal or arbitral proceedings arising out of the interest of the Participant Grower and relating to any Agreement;
- (k) to execute any deed, agreement, certificate or other document and to do all such things as are necessary or desirable to further the powers granted to the Responsible Entity in this clause 11, including for the purposes of protecting, insofar as is legally possible, the Participant Grower's tenure to its Grovelots; and
- (l) to lease the Land from the Land Owner, and sub-lease it to, the Participant Grower under the Sub-lease.

---

### **13.3 Processing of Crop**

Each Participant Grower severally authorises and requests the Responsible Entity to procure Timbercorp Securities to:

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

in accordance with the Grovelot Management Agreement.

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

Each Participant Grower severally authorises and requests the Responsible Entity to procure Timbercorp Securities to:

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

in accordance with the Grovelot Management Agreement and on such terms and conditions as Timbercorp Securities in its absolute discretion determines, and for this purpose to enter into any agreement for the sale of the Participant Grower's Participating Interest in the Product and any unprocessed Crop as agent and attorney for the Participant Grower and/or the Responsible Entity on behalf of 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 or Crop.

### **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 Participant 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 Participant 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 Participant Growers are entitled.

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

- (a) A Participant Grower is entitled to the money in the Agency Account which represents his Participating Interest in the gross income from the sale of the Product or Crop 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 payable by the Participant Grower under this Deed, 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 listed in paragraph 13.7(a) and pay the deducted amounts to the persons entitled to them. The Responsible Entity may make these payments within 14 days of receiving the money into the Agency Account in respect of the relevant 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 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 provided that the Responsible Entity will not be under the obligation to make payments, directions and distributions of Proceeds in relation to the Project under this clause:
    - (i) unless and until the amount of Proceeds payable or distributable to the Grower is at least \$200 per Grovelot; and
    - (ii) unless Proceeds have been held in the Agency Account for no less than 30 days before the distribution is required to be made.
  - (e) If there are any accruals of amounts to be paid in any of the categories listed in the definitions of "Proceeds" then the accrual must be paid in the same order of preference as the items listed in paragraph 13.7(a).

### **13.8 Product Liability Insurance**

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

### **13.9 Intentionally Deleted**

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

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

### **13.11 Deduction of Taxes**

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

- 
- (e) in relation to section 253K(2) of the Corporations Act, a poll cannot be demanded on any resolution concerning:
    - (i) the election of the chair of a meeting; or
    - (ii) the adjournment of a meeting.
  - (f) in relation to section 253L(2) of the Corporations Act, at a meeting of Participant Growers, a poll may be demanded by:
    - (i) at least 1 Participant Grower concerned holding or representing by proxy at least 10% of the aggregate number of relevant Grovelots for the time being on issue to the Participant Growers concerned and entitling the holders to vote on the resolution; or
    - (ii) the chair.
- 

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

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

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

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

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

- 
- (d) The Responsible Entity may pay out of the Agency Account any amount for 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 to the Responsible Entity in respect of the Project, other than the payments required under clause 17.1.

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

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

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

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

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## **25. COMPLAINTS PROCEDURE**

### **25.1 Procedure**

- (a) Subject to paragraph 25.1(b) and rules of any external complaints resolution scheme of which the Responsible Entity is a member in accordance with paragraph 25.6(a), complaints made by any Participant Grower in relation to the Project or the Responsible Entity, including any dispute or difference whatsoever with the Responsible Entity or in connection with this Deed ("**complaints**") must be dealt with in the manner set out in this clause 25.
- (b) Any dispute or difference between a Participant Grower and Timbercorp Securities in connection with an Agreement must be resolved in accordance with the terms of the relevant Agreement.



**Sub-lease**

**B. B. Olives Pty Ltd**

**Timbercorp Securities Limited**

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

**2006 Timbercorp Olive Project**

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

Level 7  
350 Collins Street  
MELBOURNE VIC 3000

Telephone: 9600 3525  
Facsimile: 9600 3527

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occupied by Timbercorp Securities, the Land Owner or other Participant Growers; and

- (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 in respect of the relevant Grovelots; and
- (b) Timbercorp Securities entering into the Head Leases with the Land Owner in respect of Grove 58, Grove 452 and Grove 200,

on or before the Commencement Date.

### **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) A Participant Grower who is an **Early Grower** must pay Timbercorp Securities the following rent per Grovelot:
  - (i) for the period from the Commencement Date until 30 June 2006, nil;
  - (ii) for each of the Financial Years ending 30 June 2007 and 2008, \$454.55 payable on 31 October 2006 and 2007 respectively;
  - (iii) for the Financial Year ending 30 June 2009, \$545.45 payable on 31 October 2008;
  - (iv) for the Financial Year ending 30 June 2010, \$624.55 payable on 31 October 2009;
  - (v) for the Financial Year ending 30 June 2011, \$799.10 payable on 31 October 2010; and
  - (vi) on 31 October of each subsequent Financial Year during the Term, an amount equal to the rent payable on the immediately preceding 31 October, Indexed.
- (b) A Participant Grower who is a **Post 30 June Grower** must pay Timbercorp Securities the following rent per Grovelot:
  - (i) for the period from the Commencement Date until 30 June 2007, \$454.55 payable on or before the Commencement Date;
  - (ii) for each subsequent Financial Year of the Term, the same rent as is payable by an Early Grower, as and when it is due by an Early Grower.

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## **7.2 Discontinuance or suspension of CPI**

- (a) If the CPI 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.

## **7.3 Capacity**

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

## **7.4 Timbercorp Securities may pay on Behalf of Defaulting Growers**

Without limiting any other rights Timbercorp Securities may have under clause 7.5, if the Participant Grower fails to make payment of any amount due under this Deed, 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.

## **7.5 Interest**

Without limiting any other rights Timbercorp Securities may have, if the Participant Grower fails to make a payment of any amount due under this Deed:

- (a) the Participating Grower must pay interest on such amounts not paid on the due date;
- (b) the rate of interest will be such rate determined by Timbercorp Securities from time to time provided that it must not be more than 600 basis points above the rate from time to time fixed under section 2 of the Penalty Interest Rates Act 1983 (Victoria), calculated from the date that the payment fell due until the date such payment is made in full; and
- (c) interest that is payable under this clause on any amount due and unpaid will be capitalised monthly in arrears.

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# **8. GROWER'S OBLIGATIONS**

## **8.1 Permitted use**

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

## **8.2 Grower's duties**

The Participant Grower must, at its expense:

- (a) undertake the Grovelot Operations on the relevant Grovelots;
- (b) use the relevant Grovelots solely for the purpose of Grovelot Operations;

- 
- (c) comply with Best Horticultural Practices;
  - (d) comply with all laws and regulations relating to the use and occupancy of the relevant Grovelots;
  - (e) take all reasonable steps to avoid interfering with the activities carried out on any neighbouring land by the owner or occupier of that land;
  - (f) maintain the relevant Grovelots in accordance with Best 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 8.3 does not release the Participant Grower from liability under this Deed.

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

### **9.1 Obligations**

The Land Owner must:

- (a) duly and punctually pay or cause to be paid all rates, taxes and other charges levied by any government or competent authority in respect of all Grovelots; and
- (b) comply with all laws and regulations relating to the use and occupancy of any neighbouring land occupied by the Land Owner or other persons.

### **9.2 Rights**

The Land Owner is entitled to:

0 2006 006

**Grovelot Management  
Agreement**

**Timbercorp Securities Limited**

**Each Several Participant Grower  
named in the First Schedule to  
this Agreement**

**2006 Timbercorp Olive Project**

- 
- (b) in consideration of the Grove Services and all other services to be provided under this Agreement in the period 1 July 2007 to 30 June 2008:
    - (i) an amount of \$1,090.91 per Grovelot payable on 31 October 2007; and
    - (ii) for each Grovelot, an amount equal to 4.0% of the of the Participant Grower's Participating Interest of the Net Sales Proceeds from the sale of Product or Crop 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; and
  - (c) thereafter, in consideration of the Grove Services and all other services to be provided under this Agreement in each subsequent Financial Year during the Term, the fees and costs specified in clause 11.3.

### **11.3 Management Fees and Costs Payable by all Participant Growers**

- (a) For each Financial Year after 30 June 2008 commencing on 31 October 2008 and each subsequent 31 October, Timbercorp Securities will be entitled to be paid in respect of all the Participant Grower's relevant Grovelots, the estimated costs of operating the relevant Grovelots (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 2006 as the base date)), as adjusted under paragraph 11.3(b).
- (b) Timbercorp Securities will:
  - (i) when notifying the Participant Grower under paragraph 11.3(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
  - (ii) 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 11.3(a) 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.
- (c) Despite clause 11.3(a) in respect of the final harvest of Olives under the Project, the Participating Grower must pay the costs of processing the Participating Grower's Olives into Olive Oil out of and at the time Proceeds are received by Timbercorp Securities as the Responsible Entity in respect of the sale of Olive Oil. However, if no Proceeds are received in respect of the Olive Oil produced from the final harvest before the expiration of 12 months following the completion of the processing of the Olive Oil, the Participating Grower must pay processing costs to Timbercorp Securities at such time nominated by Timbercorp Securities.
- (d) For each Financial Year in which Product or Crop is sold on behalf of the Participant Grower, the Participant Grower will pay its prescribed proportion of Marketing and Sale Costs. These costs will be deducted by the distributor or other sales agent from the proceeds of sale before paying the proceeds to Timbercorp Securities or Olivecorp Management.

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#### **11.4 Responsible Entity to make certain payments**

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

- (a) 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
- (b) pay the deducted amounts to the persons entitled to them.

#### **11.5 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 in respect of the Financial Year to which reference is first made.

#### **11.6 Discontinuance or suspension of CPI**

- (a) If the CPI 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 must be borne equally between Timbercorp Securities and the Participant Grower.

#### **11.7 Capacity**

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

#### **11.8 Timbercorp Securities may pay on Behalf of Defaulting Growers**

Without limiting any other rights Timbercorp Securities may have under clause 11.9, if the Participant Grower fails to make payment of any amount due under this Agreement, 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.

#### **11.9 Interest**

Without limiting any other rights Timbercorp Securities may have, if the Participant Grower fails to make a payment of any amount due under this Agreement:

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

**LIST E**

No 7114 of 2009

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

**ACN 092 311 469**

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

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

**CERTIFICATE IDENTIFYING EXHIBIT**

---

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

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

---

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

Before me: .....

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



## 2006 Olive Scheme - Forecast 2010 Harvest Result

### 2006 Timbercorp Olive Project (ARSN 119 182 179)

Gross Grower Proceeds	5,131,894
less: Sales & Related Costs	(217,430)
Growers Net Proceeds	4,914,464
TIM Mgmt Fee	(196,579)
Admin Fee	(220,308)
Farm Operating Costs	(4,658,620)
Technical Fee	(90,752)
BB Management Fee	(457,324)
Temp Water	(851,078)
Licence Fee	(1,745,605)
AOA Levy	0
Total Operating Expenditure	(8,220,265)
<b>Grower Net Operating Cashflow before CAPEX</b>	<b>(3,305,801)</b>
Water Capital Expenditure	(2,532,322)
Non Water Capital Expenditure	(412,053)
2010 Capital Expenditure	(2,944,375)
<b>Net Operating Cashflow after CAPEX</b>	<b>(6,250,176)</b>

### 2010 Crop Variables

a	Litres per Ha (4 lots per hectare)	1,546
a	Litres per Lot	387
b	Wholesale Price (litre) \$	4.75
c	Net Sales Price (litre) \$ - Wholesale less sales & related costs	4.55
d	Sold Area (Ha)	698.75
e	Water Allocation	40%
e	Temp Water Price \$	350
f	TIM Variable Mgmt Fee (PDS)	4.00%
g	JV Share	0%
h	Processing Fee (per tonne adjusted annually for CPI from Project C'ment)	\$165
i	Base Admin Fee per Lot (Adjusted annually for CPI from Project C'ment)	70
j	Licence Fee per Lot (FY10 Rate per PDS)	625
k	CPI Assumption	2.5%

### Net Operating Cashflow Incurred to Date

2006	(14,737,280)
2007	(4,319,561)
2008	(4,179,811)
2009	(4,879,284)
Total	<b>(28,115,936)</b>
Number of Grovelots	2,795
Cumulative Cashflow per Grovelot	
2006	(5,273)
2007	(1,545)
2008	(1,495)
2009	(1,746)
Total	<b>(10,059)</b>

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**

"MAK-7"

**Project: 2006 Olive Early – 2,795 lots**

Grower Obligations	Total		Amount		Amount		% Outstanding
	Arrears		Invoiced (Oct 2008)	Outstanding	Outstanding		
	\$931,322		\$5,704,595	\$700,783			12%
<b>Timbercorp Finance Funding</b>							
	Amount Borrowed		Value of loans in arrears	% of loans in arrears			
	\$6,861,568		\$3,020,541	44.0%			
Percentage of growers with loans <sup>1</sup>	44.1%						
Failed Direct Debits	Pre Appointment #	Pre Appointment Value	Post Appointment #	Post Appointment Value			
	5	\$1,755	87	\$34,776			
1. This is funding provided by Timbercorp Finance. Status of loans provided by other lenders is unknown.							
<b>Lots held by Timbercorp Group</b>							
Timbercorp Ltd			0				
Timbercorp Finance Ltd			0				
Timbercorp Lot Investments			4				



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

LIST E

No 7114 of 2009

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

Before me: .....

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

"mak-8"

2006 Timbercorp Olive Project (ARSN 119 182 179) - 2006 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	2030	2031	
Base	-\$6,338.28	-\$5,590.49	-\$4,956.28	(2,280)	(1,743)	(1,197)	(731)	(489)	(371)	(350)	(359)	(368)	(377)	(386)	(396)	(405)	(415)	(426)	(436)	(447)	(458)	(470)	(481)	(481)	1,962	
\$ per litre				4.49	4.75	4.87	4.99	5.12	5.24	5.37	5.51	5.65	5.79	5.93	6.08	6.23	6.39	6.55	6.71	6.88	7.05	7.23	7.41	7.41	7.41	
4.00	-\$9,985.83	-\$8,025.42	-\$6,695.06	(2,378)	(1,952)	(1,494)	(1,106)	(919)	(833)	(827)	(848)	(869)	(890)	(913)	(935)	(959)	(982)	(1,007)	(1,032)	(1,058)	(1,084)	(1,111)	(1,139)	3,011	1,685	
5.00	-\$4,194.33	-\$4,147.85	-\$3,916.84	(2,180)	(1,622)	(1,026)	(514)	(241)	(105)	(75)	(77)	(79)	(80)	(82)	(84)	(86)	(88)	(90)	(93)	(95)	(97)	(99)	(102)	4,074	2,121	
6.00	\$1,597.18	-\$270.28	-\$1,138.61	(1,982)	(1,292)	(558)	78	437	622	677	694	712	730	748	767	786	806	826	847	868	890	912	935	5,136	2,557	
7.00	\$7,388.68	\$3,607.29	\$1,639.61	(1,784)	(962)	(59)	670	1,114	1,349	1,429	1,465	1,502	1,540	1,578	1,618	1,658	1,700	1,742	1,786	1,831	1,877	1,924	1,972	6,199	2,993	
8.00	\$13,180.18	\$7,484.86	\$4,417.83	(1,586)	(631)	378	1,262	1,792	2,076	2,181	2,236	2,292	2,349	2,408	2,469	2,530	2,594	2,659	2,725	2,794	2,863	2,935	3,009	7,262	3,428	
2006 Timbercorp Olive Project (ARSN 119 182 179) - 2006 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	2030	2031	
-15%	-\$9,039.71	-\$7,176.70	-\$5,941.85	(2,280)	(1,743)	(1,197)	(731)	(489)	(669)	(858)	(879)	(901)	(924)	(947)	(970)	(994)	(1,019)	(1,045)	(1,071)	(1,097)	(1,125)	(1,153)	(1,181)	2,967	1,667	
Base	-\$6,338.28	-\$5,590.49	-\$4,956.28	(2,280)	(1,743)	(1,197)	(731)	(489)	(371)	(350)	(359)	(368)	(377)	(386)	(396)	(405)	(415)	(426)	(436)	(447)	(458)	(470)	(481)	3,685	1,962	
15%	-\$3,636.85	-\$4,004.28	-\$3,970.71	(2,280)	(1,743)	(1,197)	(731)	(489)	(74)	(158)	(162)	(166)	(170)	(175)	(179)	(184)	(188)	(193)	(198)	(203)	(208)	(214)	219	4,402	2,256	
2006 Timbercorp Olive Project (ARSN 119 182 179) - 2006 Olive Early Temporary Water for 40%, 60% and 80% scenarios @ \$550 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	2030	2031	
Base	-\$6,338.28	-\$5,590.49	-\$4,956.28	(2,280)	(1,743)	(1,197)	(731)	(489)	(371)	(350)	(359)	(368)	(377)	(386)	(396)	(405)	(415)	(426)	(436)	(447)	(458)	(470)	(481)	3,685	1,962	
40%	-\$8,860.63	-\$7,324.71	-\$6,215.40	(2,280)	(1,860)	(1,477)	(1,099)	(856)	(739)	(718)	(726)	(735)	(744)	(754)	(763)	(773)	(783)	(793)	(804)	(815)	(826)	(837)	(849)	3,685	1,962	
60%	-\$7,840.89	-\$6,579.93	-\$5,639.80	(2,178)	(1,743)	(1,355)	(976)	(734)	(616)	(595)	(604)	(613)	(622)	(631)	(641)	(650)	(660)	(671)	(681)	(692)	(703)	(715)	(726)	3,685	1,962	
80%	-\$6,821.14	-\$5,835.16	-\$5,064.20	(2,077)	(1,625)	(1,232)	(854)	(611)	(484)	(473)	(481)	(490)	(499)	(509)	(518)	(528)	(538)	(548)	(559)	(570)	(581)	(592)	(604)	3,685	1,962	

Notes

- NPV assessments are based on Timbercorp managements cashflow model for each project.
- Per Timbercorp management, the average forecast price for the 2009 olive crop is \$4.30 per litre.
- The base case yield assumes trees mature in 2014 and produce 686 litres per lot.
- Water allocation base case (40% in 2010, 60% in 2011, 80% in 2012 and 100% from 2013 and beyond).
- NPV's are from the growers perspective, based on current agreements and assume that all CAPEX is in place. However, CAPEX of \$5.41m for permanent water rights and \$0.65m for other CAPEX 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"

**2006 Timbercorp Olive  
Project**

**Management Agreement**

**Timbercorp Securities Limited**

**Olivecorp Management Limited**

**2006 Timbercorp Olive 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 2029.

---

## **3. APPOINTMENT OF OML**

### **3.1 Engagement of OML**

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

### **3.2 OML to Carry Out Grove Services as Independent Contractor**

The parties agree and acknowledge that:

- (a) OML will carry out the Grove Services as an independent contractor and not as agent or contractor of the Grower;
- (b) OML has no recourse in any circumstances whatsoever to a Grower or to assets of the Grower or the Project, including the proceeds from the sale of the Crop or Product, for any fees, expenses or amounts due to OML from TSL under this Agreement.

### **3.3 Authority to Act**

OML does not have any authority to act for, or to assume any obligation or liability on behalf of, the Grower or the Growers except such authority as is conferred on OML by this Agreement or the Constitution.

### **3.4 Performance of Obligations**

- (a) Subject to this Agreement, OML must use reasonable endeavours to perform all its functions, exercise its powers under this Agreement and conduct the Project Operations:
  - (i) in a commercially reasonable manner;
  - (ii) honestly;
  - (iii) generally in accordance with Best Horticultural Practices which are generally recognised and adopted in Australia and are known and acceptable to OML and suitable for use on the Grove; and
  - (iv) in the best interests of all the Growers and not in the interests of OML if those interests are not the same as those of the Growers.
- (b) The phrase "commercially reasonable manner" means, in any particular circumstances, a manner which OML honestly believes is commercially reasonable in those circumstances (having regard where appropriate to the



02006 004A

## Lease

Section 66(1) Transfer of Land Act 1958

Lodged at the Land Titles Office by:

Name: Stedman Cameron

Phone: 9670 7211

Address: 179 Queen St, Melbourne (DX 217)

Ref: A60198 (Grove 58 - Kooloonong)

Customer 1608A

Code:



**AE316344Y**

27/04/2006 \$92.30 66



Privacy C  
The informati  
collected und  
and is used fo  
maintaining publicly searchable  
registers and indexes in the  
Victorian Land Registry.

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)

**CAVEAT**

Lot 2 on the attached plan, being part of the land described in Certificate of Title Volume 10707 Folio 617

Lessor: (full name)

**B.B. OLIVES PTY LTD** ACN 083 992 367 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 2029

Commencement date: 27 April 2006

Rental:

\$116,000 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 14 pages and one plan, making 16 in total

Dated: 27 April 2006

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

**x66**

**94/10707 F.617**  
**(Pf).**

**3.5.06.**

**27 APR 2006**

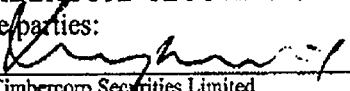
## ANNEXURE PAGE


Approved Form A1  
Victorian Land Titles Office

### Transfer of Land Act 1958

This is page 9 of *Approved Form 26 (Lease)* dated 27 April 2006 between B.B. OLIVES PTY LTD ACN 083 992 367 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 B.B. Olives Pty Ltd

#### 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 the Growers under paragraph 9.3.

### 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.

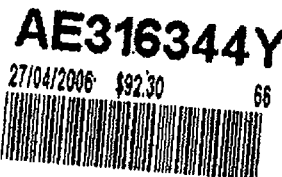
11.2. Despite any other provision of this Lease, in the event that a Grower ceases to participate in the Project due to a termination of its Grovelot Management Agreement and the Sub-Lease ("Past Grower"):

- (a) with the consent of the Lessor, the Lessee may sub-underlease or licence the Lessor to occupy and use that part of the Land that was occupied by the Past Grower under its Sub-Lease, with the intent 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) the sub-underleasing or licencing to the Lessor of part of the Land under this paragraph 11.2 is without prejudice to any rights and obligations that may have

Approval No. 330056A



1. If there is insufficient space to accommodate the required information in a panel, the words "See Annexure Page 2" (or as the case may be) and enter all the information under the appropriate panel heading. **THE BACK OF THE ANNEXURE 1**
2. If multiple copies of a mortgage are lodged, original Annexure Pages must be attached.
3. The Annexure Pages must be properly identified and signed by the parties to be attached.
5. All pages must be attached together by being stapled in the top left corner.



## Lease

### Section 66(1) Transfer of Land Act 1958

Lodged at the Land Titles Office by:

Name: Stedman Cameron

Phone: 9670 7211

Address: 179 Queen St, Melbourne (DX 217)

Ref: A60193 (Grove 200 - Anderson)

Customer 1608A

Code:



Privacy Code: 66  
The information is collected under section 66 and is used for the purpose of maintaining publicly searchable registers and indexes in the Victorian Land Registry.

**AE316313L**



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)*

Certificate of Title Volume 10193 Folio 951 and Volume 10193 Folio 952

Lessor: *(full name)*

**B.B. OLIVES PTY LTD** ACN 083 992 367 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 2029

Commencement date:

27 April 2006

Rental:

\$400,000 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 negated or modified)*

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

Dated: 27 April 2006

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

  
27 APR. 2006

## ANNEXURE PAGE

Approved Form A1  
Victorian Land Titles Office

Transfer of Land Act 1958

This is page 9 of *Approved Form 26 (Lease)* dated 27 April 2006 between B.B. OLIVES PTY LTD ACN 083 992 367 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 B.B. Olives Pty Ltd

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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 the Growers under paragraph 9.3.

## 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 the Sub-Lease ("Past Grower"):

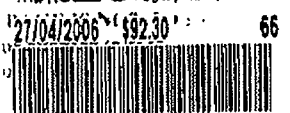
- (a) with the consent of the Lessor, the Lessee may sub-underlease or licence the Lessor to occupy and use that part of the Land that was occupied by the Past Grower under its Sub-Lease, with the intent that the Lessee will no longer be able to have the benefit of this Lease in respect of that part of the Land after termination;
- (b) the sub-underleasing or licencing to the Lessor of part of the Land under this paragraph 11.2 is without prejudice to any rights and obligations that may have

Approval No. 330056A



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**AE316313L**



## Lease

### Section 66(1) Transfer of Land Act 1958

Lodged at the Land Titles Office by:

Name: Stedman Cameron

Phone: 9670 7211

Address: 179 Queen St, Melbourne (DX 217)

Ref: A60197 (Grove 452 - Kooloonong)

Customer 1608A

Code:



**AE316329U**

27/04/2006 \$92.30 66



Privacy Co

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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)

*DAVEAT*

Certificates of Title Volume 10707 Folios 612- 615

Lessor: (full name)

**B.B. OLIVES PTY LTD** ACN 083 992 367 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 2029

Commencement date: 27 April 2006

Rental:

**\$904,000 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 negated or modified)

As appears from the annexure of 14 pages, making 15 in total

Dated: 27 April 2006

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

*[Signature]*  
27 APR 2006

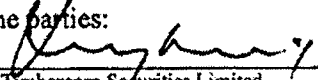
## ANNEXURE PAGE

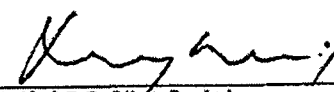
Approved Form A1  
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Transfer of Land Act 1958

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For and on behalf of B.B. Olives Pty Ltd

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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.

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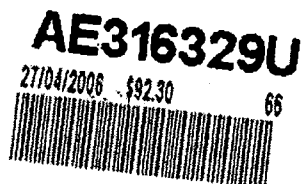
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- (b) the sub-underleasing or licencing to the Lessor of part of the Land under this paragraph 11.2 is without prejudice to any rights and obligations that may have

Approval No. 330056A

A1



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2. If multiple copies of a mortgage are lodged, original Annexure Pages 1
3. The Annexure Pages must be properly identified and signed by the party attached.
5. All pages must be attached together by being stapled in the top left corner.



**Sub-lease**

**B. B. Olives Pty Ltd**

**Timbercorp Securities Limited**

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

## **2006 Timbercorp Olive Project**

**NM TAYLOR**  
LAWYERS

Level 7  
350 Collins Street  
MELBOURNE VIC 3000

Telephone: 9600 3525  
Facsimile: 9600 3527

- 
- (b) Timbercorp Securities represents and warrants that:
    - (i) as at the date of execution of this Deed, the Head Leases are valid and subsisting;
    - (ii) Timbercorp Securities is entitled under the Head Leases to grant the sub-lease under this Deed; and
    - (iii) any consents which may be required to the granting of the Sub-lease have been, or will be, 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 Timbercorp Securities 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**

### **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 clause 10.5, this Deed will continue until the earlier of:
  - (i) the date which is one day before the expiry or termination of all of the Head Leases between Timbercorp Securities and the Land Owner;
  - (ii) termination of the Participating Grower's Participating Interest in the Project;
  - (iii) 29 June 2029; 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) Any structures or plant and equipment of any description which belong to the Participating Grower must be removed from the relevant Grovelots within 30 days after the end of this Deed. If the Participating Grower does not comply



0 2006 006

**Grovelot Management  
Agreement**

**Timbercorp Securities Limited**

**Each Several Participant Grower  
named in the First Schedule to  
this Agreement**

**2006 Timbercorp Olive Project**

---

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

### **2.1 Term**

- (a) This Agreement will commence on the Commencement Date.
- (b) Subject to clauses 15.1 to 15.3, this Agreement will continue until the earlier of:
  - (i) termination of the Participant Grower's participation in the Project;
  - (ii) 30 June 2030;
  - (iii) termination of the Sub-lease; and
  - (iv) termination of the Project.

---

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

### **3.1 No Partnership etc**

The relationship amongst the Participant Growers and between the Participant Growers and Timbercorp Securities is not, is not intended to be, is not deemed to be and is not to be treated as, a partnership association or a joint venture, other than the Joint Venture which may comprise a Participant Grower.

### **3.2 Project**

The parties expressly agree and acknowledge that:

- (a) each party is an independent contracting party; and
- (b) no party has any authority or power for or on behalf of any other party to enter into any contract, to pledge any credit, to incur any liabilities, to assume any obligations or to make any warranties or representations whatsoever except as specifically provided by this Agreement.

---

## **4. APPOINTMENT OF TIMBERCORP SECURITIES**

### **4.1 Engagement of Timbercorp Securities**

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

### **4.2 Timbercorp Securities to Carry out Grove Services as Independent Contractor**

The Parties agree that Timbercorp Securities will carry out the Grove Services as an independent contractor and not as agent of the Participant Grower.

### **4.3 Authority to Act**

Timbercorp Securities does not have any authority to act for, or to assume any obligation or liability on behalf of, the Participant Grower except such authority as is conferred on Timbercorp Securities by this Agreement or the Constitution.

**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**

**2006 OLIVE PROJECT  
WATER ENCUMBRANCES**

Property	Owner	Water Share ID	Volume	First Mortgagee	Mortgage ID
Boundary Bend	B.B. Olives Pty Ltd	WEE018318	4972.3	BOSI Security Services Ltd	MOR001534
Boundary Bend	B.B. Olives Pty Ltd	WEE035530	206.0	BOSI Security Services Ltd	MOR001534
Boundary Bend	B.B. Olives Pty Ltd	WEE035721	2356.0	BOSI Security Services Ltd	MOR001534
Boundary Bend	B.B. Olives Pty Ltd	WEE035747	994.0	BOSI Security Services Ltd	MOR001534
Boundary Bend	B.B. Olives Pty Ltd	WEE037487	250.0	BOSI Security Services Ltd	MOR001534
Boundary Bend	B.B. Olives Pty Ltd	WEE042816	40.0	BOSI Security Services Ltd	MOR001534
Boundary Bend	B.B. Olives Pty Ltd	WEE045492	523.5		

"mak-10"

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

LIST E

No 7114 of 2009

IN THE MATTER OF TIMBERCORP SECURITIES LIMITED  
(UNDER ADMINISTRATION)

ACN 092 311 469

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

MARK ANTHONY KORDA and LEANNE KYLIE CHESSER  
Second and Third Plaintiffs

CERTIFICATE IDENTIFYING EXHIBIT

---

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

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

---

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

Before me: .....

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

"MAK-11"

02006 004A

Delivered by LANDATA®. Land Registry timestamp 11/05/2006 16:44 Page 1 of 16  
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## Lease

### Section 66(1) Transfer of Land Act 1958

Lodged at the Land Titles Office by:

Name: Stedman Cameron

Phone: 9670 7211

Address: 179 Queen St, Melbourne (DX 217)

Ref: A60198 (Grove 58 - Kooloonong)

Customer 1608A

Code:



**AE316344Y**

27/04/2006 \$92.30 66



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and is used fo.

maintaining publicly searchable  
registers and indexes in the  
Victorian Land Registry.

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)

**CAVEAT**

Lot 2 on the attached plan, being part of the land described in Certificate of Title Volume 10707 Folio 617

Lessor: (full name)

**B.B. OLIVES PTY LTD ACN 083 992 367 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 2029

Commencement date: 27 April 2006

Rental:

\$116,000 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 negated or modified)

As appears from the annexure of 14 pages and one plan, making 16 in total

Dated: 27 April 2006

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

x66

9/1/10707 F.617  
(Pt).

*[Signature]* 3.5.06.

*[Signature]*  
27 APR 2006

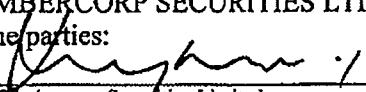
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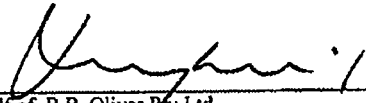
Approved Form A1  
Victorian Land Titles Office

Transfer of Land Act 1958

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Signatures of the parties:

  
for and on behalf of Timbercorp Securities Limited

  
For and on behalf of B.B. Olives Pty Ltd

### 2. CAPACITY OF THE LESSEE

#### 2.1. Capacity of Lessee

The parties acknowledge that the Lessee has entered into this Lease in its personal capacity.

#### 2.2. Lease is not Scheme Property

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

### 3. RENT PAYMENTS

3.1. The Lessee must pay the Rent to the Lessor, as and when and to the extent it receives rent from the Growers under the Sub-lease, and by no later than 60 days after receiving the rent from Growers under the Sub-lease.

3.2. Where the amount of rent received from the Growers under the Sub-lease is less than the Rent, the Lessee must pay to the Lessor that lesser amount. At the time it pays rent, the Lessee must also pay GST on the Rent in accordance with this Lease.

### 4. RATES, TAXES AND CHARGES

4.1. The Lessor must pay all charges and assessments levied upon the Land and or the Lessor in respect of the Land, including, but not limited to:

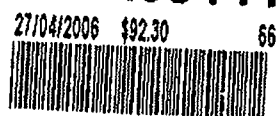
Approval No. 330056A

# A1



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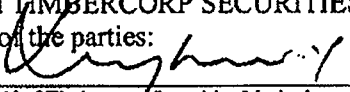
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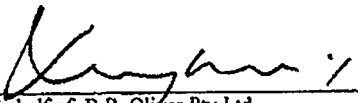
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Signatures of the parties:

  
for and on behalf of Timbercorp Securities Limited

  
For and on behalf of B.B. Olives Pty Ltd

## 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

The Lessor consents and authorises the Lessee to enter into Sub-lease with Growers.

9.3. 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-lease, on the same terms and conditions as the Growers are granted the Sub-lease, 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-lease.

### 9.4. Lessee must not mortgage its interest

The Lessee must not mortgage, charge or otherwise encumber its estate or interest in this Lease without the 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.

Approval No. 330056A

# A1



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**AE316344Y**





## Lease

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Ref: A60193 (Grove 200 - Anderson)

Customer 1608A

Code:



Privacy Code  
The information is collected under section 66(1) and is used for the purpose of maintaining publicly searchable registers and indexes in the Victorian Land Registry.

**AE316313L**

27/04/2006 \$92.30 66



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Certificate of Title Volume 10193 Folio 951 and Volume 10193 Folio 952

Lessor: (full name)

**B.B. OLIVES PTY LTD** ACN 083 992 367 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 2029

Commencement date:

27 April 2006

Rental:

\$400,000 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 negated or modified)

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

Dated: 27 April 2006

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

  
27 APR 2006

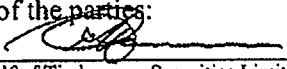
## ANNEXURE PAGE


Approved Form A1  
Victorian Land Titles Office

### Transfer of Land Act 1958

This is page 5 of *Approved Form 26 (Lease)* dated 27 April 2006 between B.B. OLIVES PTY LTD ACN 083 992 367 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 B.B. Olives Pty Ltd

## 2. CAPACITY OF THE LESSEE

### 2.1. Capacity of Lessee

The parties acknowledge that the Lessee has entered into this Lease in its personal capacity.

### 2.2. Lease is not Scheme Property

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

## 3. RENT PAYMENTS

3.1. The Lessee must pay the Rent to the Lessor, as and when and to the extent it receives rent from the Growers under the Sub-lease, and by no later than 60 days after receiving the rent from Growers under the Sub-lease.

3.2. Where the amount of rent received from the Growers under the Sub-lease is less than the Rent, the Lessee must pay to the Lessor that lesser amount. At the time it pays rent, the Lessee must also pay GST on the Rent in accordance with this Lease.

## 4. RATES, TAXES AND CHARGES

4.1. The Lessor must pay all charges and assessments levied upon the Land and or the Lessor in respect of the Land, including, but not limited to:

Approval No. 330056A



1. If there is insufficient space to accommodate the required information the words "See Annexure Page 2" (or as the case may be) and enter a under the appropriate panel heading. **THE BACK OF THE ANNEXURE**
2. If multiple copies of a mortgage are lodged, original Annexure Pages
3. The Annexure Pages must be properly identified and signed by the p. attached.
5. All pages must be attached together by being stapled in the top left c

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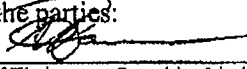
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### 9. ASSIGNMENTS, SUB-LEASES AND MORTGAGES

#### 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

The Lessor consents and authorises the Lessee to enter into Sub-lease with Growers.

#### 9.3. 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-lease, on the same terms and conditions as the Growers are granted the Sub-lease, 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-lease.

#### 9.4. Lessee must not mortgage its interest

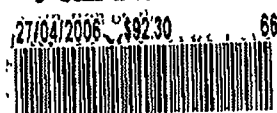
The Lessee must not mortgage, charge or otherwise encumber its estate or interest in this Lease without the prior written consent of the Lessor. The consent may be granted conditionally or may be refused if the security documents entitle the mortgagee to enter into possession of the Land. In any other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

Approval No. 330056A



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## Lease

### Section 66(1) Transfer of Land Act 1958

Lodged at the Land Titles Office by:

Name: Stedman Cameron

Phone: 9670 7211

Address: 179 Queen St, Melbourne (DX 217)

Ref: A60197 (Grove 452 - Kooloonong)

Customer 1608A

Code:



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27/04/2006 \$92.30 66



**Privacy Code**

The information collected under this code and is used for the purpose of maintaining publicly searchable registers and indexes in the Victorian Land Registry.

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)

*CAVEAT*

Certificates of Title Volume 10707 Folios 612- 615

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from the Commencement Date to 30 June 2029

Commencement date: 27 April 2006

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As appears from the annexure of 14 pages, making 15 in total

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*[Signature]*  
27 APR 2006

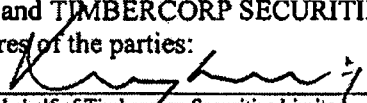
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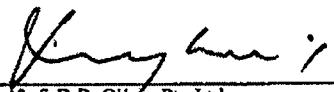
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## AE316329U

27/04/2006 \$92.30 66



**Sub-lease**

B. B. Olives Pty Ltd

Timbercorp Securities Limited

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

**2006 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

- 
- (a) 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) 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.
- 

## **10. TERMINATION OF DEED**

### **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 paragraphs 10.2(b) and 10.2(c) and without prejudice to Timbercorp Securities' rights under this Deed, 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) Where Timbercorp Securities is the Responsible Entity at the relevant time, the provisions relating to default and termination as set out in clauses 18.3 to 18.4 of the Constitution are to apply.

### **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