

**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 -**

**2007 TIMBERCORP OLIVE PROJECT (ARSN 123 155 715)**

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Date of document: June 2009

Filed on behalf of: the Plaintiffs

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**A 2007 Timbercorp Olive Project (ARSN 123 155 715)**

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

- 1 I am the voluntary administrator of the first plaintiff Timbercorp Securities Limited (TSL) with Leanne Kylie Chesser. Except where I otherwise indicate, I make this affidavit from my own knowledge. Where I depose to matters from information or belief, I believe those matters to be true. I am authorised by Ms Chesser to make this

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

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

3 In this affidavit I refer to two other affidavits:

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

4 TSL is the responsible entity for a number of forestry and horticultural schemes which are registered managed investment schemes, including the 2007 Timbercorp Olive Project, which has the Australian Registered Scheme Number 123 155 715 (**2007 Olive Scheme**).

## 5 **2007 Olive Scheme Documents**

5.1 The 2007 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 2007 Olive Scheme is constituted by the following documents:

- (a) the constitution dated 15 December 2006 (O 2007 001) and supplemental deeds dated 21 December 2006 (O 2007 001A) and 25 January 2007 (O 2007 001B), which bind TSL (in its capacity as responsible entity for each scheme) and each of the Growers (**Constitution**);

- (b) a product disclosure statement dated 7 February 2007 (O 2007 000) describing the 2007 Olive Scheme including a summary of the key documents and application and power of attorney forms (**PDS**);
- (c) a custody agreement dated 18 December 2006 (O 2007 003), between Trust Company Limited (ABN 59 004 027 749) and TSL (in its capacity as the responsible entity), by which TSL agreed to appoint Trust Company Limited as custodian to hold the Scheme Assets on the terms and conditions of the Agreement (**Custody Agreement**);
- (d) the 2007 Olive Scheme was operated at two properties on which the crop was to be grown (**Land**), each with a lease agreement. Leases were concluded between TSL (in its personal capacity) and the land owner B.B. Olives Pty Ltd (ACN 083 992 367) (Administrators Appointed) (**Landowner**) for each property. Those were:
  - (i) 'Anderson Top', dated 19 January 2007 (O 2007 004A); and
  - (ii) 'Suttons Top', dated 19 January 2007 (O 2007 004),
 (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 CD marked MAK-1. Now produced and shown to me marked **MAK-2** is a table prepared by my solicitors setting out the title particulars for the Land. Where the volume and folio number or certificate of title for the relevant section of Land has changed since the lease and subleases set out above were entered into, the new volume and folio numbers are set out in MAK-2;

- (e) an undated sublease (O 2007 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**);
- (f) management agreement dated 7 February 2007 (O 2007 007), by which TSL (in its capacity as responsible entity) engaged Olivecorp Management Limited (ACN 089 542 343) (Administrators appointed) (**OML**) to manage the 2007 Olive Scheme Grovelots and procure the processing of the olives into olive oil (**Management Agreement**);

- (g) an undated grower agreement dated (O 2007 006) (referred to as the Grovelot Management Agreement), by which the Growers engaged TSL (in its capacity as responsible entity) to manage, cultivate, harvest, process and market the crop grown on the 2007 Olive Scheme Grovelots, and to do other things (**Grower Agreement**);
- (h) a management agreement dated 7 February 2007 (O 2007 008), by which OML engaged Boundary Bend Estate Management (ABN 91 080 184 925) (**BBEM**) to cultivate and manage the 2007 Olive Scheme grove, a task that included harvesting, processing and marketing (**Olive Grove Management Agreement**);
- (i) a distribution agreement dated 20 May 2006 (O 2007 012) by which the OML engaged Boundary Bend Marketing Pty Ltd (ACN 118 216 863) (**BBM**) as exclusive distributor of the products of the 2007 Olive Scheme (**Distribution Agreement**); and
- (j) a tree supply agreement dated 7 February 2007 (O 2007 009), between the Landowner and Pengala Pty Ltd (ACN 084 730 101) (**Pengala**) by which Pengala agrees to sell and supply olive trees to be planted on Grove 300 (**Tree Supply Agreement**);
- (k) a capital works agreement dated 7 February 2007 (O 2007 010), by which the Landowner engaged BBEM as an independent contractor to undertake the capital works necessary to establish the grove on the land (**Capital Works Agreement**);
- (l) a storage agreement dated 7 February 2007 (O 2007 011), by which Pengala agreed to provide storage in its warehouse for olive oil produced by OML from the 2007 Olive Scheme groves (**Storage Agreement**);

**(Key Scheme Documents)**

- 5.3 Now produced and shown to me marked **MAK-3** is a structure diagram for the 2007 Olive Scheme.
- 5.4 There are 471 Growers in the 2007 Olive Scheme and a total of 2,998 grovelots. There are two projects within the 2007 Olive Scheme. There are 2,440 grovelots in the first scheme (**2007 Olive Early**) and 558 grovelots in the second scheme (**2007**

**Olive Post June**). Now produced and shown to me marked **MAK-4** is a confidential exhibit (on computer disc) listing the Growers for the 2007 Olive Scheme.

**6 Growers' contributions to the 2007 Olive Scheme**

- 6.1 The Growers' obligations to contribute to the 2007 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, under the Sub-Lease or under 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 Agreements and Sub-Lease (clause 9.3(a)).
- 6.4 TSL (as Responsible Entity), as agent and attorney for each Grower, entered into the Sub-Lease with the Landowner and TSL (in its personal capacity). Under the Sub-Lease, each Grower (amongst other things):
- (a) must pay annual rent per Grovelot to TSL (clause 7.1);
  - (b) must, at its own expense, 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 Growers Agreement, the Growers must pay annual management fees and charges to TSL (in its personal capacity) (clause 11.3).
- 6.6 Under the Constitution, TSL (as Responsible Entity) is required pay into a separate account (the **Agency Account**), amongst other things, the proceeds of the sale of the crop and from the sale of product produced from the olives and crop (**Proceeds**) (clause 13.6).

6.7 Each Grower is entitled to the money in the Agency Account which represents its participating interest in the Proceeds, less any fees or amounts payable under (amongst other things):

- (a) the Grower's Sub-Lease;
- (b) the Grower Agreement;
- (c) the Constitution (clause 13.7(a)).

6.8 The Grower authorises TSL (as responsible entity) to make these 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 2007 Olive Scheme**

7.1 The solvency of the 2007 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 2007 Olive Scheme is represented by a collection of contracts which create rights and impose obligations.

7.2 To analyse whether the 2007 Olive Scheme is solvent I have instructed my staff to prepare a forecast cashflow statement for the 2010 harvest, excluding recovery of costs from, and distribution of proceeds to Growers, to show the forecast cash flow for the 2007 Olive Scheme. Now produced and shown to me marked **MAK-6** is the Solvency Analysis (**Solvency Analysis**). Information about both the 2007 Olive Early (shown as 2007E) and 2007 Olive Post June (shown as 2007P) for the 2007 Olive Scheme appears in this analysis.

## 8 **Cashflow - Historic**

8.1 The final section of the Solvency Analysis shows the net operating cashflow to date for the years since the 2007 Olive Scheme began on a financial year basis (July 1 to June 30). For each of the financial years since the 2007 Olive Scheme began, each of the 2007 Olive Early and 2007 Olive Post June had a negative net operating cashflow. The 2009 net operating cashflow for each of the 2007 Olive Early and

2007 Olive Post June for the 2007 Olive Scheme is an estimate and will change as the proceeds from the sale of the 2008 and 2009 crops are received.

## 9 **Projected Cashflow 2010**

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

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

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

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

- (a) Litres per hectare - this is the estimated yield per hectare of the crop and is a Timbercorp management projection based on its experience.
- (b) The yield depends on a number of factors including rainfall, storms, water supply, variations in soil type, pestilence, vermin, disease, frost and wind, as well as horticultural practices. While all efforts are made to minimise annual variations in yields and production, yields may vary from tree to tree and harvest to harvest. The actual yield in litres per year for the 2007 Olive Scheme from the first crop in 2008 up to the estimate for 2010 is summarised below:

<b>Crop Year</b>	<b>2008</b>	<b>2009*</b>	<b>2010*</b>
Yield (Litres)			
2007 Early	9,767	295,763	1,053,837
Yield (Litres)			
2007 Post June	2,234	67,637	14,484
*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 per litre for the 2010 crop. The projected farm-gate price compares to an average price of \$4.50 per litre achieved for the 2008 crop sold over the last 12 months and represents a small uplift over the current, relatively low market price of \$4.30. Farmgate prices achieved in recent years are:

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

\*Forecast

- 9.4 "Gross Grower Proceeds" on the Solvency Analysis records the estimated gross sales.

*Scheme Costs - Explanation, Variables and Assumptions*

- 9.5 BBM deducts sales and related costs including a brokerage charge of 1.5% of gross sales and an estimate of sales and marketing overheads relating to bulk oil sales (approximately \$0.13 per litre for the 2010 crop) prior to remitting proceeds to TSL (through the Agency Account).
- 9.6 In addition before proceeds are distributed to Growers the TIM Variable Management Fee is deducted. This is a fee TSL charges the Growers to manage the lot on the Growers' behalf. It is charged at 3.64% of the Growers' net sales proceeds for each of the 2007 Olive Early and 2007 Olive Post June for the 2007 Olive Scheme.
- 9.7 The Grower's are responsible for the payment of operating expenditure. Even though the Timbercorp Group can no longer provide services for the 2004 Olive Scheme, I have assumed an alternative provider will charge a like fee. They key variables and assumptions underpinning the expenses analysis are:
- (a) Processing fee - a fee of \$175 per tonne adjusted annually for the Consumer Price Index;
  - (b) Base Admin Fee per Lot - this fee is billed by TSL to administer the 2007 Olive Scheme. It is calculated as a fixed charge per lot of \$70 (base) and adjusted annually for the Consumer Price Index for each of the 2007 Olive Early and 2007 Olive Post June of the 2007 Olive Scheme;
  - (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 (Pengala Pty Ltd ACN 084 730 101) a division of the Boundary Bend Group, provides grove agronomy services and specialist technical advice. TSL collects the fee which is charged on a per hectare basis increasing annually by the CPI. The base fee at the beginning of the Scheme was \$120/Ha.
- (e) BB Management Fee - BBEM, a wholly owned subsidiary of Boundary Bend Limited (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	2007	2008	2009	2010*
Total – Murray Allocation	29%	57%	33%	40%
*Forecast				

- (g) Licence fee per lot - The licence fee is referred to in the PDS. It is payable for the use of and occupancy of the Grovelot under the Sublease. The Growers pay the licence fee on the basis that the Landowner provides the entire necessary infrastructure and other capital works to operate a commercial olive grove.
- (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.

9.8 The operational costs are charged in accordance with the 2007 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)*

9.9 The conclusion from this analysis is that for the 2010 Harvest Result the Growers will have to meet a shortfall of:

- (a) \$2,757,027 (approximately) in respect of the 2001 Olive Early; and
  - (b) \$661,994 (approximately) in respect of the 2001 Olive Post June,
- as project costs are greater than gross proceeds.

9.10 The 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 managed 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.

9.11 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 2007 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*

9.12 In addition to the operating expenditure, the 2007 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.

9.13 There is capital expenditure expected for water for the 2010 Harvest Result of:

- (a) \$2,290,047 (approximately) in respect of the 2007 Olive Early; and
- (b) \$523,708 (approximately) in respect of the 2007 Olive Post June.

9.14 There is expected expenditure for water related infrastructure, referred to in the Solvency Analysis as "Non Water Capital Expenditure" of:

- (a) \$340,291 (approximately) in respect of the 2007 Olive Early; and
- (b) \$77,821 (approximately) in respect of the 2007 Olive Post June.

9.15 It is not necessary to install 100% of the water supply infrastructure for the groves when the trees are planted as the water use requirements increase over time as the 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 2007 Olive Scheme terminate their participation in the 2007 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 Limited (Administrators appointed) and Timbercorp Lot Investments Pty Ltd (Administrators Appointed) ACN 125 427 492, both of which are Timbercorp Group companies, hold in aggregate approximately 0.2% of the total number of Grovelots in the Early Project of 2007 Olive Scheme. 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 2007 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 - in October 2008, Growers were invoiced a total of:
  - (i) \$4.1m in respect of the 2007 Olive Early; and
  - (ii) \$0.9m in respect of the 2007 Olive Post June,  
of which (respectively):

- (iii) \$0.3m or 6% remains unpaid remains unpaid for the 2007 Olive Early costs; and
  - (iv) of which \$0.2m or 18% remains unpaid for the 2007 Olive Post June costs.
- (b) loans in arrears -
  - (i) 56% of Growers in the 2007 Olive Early; and
  - (ii) 69% of Growers in the 2007 Olive Post June,

have taken out loans with Timbercorp Finance Pty Ltd (Administrators Appointed) (ACN 054 581 190) (**Timbercorp Finance**), of which:

  - (i) \$2.7m or 63%; and
  - (ii) \$0.2m or 69%,

respectively, of these loans are in arrears;
- (c) direct debit rejections - monthly loan payments to Timbercorp Finance are typically processed by direct debit. The number of direct debit rejections instigated by growers increased from:
  - (i) 33 in March 2009 to 83 in May 2009 for the 2007 Olive Early; and
  - (ii) 3 in March 2009 to 5 in May 2009 for the 2007 Olive Post June.

10.4 Furthermore, Timbercorp Finance is no longer in a position to provide finance to Growers to meet their obligations in the 2007 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 2007 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 2007 Olive Scheme over its life.
- 11.2 The Viability Analysis is based on Timbercorp management's cashflow model for the 2007 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 \$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 57%.
- 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:

(a) \$5.13m for the 2007 Olive Early; and

(b) \$1.17m for the 2007 Olive Post June,

is still required for the 2007 Olives 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 9.15, 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.

13 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.

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

14.1 If the Court orders that the 2007 Olive Scheme is to be wound up in accordance with the Constitution, most of the agreements that constitute the Scheme also end. Upon termination of the Project, the following agreements will end:

(a) the Custody Agreement (cl 10.1);

(b) the Grower Agreement (cl 2.1);

(c) the Management Agreement (cl 2.2);

(d) Head Lease - Suttons (cl 11.1);

(e) Head Lease - Andersons (cl 11.1);

- (f) the Sublease (cl 4.1); and
- (g) the Capital Works Agreement (cl 2); and
- (h) the Storage Agreement (cl 2).

14.2 As the Sublease terminates on the winding up of the 2007 Olive Scheme, if the Court orders winding up the Growers will not have a caveatable interest.

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

## 15 Impediments to Restructure

15.1 Based on legal advice I believe that the structure of the 2007 Olive Scheme means that there are a number of impediments to restructuring it. I discuss these below.

### *Encumbrances on land title*

15.2 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**).

15.3 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 (ACN 066 601 250), Westpac Banking Corporation and Australia and New Zealand Banking Group Limited (collectively the **Syndicate**) agreed to advance Timbercorp Limited (Administrators Appointed) the sum of \$200,000,000.

15.4 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 (ACN 009 413 852) in its capacity as Security Trustee;
- (b) various fixed charges;
- (c) real property mortgages over land owned by Almond Land Pty Ltd (Administrators Appointed) (ACN 091 460 392) (**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**).

15.5 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*

16 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 2007 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.

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

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

18.1 As I deposed in my Directions Affidavit and Olives and Almonds Affidavit, I consider that TSL is insolvent. If the Court does not wind up the 2007 Olive Scheme then TSL will default on its obligations under the 2007 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 (**Step In Provision**);
- (b) 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 license fee (clause 3.1) and performance of maintenance services by the Growers). Therefore, as TSL is insolvent, the Growers may be obligated to continue to pay fees under the Sub-Lease;

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

18.2 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: .....

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-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**

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  
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First Plaintiffs**

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

**CERTIFICATE IDENTIFYING EXHIBIT**

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Date of document: June 2009  
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Ref: 011499489  
(Leon Zwier)

---

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

Before me: .....

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

"MAK-2"

2007 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 300 (Suttons)	Vol 8876 Fol 208	BOSI Security Services Ltd	AG323075S
			Boundary Bend - Vic - Grove 200/700 (Andersons)	Vol 10193 Fols 951 and 952	BOSI Security Services Ltd	AG323075S

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  
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INVESTMENTS SCHEMES LISTED IN SCHEDULE 1  
First Plaintiffs**

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

**CERTIFICATE IDENTIFYING EXHIBIT**

---

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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Ref: 011499489  
(Leon Zwier)

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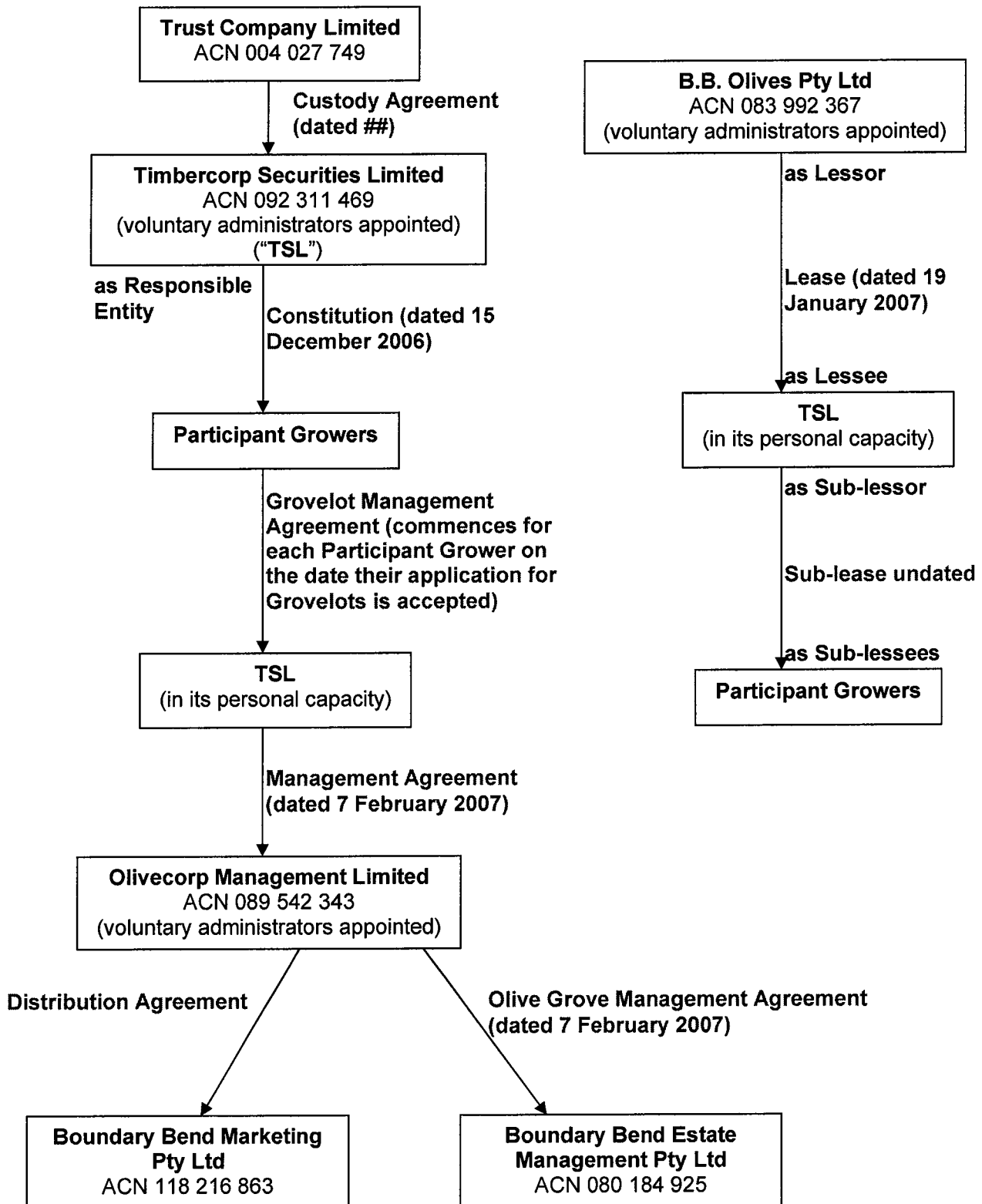
This is the exhibit marked "**MAK-3**" now produced and shown to **MARK ANTHONY KORDA** at  
the time of swearing his affidavit on June 2009.

Before me: .....

**Exhibit "MAK-3"**  
**Structure diagram for the 2007 Olive Scheme**

"MAK-3"

## STRUCTURE DIAGRAM 2007 TIMBERCORP OLIVE PROJECT



r43.06

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

**LIST E**

No 7114 of 2009

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

**ACN 092 311 469**

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

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

**CERTIFICATE IDENTIFYING EXHIBIT**

---

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

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

---

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

Before me: .....

**Exhibit "MAK-4"**  
**Confidential exhibit - CD of Register of Growers  
and Sale Agreements for the 2007 Olive Scheme**



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

**LIST E**

No 7114 of 2009

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

**ACN 092 311 469**

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

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

**CERTIFICATE IDENTIFYING EXHIBIT**

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Date of document: June 2009  
Filed on behalf of: the Plaintiffs  
Arnold Bloch Leibler  
Lawyers and Advisers  
Level 21  
333 Collins Street  
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Solicitor's Code: 54  
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Ref: 011499489  
(Leon Zwier)

---

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

Before me: .....

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

"MAK-5"

## **CONSTITUTION**

**2007 Timbercorp Olive Project**

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

**2007 Timbercorp Olive Project**

**[EXECUTION COPY]**

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## **6. APPLICATION PROCEDURE**

### **6.1 Oversubscriptions**

The Responsible Entity reserves the right to accept Applications for Grovelots in excess of that number of Grovelots for which subscription or purchase or invitations to subscribe or apply for are sought under the PDS.

### **6.2 Receipt of Application**

The Responsible Entity may itself or by its duly authorised representatives receive Applications under the PDS.

### **6.3 How to Apply**

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

- (a) an Application for Grovelots, incorporating an offer to become a Participant Grower under this Deed, being in the form attached to the PDS, and signed or executed by the Applicant;
- (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 Moneys 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 Moneys 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

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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.

## **6.5 Condition as to Finance**

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

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## **7. REFUSAL OF APPLICATIONS**

### **7.1 Refusal of Application**

The Responsible Entity may in its absolute discretion give notice in writing to any Applicant to the effect that its Application has been refused.

### **7.2 Notice of Refusal**

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

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

without giving any reasons for the refusal.

### **7.3 Repayment to Applicant**

Upon the Responsible Entity giving notice to an Applicant that their Application has been refused, the Applicant will be entitled to be repaid the Application Moneys in relation to that Application, or so much as has been paid by the Applicant, with interest (if any) earned thereon, after deduction of all bank fees and government taxes and charges in relation to the deposit and withdrawal of the money and any other expenses

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## **9. RESPONSIBLE ENTITY TO ARRANGE ENTRY INTO SUB-LEASE AND GROVELOT MANAGEMENT AGREEMENT**

### **9.1 Preparation of Sub-Lease and Grovelot Management Agreement**

Following acceptance of an Application, the Responsible Entity will prepare the Sub-lease and Grovelot Management Agreement. The Sub-lease and Grovelot Management Agreement:

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

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

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

- (a) the Sub-lease and Grovelot Management Agreement are in the form required by this Deed and have been duly entered into by all parties;
- (b) Timbercorp Securities has the capacity to grant the Sub-lease;
- (c) all necessary condition precedents to the grant of the Sub-lease and entry into the Sub-lease and Grovelot Management Agreement have been, or will be, satisfied;
- (d) all necessary consents to the grant of the Sub-lease and entry into the Sub-lease and Grovelot Management Agreement have been, or will be, obtained;
- (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 Moneys is to be released pursuant to clause 9.3.

### **9.3 Release of Application Moneys**

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

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 Moneys 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 Moneys must be paid to the Responsible Entity in accordance with the requirements of clause 6.4.

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**(b) Refund of Application Moneys**

Where the Responsible Entity does not issue a Grovelot to an Applicant within the time required by the Corporations Act, the Responsible Entity must refund to the Applicant the relevant Application Moneys paid with any interest earned in relation to that Application Moneys, 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 Moneys at any time, but not before the first transfer of Application Moneys 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.

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

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

Within 2 months after the allotment of Grovelots to a Participant Grower, the allocation of Grovelots to a Participant Grower under paragraph 8.7(b) in substitution for other Grovelots or when accounting to a Participant Grower after any change in the holding of the Participant Grower in the Register, the Responsible Entity must issue to the Participant Grower a Grovelot Statement which must be substantially in the form set out in the Fourth Schedule or such other form as the Responsible Entity determines.

### **10.2 Grovelot Statements**

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

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### 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 or her 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-leases 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-leases plus interest.
  - (iv) any Outstanding Loan Amounts due and payable by the Participant Grower for the Project for the period up to and including the date upon which the next distribution is to be made (in order of the date on which the amounts became due and payable, beginning with the oldest amount due and payable);
  - (v) any fees or other amounts due and payable under the constitution and grower agreements of Other Timbercorp Projects (in order of the date on which the amounts became due and payable, beginning with the oldest amount due and payable); and
  - (vi) any Outstanding Loan Amounts due and payable by the Participant Grower for Other Timbercorp Projects or any other purpose for the period up to and including the date upon which the next distribution is to be made (in order of the date on which the amounts became due and payable, beginning with the oldest amount due and payable).
- (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) Before making any deductions listed in **paragraph 13.7(a)(iv)-(vi)**, the Responsible Entity must be in receipt of a certificate from the person to whom the moneys owing are due and payable, certifying the amounts payable. Such certificate shall, in the absence of manifest error, be conclusive evidence of the amounts due and payable.

- 
- (d) 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.
  - (e) 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.
  - (f) 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.

### **13.12 Indemnity**

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

### **13.13 Pooling**

Each Participant Grower severally authorises Timbercorp Securities to:

- (a) gather in and store each Participant Grower's Participating Interest in the Olives and the Crop;
- (b) then procure the processing of each Participant Grower's Participating Interest in the Crop; and



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## **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 26.6, the entire liability of each Participant Grower is limited to the balance of any Application Moneys 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 Moneys 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.

**Sub-lease**

**B. B. Olives Pty Ltd**

**Timbercorp Securities Limited**

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

**2007 Timbercorp Olive Project**

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

Level 7  
350 Collins Street  
MELBOURNE VIC 3000

Telephone: 9600 3525  
Facsimile: 9600 3527

- 
- (b) is entitled to full and free access with or without vehicles to the relevant Grovelots for the purpose of accessing neighbouring land owned or occupied by Timbercorp Securities, the Land Owner or other Participant Growers; 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 700 and Grove 300,

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.

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## **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 2007, nil;
  - (ii) for each of the Financial Years ending 30 June 2008 and 2009, \$454.55 payable on 31 October 2007 and 2008 respectively;
  - (iii) for the Financial Year ending 30 June 2010, \$545.45 payable on 31 October 2009;
  - (iv) for the Financial Year ending 30 June 2011, \$624.55 payable on 31 October 2010;
  - (v) for the Financial Year ending 30 June 2012, \$877.86 payable on 31 October 2011;
  - (vi) for the Financial Year ending 30 June 2013, \$900 payable on 31 October 2012, and;
  - (vii) 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 2008, \$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.

## **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 7.2 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 the amount so paid together with interest thereon calculated under clause 7.5 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 and performed 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**

**Grovelot Management  
Agreement**

**Timbercorp Securities Limited**

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

**2007 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 1.82% 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;
  - (c) in consideration of the Grove Services and all other services to be provided under this Agreement in the period 1 July 2008 to 30 June 2009:
    - (i) an amount of \$1,090.91 per Grovelot payable on 31 October 2008; and
    - (ii) for each Grovelot, an amount equal to 1.82% 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
  - (d) 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.

## **11.2 Annual Fee and Charges Payable by Post 30 June Participant Growers**

A Participant Grower who is a **Post 30 June Grower** must pay Timbercorp Securities the following management fees and charges:

- (a) in consideration of the Grove Services and all other services to be provided under this Agreement in the period from the Commencement Date to 30 June 2008, an amount of \$6,272.72 per Grovelot payable in advance on or before the Commencement Date; and
- (b) in consideration of the Grove Services and all other services to be provided under this Agreement in the period 1 July 2008 to 30 June 2009:
  - (i) an amount of \$1,090.91 per Grovelot payable on 31 October 2008; and
  - (ii) for each Grovelot, an amount equal to 3.64% 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 2009 commencing on 31 October 2009 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

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allocation of overhead costs incurred by Timbercorp Securities or its contractors that will not exceed \$50 per relevant Grovelot, Indexed (adopting 30 June 2007 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.

#### **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



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)

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

Before me: .....

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

2007 Olive Scheme - Forecast 2010 Harvest Result

2007 Timbercorp Olive Project (ARSN 123 155 715)

Gross Grower Proceeds	2,894,307	661,895	3,556,202
less: Sales & Related Costs	(122,627)	(28,043)	(150,671)
Growers Net Proceeds	2,771,680	633,851	3,405,531
TIM Mgmt Fee	(100,788)	(23,049)	(123,837)
Admin Fee	(186,906)	(42,743)	(229,649)
Farm Operating Costs	(3,043,410)	(695,993)	(3,739,403)
Technical Fee	(81,206)	(18,571)	(99,777)
BB Management Fee	(183,000)	(41,850)	(224,850)
Temp Water	(602,488)	(169,275)	(771,763)
Licence Fee	(1,330,909)	(304,364)	(1,635,273)
AOA Levy	0	0	0
Total Operating Expenditure	(5,528,707)	(1,295,845)	(6,824,552)
<b>Grower Net Operating Cashflow before CAPEX</b>	<b>(2,757,027)</b>	<b>(661,994)</b>	<b>(3,419,021)</b>
Water Capital Expenditure	(2,290,047)	(523,708)	(2,813,755)
Non Water Capital Expenditure	(340,291)	(77,821)	(418,112)
2010 Capital Expenditure	(2,630,338)	(601,529)	(3,231,867)
<b>Net Operating Cashflow after CAPEX</b>	<b>(5,387,365)</b>	<b>(1,263,523)</b>	<b>(6,650,888)</b>

2010 Crop Variables

a	Litres per Ha (4 lots per hectare)	999	999
a	Litres per Lot	250	250
b	Wholesale Price (litre) \$	4.75	4.75
c	Net Sales Price (litre) \$ - Wholesale less sales & related costs	4.55	4.55
d	Sold Area (Ha)	610.00	139.50
e	Water Allocation	40%	40%
e	Temp Water Price \$	350	350
f	TIM Variable Mgmt Fee (PDS)	3.64%	3.64%
g	JV Share	0%	0%
h	Processing Fee (per tonne adjusted annually for CPI from Project C'ment)	\$175	\$175
i	Base Admin Fee per Lot (Adjusted annually for CPI from Project C'ment)	70	70
j	Licence Fee per Lot (FY10 Rate per PDS)	545	545
k	CPI Assumption	2.5%	2.5%

Net Operating Cashflow Incurred to Date

2007	(12,633,277)		(12,633,277)
2008	(3,770,922)	(3,511,640)	(7,282,563)
2009	(3,770,898)	(862,361)	(4,633,259)
Total	<b>(20,175,098)</b>	<b>(4,374,001)</b>	<b>(24,549,099)</b>
Number of Grovelots	2,440	558	2,998
Cumulative Cashflow per Grovelot			
2007	(5,178)		(4,214)
2008	(1,545)	(6,293)	(2,429)
2009	(1,545)	(1,545)	(1,545)
Total	<b>(8,268)</b>	<b>(7,839)</b>	<b>(8,188)</b>

**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**

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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)

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

Before me: .....

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

# 2007 Timbercorp Olive Project (ARSN 123 155 715)

"MAK-7"

Project: 2007 Olive Early – 2,440 lots					
Grower Obligations	Total Arrears	Amount Invoiced (Oct 2008)	Amount Outstanding	% Outstanding	
	\$261,481	\$4,148,000	\$256,508	6%	
Timbercorp Finance Funding	Amount Borrowed	Value of loans in arrears	% of loans in arrears		
	\$4,302,438	\$2,715,181	63.1%		
Percentage of growers with loans <sup>1</sup>	56.1%				
Failed Direct Debits	Pre Appointment (March) #	Pre Appointment Value	Post Appointment (May) #	Post Appointment Value	
	33	\$15,769	83	\$31,520	
1. This is funding provided by Timbercorp Finance. Status of loans provided by other lenders is unknown.					
Lots held by Timbercorp Group					
Timbercorp Ltd		▪	0		
Timbercorp Finance Ltd		▪	0		
Timbercorp Lot Investments		▪	6		

Project: 2007 Olive Post June – 558 lots					
Grower Obligations	Total Arrears	Amount Invoiced (Oct 2008)	Amount Outstanding	% Outstanding	
	\$170,032	\$948,600	\$170,032	18%	
Timbercorp Finance Funding	Amount Borrowed	Value of loans in arrears	% of loans in arrears		
	\$263,739	\$181,163	68.9%		
Percentage of growers with loans <sup>1</sup>	68.8%				
Failed Direct Debits	Pre Appointment (March) #	Pre Appointment Value	Post Appointment (May) #	Post Appointment Value	
	3	\$2,104	5	\$8,037	
1. This is funding provided by Timbercorp Finance. Status of loans provided by other lenders is unknown.					
Lots held by Timbercorp Group					
Timbercorp Ltd		▪	0		
Timbercorp Finance Ltd		▪	0		
Timbercorp Lot Investments		▪	0		



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  
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**ACN 092 311 469**

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

**MARK ANTHONY KORDA and LEANNE KYLIE CHESSER  
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**CERTIFICATE IDENTIFYING EXHIBIT**

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

Before me: .....

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

" MAK - 8 "

2007 Timbercorp Olive Project (ARSN 123 155 715) - 2007 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	2032
Base				(1,917)	(1,916)	(1,734)	(1,205)	(784)	(531)	(405)	(388)	(397)	(407)	(417)	(428)	(438)	(449)	(460)	(471)	(483)	(495)	(507)	(520)	(533)	(547)	2,018
\$ 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	7.59	7.79	7.99
4.00				(1,952)	(2,039)	(1,941)	(1,508)	(1,170)	(973)	(880)	(878)	(900)	(923)	(946)	(969)	(993)	(1,018)	(1,043)	(1,069)	(1,096)	(1,123)	(1,151)	(1,180)	(1,209)	(1,234)	1,734
5.00				(1,881)	(1,846)	(1,615)	(1,090)	(562)	(276)	(131)	(105)	(107)	(110)	(112)	(115)	(118)	(121)	(124)	(127)	(130)	(133)	(136)	(139)	(143)	(147)	2,182
6.00				(1,810)	(1,653)	(1,290)	(553)	45	421	617	669	686	703	721	739	758	777	796	816	837	858	879	901	924	947	2,631
7.00				(1,740)	(1,460)	(965)	(76)	653	1,118	1,366	1,443	1,479	1,516	1,554	1,593	1,633	1,674	1,716	1,759	1,803	1,848	1,895	1,942	1,991	2,040	3,079
8.00				(1,669)	(1,267)	(640)	402	1,260	1,816	2,115	2,217	2,273	2,329	2,388	2,448	2,509	2,572	2,636	2,702	2,770	2,839	2,910	2,983	3,058	3,137	3,527

2007 Timbercorp Olive Project (ARSN 123 155 715) - 2007 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	2032
-15%				(1,917)	(1,916)	(1,734)	(1,205)	(784)	(531)	(711)	(910)	(933)	(956)	(980)	(1,004)	(1,029)	(1,055)	(1,081)	(1,108)	(1,136)	(1,164)	(1,193)	(1,223)	(1,253)	(1,283)	1,716
Base				(1,917)	(1,916)	(1,734)	(1,205)	(784)	(531)	(405)	(388)	(397)	(407)	(417)	(428)	(438)	(449)	(460)	(471)	(483)	(495)	(507)	(520)	(533)	(547)	2,018
15%				(1,917)	(1,916)	(1,734)	(1,205)	(784)	(531)	(100)	135	138	142	146	149	153	157	161	165	169	174	178	183	187	191	2,321

2007 Timbercorp Olive Project (ARSN 123 155 715) - 2007 Olive Early																										
Temporary Water for 40%, 60% and 80% scenarios @ \$350 per ML																										
Water Allocation	NPV (10%)	NPV (15%)	NPV (20%)	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032
Base				(1,917)	(1,916)	(1,734)	(1,205)	(784)	(531)	(405)	(388)	(397)	(407)	(417)	(428)	(438)	(449)	(460)	(471)	(483)	(495)	(507)	(520)	(533)	(547)	2,018
40%				(1,917)	(2,016)	(2,009)	(1,573)	(1,152)	(899)	(773)	(755)	(763)	(775)	(785)	(795)	(806)	(816)	(828)	(839)	(851)	(863)	(875)	(888)	(900)	(913)	2,018
60%				(1,894)	(1,916)	(1,885)	(1,450)	(1,039)	(776)	(650)	(633)	(642)	(652)	(662)	(673)	(683)	(694)	(705)	(716)	(728)	(740)	(752)	(765)	(778)	(791)	2,018
80%				(1,752)	(1,817)	(1,768)	(1,328)	(907)	(654)	(528)	(510)	(520)	(530)	(540)	(550)	(561)	(571)	(583)	(594)	(606)	(618)	(630)	(643)	(655)	(667)	2,018

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 2015 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 \$4.56m for permanent water rights and \$0.57m 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.

2007 Timbercorp Olive Project (ARSN 123 155 715) - 2007 Olive Post June Annual Inflationary Price Adjustment - 2.5%																										
2010 Price	NPV (10%)	NPV (15%)	NPV (20%)	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032
Base \$ per litre	-\$7,416.52	-\$6,391.83	-\$5,569.24	(1,917)	(1,916)	(1,734)	(1,205)	(784)	(531)	(405)	(388)	(397)	(407)	(417)	(428)	(438)	(449)	(460)	(471)	(483)	(495)	(507)	(520)	(533)	3,817	2,018
4.00	-\$10,868.92	-\$8,609.28	-\$7,097.44	(1,952)	(2,039)	(1,941)	(1,508)	(1,170)	(973)	(880)	(878)	(900)	(923)	(946)	(969)	(993)	(1,018)	(1,043)	(1,068)	(1,096)	(1,123)	(1,151)	(1,180)	(1,209)	3,124	1,734
5.00	-\$5,410.62	-\$3,099.01	-\$4,674.64	(1,881)	(1,846)	(1,615)	(1,030)	(562)	(276)	(131)	(105)	(107)	(110)	(112)	(115)	(118)	(121)	(124)	(127)	(130)	(133)	(136)	(139)	(143)	4,217	2,182
6.00	\$47.69	-\$1,588.74	-\$2,251.83	(1,810)	(1,653)	(1,290)	(553)	45	421	617	669	686	703	721	739	758	777	796	816	837	858	879	901	924	5,511	2,631
7.00	\$5,505.99	\$1,971.52	\$170.98	(1,740)	(1,460)	(965)	(76)	653	1,118	1,366	1,443	1,479	1,516	1,554	1,593	1,633	1,674	1,716	1,759	1,803	1,848	1,895	1,942	1,991	6,404	3,079
8.00	\$10,964.30	\$5,431.79	\$2,593.78	(1,669)	(1,267)	(640)	402	1,260	1,816	2,115	2,217	2,273	2,329	2,388	2,448	2,509	2,572	2,636	2,702	2,770	2,839	2,910	2,983	3,058	7,498	3,527

2007 Timbercorp Olive Project (ARSN 123 155 715) - 2007 Olive Post June																											
	Mature Yield	NPV (10%)	NPV (15%)	NPV (20%)	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032
-15%		-\$5,943.29	-\$7,810.98	-\$6,414.27	(1,917)	(1,916)	(1,734)	(1,205)	(784)	(531)	(711)	(910)	(933)	(956)	(980)	(1,004)	(1,029)	(1,055)	(1,081)	(1,108)	(1,136)	(1,164)	(1,193)	(1,223)	(1,253)	3,079	1,716
Base		-\$7,416.52	-\$6,391.83	-\$5,569.24	(1,917)	(1,916)	(1,734)	(1,205)	(784)	(531)	(405)	(388)	(397)	(407)	(417)	(428)	(438)	(449)	(460)	(471)	(483)	(495)	(507)	(520)	(533)	3,817	2,018
15%		-\$4,889.74	-\$4,972.67	-\$4,724.21	(1,917)	(1,916)	(1,734)	(1,205)	(784)	(531)	(100)	135	138	142	146	149	153	157	161	165	169	174	178	183	187	4,556	2,321

2007 Timbercorp Olive Project (ARSN 123 155 715) - 2007 Olive Post June Temporary Water for 40%, 60% and 80% scenarios @ \$350 per ML																										
Water Allocation	NPV (10%)	NPV (15%)	NPV (20%)	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032
Base	-\$7,416.52	-\$6,391.83	-\$5,569.24	(1,917)	(1,916)	(1,734)	(1,205)	(784)	(531)	(405)	(388)	(397)	(407)	(417)	(428)	(438)	(449)	(460)	(471)	(483)	(495)	(507)	(520)	(533)	(545)	(557)
40%	-\$9,964.93	-\$8,124.34	-\$6,817.15	(1,917)	(2,016)	(2,003)	(1,573)	(1,152)	(899)	(773)	(755)	(765)	(775)	(785)	(795)	(806)	(816)	(828)	(839)	(851)	(863)	(875)	(888)	(900)	(913)	(925)
60%	-\$8,964.66	-\$7,406.59	-\$6,270.22	(1,834)	(1,916)	(1,885)	(1,450)	(1,029)	(776)	(650)	(633)	(642)	(652)	(662)	(673)	(683)	(694)	(705)	(716)	(728)	(740)	(752)	(765)	(778)	(791)	(804)
80%	-\$7,964.39	-\$6,688.83	-\$5,723.29	(1,752)	(1,817)	(1,768)	(1,328)	(907)	(654)	(528)	(510)	(520)	(530)	(540)	(550)	(561)	(571)	(583)	(594)	(606)	(618)	(630)	(643)	(655)	(667)	(680)

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 2015 and produce 685 litres per lot.
- Water allocation base case (40% in 2010, 60% in 2011, 80% in 2012 and 100% from 2013 and beyond).
- NPVs are from the growers perspective, based on current agreements and assume that all CAPEX is in place. However, CAPEX of \$1.04m for permanent water rights and \$0.13m 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.

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-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"

**Grovelot Management  
Agreement**

**Timbercorp Securities Limited**

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

**2007 Timbercorp Olive Project**

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## **1.7 Capacity of Timbercorp Securities**

Timbercorp Securities enters into this Agreement in its personal capacity.

## **1.8 Grovelot Management Agreement is not Project Property**

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

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

## **2.1 Term**

- (a) This Agreement will commence on the Commencement Date.
- (b) Subject to clause 2.1(c) and clause 2.2, this Agreement will continue until the date on which the Responsible Entity completes all of its contractual obligations to the Participant Grower in relation to the sale of the Olive Oil extracted from the Crop harvested in the financial year ending 30 June 2030.
- (c) Notwithstanding clause 2.1(b), this Agreement will terminate forthwith upon the occurrence of any of the following possible events:
  - (i) the Project is terminated;
  - (ii) the Participant Grower's participation in the Project is terminated;
  - (iii) the Sub-lease is terminated;
  - (iv) the events specified in clauses 15.1 to 15.3.

## **2.2 Extension of Term**

Timbercorp Securities may, by notice in writing to Participant Growers, extend the Term for a further period:

- (a) on the same terms and conditions as are contained in this Agreement other than this clause 2.2; and
  - (b) until the Responsible Entity completes all of its contractual obligations to the Participant Grower in relation to the sale of the Olive Oil extracted from Crop harvested in the financial year ending 30 June 2032,
- if:
- (c) before 30 June 2029, the Internal Rate of Return to a Participant Grower is not equal to or greater than 9.5% after tax; and
  - (d) the Project has not been terminated before 30 June 2030 in any manner contemplated in clause 2.1(c); and
  - (e) the Responsible Entity is reasonably satisfied that it is in the best interests of Participating Growers to extend the Term in the manner described above.
-

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contains information concerning the following matters:

- (a) the results of the harvest of Olives;
- (b) the condition of the Grove, the Participant Grower's Grovelots and Olive Trees;
- (c) any other matters which Timbercorp Securities considers material concerning the Grove, the relevant Grovelots or the Project and which ought reasonably to be made known to the Participant Grower; and
- (d) any other matter reasonably requested by the Participant Grower.

### **13.6 Statements of Income and Expenses**

Within 4 months after the end of each Financial Year, commencing at the end of the Financial Year in which the Olive Trees start to produce Crop, Timbercorp Securities will send to the Participant Grower an annual statement of income and expenses relating to the management of the relevant Grovelots and the sale of the Participant Grower's Participating Interest in the Product or Crop during the relevant Financial Year.

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## **14. DISTRIBUTIONS**

### **14.1 Distribution of Proceeds to the Participant Growers**

Subject to this Agreement, Timbercorp Securities as the Responsible Entity must pay to the Participant Grower the amount of Proceeds standing to the credit of the Participant Grower in the Agency Account in accordance with the Constitution and comply with this Agreement in those respects in its personal capacity.

---

## **15 TERMINATION AND DEFAULT**

### **15.1 Termination by the Participant Grower**

The Participant Grower may terminate this Agreement by notice in writing to Timbercorp Securities:

- (a) immediately, if Timbercorp Securities:
  - (i) goes into liquidation other than for the purposes of reconstruction or amalgamation or a Controller or Administrator is appointed in relation to the undertaking of Timbercorp Securities or any part of its undertaking;
  - (ii) ceases to carry on business; or
  - (iii) fails or neglects to pay any moneys due to the Participant Grower, or is in default of any material obligation under this Agreement and such default continues for a period of 3 months after receipt by Timbercorp Securities of written notice from the Participant Grower specifying the default and requesting that the default be remedied (except where Timbercorp Securities has advised the Participant Grower of a plan of remedial action to satisfy any such duty and has substantially completed such plan); or
- (b) 6 months (or such shorter period as Timbercorp Securities and the Participant Growers agree) after the Participant Growers by Special Resolution at a meeting of Participant Growers resolve to terminate the engagement of

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Timbercorp Securities under the Agreement.

## **15.2 Termination by Timbercorp Securities**

- (a) Subject to paragraphs 15.2(c) and without prejudice to Timbercorp Securities' rights under this Agreement, Timbercorp Securities may terminate this Agreement, with immediate effect in respect of all the Grovelots of the Participant Grower, if the Participant Grower fails to make a payment within the required time under this Agreement in relation to any Grovelot of the Participant Grower or the Constitution or commits a material breach of this Agreement in relation to any Grovelot of the Participant Grower or the Constitution and fails to remedy the breach or make reasonable compensation in money within 30 days after Timbercorp Securities has served a written notice on the Participant Grower specifying the breach and requiring the Participant Grower to remedy the breach.
- (b) If this Agreement is terminated under paragraph 15.2(a) or in accordance with paragraph 15.2(c), then:
  - (i) the Participant Grower loses all rights as a participant in the Project; and
  - (ii) the Participant Grower remains liable for payment of all fees in respect of work done by Timbercorp Securities.
- (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.

## **15.3 Termination of Sub-lease**

This Agreement terminates in respect of the relevant Grovelots immediately if the Sub-lease is terminated in respect of the relevant Grovelots for any reason.

## **15.4 Timbercorp Securities to Relinquish Property and Books and Records**

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

## **15.5 Effect of Termination**

- (a) The termination of this Agreement (whether under this clause 15 or under any other clause) will terminate the rights and obligations of the Parties under this Agreement except to the extent that those rights and obligations are expressed to survive termination.
  - (b) The termination of this Agreement will not prejudice any right, power or remedy to the extent that it accrued prior to or on termination.
-

**2007 Timbercorp Olive  
Project**

**Management Agreement**

**Timbercorp Securities Limited**

**Olivecorp Management Limited**

**2007 Timbercorp Olive Project**

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## **2.2 Termination Date**

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

- (a) termination of the Project; and
  - (b) the date on which the Responsible Entity completes of all of its contractual obligations to the Growers in relation to the sale of the Olive Oil extracted from Crop harvested in the financial year ending:
    - (i) 30 June 2030; or
    - (ii) if the Project is extended under clause 2.2 of the Grovelot Mangement Agreement, 30 June 2032.
- 

## **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

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## 15. TERMINATION

### 15.1 Termination of Agreement by TSL or OML

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

### 15.2 Termination by TSL

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

### 15.3 Change of Responsible Entity

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

TSL will be deemed to have exercised any rights of step-in which it is entitled to exercise under any contract between OML and Boundary Bend Estate Management Pty Limited (ACN 080 184 925) or any other contractor relating to the Grove Services and other services under this Agreement.

### 15.4 Effect of Termination

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

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## 16. INDEMNITY

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

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## 17. GST

- (a) If any supply made by a party ("**Supplier**") to the other ("**Recipient**") under this Agreement is a taxable supply (according to GST Law) so that the Supplier is liable to GST, the parties agree that the consideration payable for that taxable supply represents the value of the taxable supply (the "**GST Exclusive Amount**") and not the price for that taxable supply.
- (b) In addition to the GST Exclusive Amount for a taxable supply under this

Form 26

## 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: A70003 (Suttons TOP 2007)

Customer 1608A

Code:



Private  
The info  
collected  
and is us  
maintain  
registers  
Victorian

**AE871871Y**



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)

CA 47 Parish of Koorkab Crown Grant Vol.8876 Fol. 208

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 2032

Commencement date:

19 January 2007

Rental:

\$272,400.00 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: 19 January 2007

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



## ANNEXURE PAGE

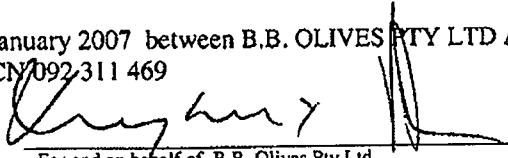
Approved Form A1  
Victorian Land Titles Office

Transfer of Land Act 1958

This is page 9 of *Approved Form 26 (Lease)* dated 19 January 2007 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

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

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

### 10.4. Lessor discharged from obligations

Where the Lessor exercises its rights under clause 10.2, and upon re-entry by the Lessor, the Lessor will be freed and discharged from any action, suit, claim or demand by, or obligation, to the Lessee under or by virtue of this Lease.

### 10.5. Lessor's rights subject to Growers' rights

The Lessor's rights under this clause 10 are subject to the rights granted by the Lessor to 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

Approval No. 330056A

# A1



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 info under the appropriate panel heading. **THE BACK OF THE ANNEXURE PAGE**
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 the mortgage.
5. All pages must be attached together by being stapled in the top left corner.

## AE871871Y

01/02/2007 \$94.60 66



## ANNEXURE PAGE


Approved Form A1  
Victorian Land Titles Office

Transfer of Land Act 1958

This is page 10 of *Approved Form 26 (Lease)* dated 19 January 2007 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

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 accrued prior to the effective date of the sub-underlease or licence as to that part of the Land.

- 11.3. Either the Lessee or the Lessor may terminate this Lease by notice in writing to the other if the terms of all of the Sub-leases are not extended from 29 June 2030 until 29 June 2032 under clause 4.2 of the Sub-leases.

## 12. SURRENDER

- 12.1. The Lessee may at any time and from time to time, with the consent of the Lessor, surrender this Lease, for the purpose of re-granting to the Lessee a lease on the same terms and conditions as this Lease, save and except that:

- (a) the leased area, if less than a whole folio of the Register shall be surveyed at the expense of the Lessee; and
- (b) these rights may not be exercised to exclude from a leased area, a Grovelot occupied by a Grower under the Sub-lease.

Approval No. 330056A

A1



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

**AE871871Y**

01/02/2007 \$94.60 66



## 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: A70003

(ANDERSON TOP 2006 and 2007)

Customer 1608A

Code:

**Privacy Colle**

The information i  
collected under st  
and is used for the  
maintaining publi

registers and inde  
Victorian Land Registry.



**AE864547Y**

29/01/2007 \$94.60 66



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)

CA 49 and 50 Parish of Koorkab CT Vol.10193 Fol. 951 and 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 2032

Commencement date:

19 January 2007

Rental:

\$1,072,000.00

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: 19 January 2007

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

## ANNEXURE PAGE

Approved Form A1  
Victorian Land Titles Office

### Transfer of Land Act 1958

This is page 9 of *Approved Form 26 (Lease)* dated 19 January 2007 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

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

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

#### 10.4 Lessor discharged from obligations

Where the Lessor exercises its rights under clause 10.2, and upon re-entry by the Lessor, the Lessor will be freed and discharged from any action, suit, claim or demand by, or obligation, to the Lessee under or by virtue of this Lease.

#### 10.5 Lessor's rights subject to Growers' rights

The Lessor's rights under this clause 10 are subject to the rights granted by the Lessor to 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"):

11.2.1 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

Approval No. 330056A

# A1



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

## AE864547Y

29/01/2007 \$94.60 66

A standard 1D barcode representing the document number AE864547Y.

## ANNEXURE PAGE

Approved Form A1  
Victorian Land Titles Office

Transfer of Land Act 1958

This is page 10 of *Approved Form 26 (Lease)* dated 19 January 2007 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

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;

11.2.2 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 accrued prior to the effective date of the sub-underlease or licence as to that part of the Land.

11.3 Either the Lessee or the Lessor may terminate this Lease by notice in writing to the other if the terms of all of the Sub-leases are not extended from 29 June 2030 until 29 June 2032 under clause 4.2 of the Sub-leases.

## 12 SURRENDER

12.1 The Lessee may at any time and from time to time, with the consent of the Lessor, surrender this Lease, for the purpose of re-granting to the Lessee a lease on the same terms and conditions as this Lease, save and except that:

12.1.1 the leased area, if less than a whole folio of the Register shall be surveyed at the expense of the Lessee; and

12.1.2 these rights may not be exercised to exclude from a leased area, a Grovelot occupied by a Grower under the Sub-lease.

12.2 At the written request of the Lessor or the Lessee at any time and from time to time, the parties agree to surrender this Lease in respect of such parts of the Land on which Olive Trees have not been established for the purposes of the Project.

Approval No. 330056A

# A1



1. If there is insufficient space to accommodate the required information in a panel of the Approved Form insert the words "See Annexure Page 2" (or as the case may be) and enter all the information on the Annexure Page under the appropriate panel heading. **THE BACK OF THE ANNEXURE PAGE IS NOT TO BE USED**
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## AE864547Y

29/01/2007 \$94.60 66



## **Sub-lease**

**B. B. Olives Pty Ltd**

**Timbercorp Securities Limited**

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

## **2007 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

- 
- (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 4.2, 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 2030, or if clause 4.2 applies, 29 June 2032; and
  - (iv) termination of the Project.

### **4.2 Extension of Term**

If the term of the Project is extended under clause 2.2 of the Grovelot Management Agreement, the Term of this Deed shall be extended and clause 4.1(b) (iii) shall be read and construed as 29 June 2032.

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

- (a) At the end of this Deed, the Participant Grower must return the relevant Grovelots to the Land Owner in good condition, but the Participant Grower is not required to remove Olive Trees or restore the relevant Grovelots to their original condition.

- 
- (b) is entitled to full and free access with or without vehicles to the relevant Grovelots for the purpose of accessing neighbouring land owned or occupied by Timbercorp Securities, the Land Owner or other Participant Growers; 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 700 and Grove 300,

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.

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## **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 2007, nil;
- (ii) for each of the Financial Years ending 30 June 2008 and 2009, \$454.55 payable on 31 October 2007 and 2008 respectively;
- (iii) for the Financial Year ending 30 June 2010, \$545.45 payable on 31 October 2009;
- (iv) for the Financial Year ending 30 June 2011, \$624.55 payable on 31 October 2010;
- (v) for the Financial Year ending 30 June 2012, \$877.86 payable on 31 October 2011;
- (vi) for the Financial Year ending 30 June 2013, \$900 payable on 31 October 2012, and;
- (vii) 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 2008, \$454.55 payable on or before the Commencement Date;



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The Land Owner is entitled to:

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

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

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

If, in respect of the relevant Grovelots:

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

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

#### **10.5 Effect of Termination**

- (a) Termination of this Deed under clauses 10.1, 10.2 or 10.3 or reduction of the relevant Grovelots under clause 10.4 is without prejudice to any rights and obligations that may have accrued prior to the date of termination.
- (b) Termination of this Deed in respect of any number of all of the relevant Grovelots or part of the relevant Grovelots under this clause 10 does not affect the rights or obligations of the parties in respect of any other Grovelots or any other part of the reduced relevant Grovelots.
- (c) If this Deed is terminated under clause 10.2 in relation to all of the Grovelots of the Participant Grower, the Participant Grower, loses all rights and interest as a participant in the Project.
- (d) The termination of this Deed will terminate the rights and obligations of the parties under this Deed except to the extent that those rights and obligations are expressed to survive termination.

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### **11. EXCUSES FOR NON PERFORMANCE**

#### **11.1 Force Majeure**

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

#### **11.2 Lack or unavailability of funds**

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

# **Olive Grove Management Agreement**

**[2007 Timbercorp Olive Project]**

**Olivecorp Management Limited**

**B.B. Olives Pty Ltd**

**Timbercorp Securities Limited**

**Boundary Bend Estate  
Management Pty Ltd**

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

### **1.3 Headings**

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

### **1.4 Olive Grove Management Agreement is not Scheme Property**

This Agreement is not "Scheme Property" of the Project as defined in section 9 of the Corporations Act.

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## **2. TERM**

Subject to Clause 17, this Agreement will commence on the Commencement Date and continue for the term of the Project or until BBEM and TSL agree that the services are no longer required.

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## **3. ENGAGEMENT**

### **3.1 Engagement of BBEM**

Olivecorp engages BBEM and BBEM accepts its engagement to perform or procure to be performed the Services on the terms and conditions set out in this Agreement.

### **3.2 Nature of Relationship**

BBEM will carry out the Services as an independent contractor of Olivecorp.

### **3.3 Performance Standards**

- (a) Subject to this Agreement, BBEM must use reasonable endeavours to perform all its functions, exercise its powers under this Agreement and provide the Services:
  - (i) in a commercially reasonable manner;
  - (ii) fairly and honestly;

- 
- (i) compliance by BBEM with occupational health and safety obligations;
  - (ii) BBEM's occupational health and safety systems;
  - (iii) any procedures or work practices adopted by BBEM which have implications for the occupational health and safety of Olivecorp's employees, agents and servants while exercising any right of access to the Land or any other right pursuant to this Agreement.
- (b) Olivecorp or the person authorised by it to conduct the review and audit will:
- (i) be given reasonable access to any property, premises, plant or equipment of BBEM utilised in relation to the performance of this Agreement and will be given reasonable access to any records and documentation including those of any sub-contractor which is relevant to the review and audit function. Such documentation is deemed intellectual property and at all times ownership remains vested in BBEM; and
  - (ii) be entitled to speak to any officer, employee or agent of BBEM for the purpose of carrying out the audit and review.
- (c) If Olivecorp or its representative reasonably determines that BBEM should make some provision or implement some measure which is necessary in order to comply with the occupational health and safety obligations of BBEM under clause 16.1, Olivecorp or its representative may reasonably direct BBEM to make that provision or take that measure and BBEM will do so as soon as reasonably practicable in accordance with its obligations under clause 16.1. However, in the event that BBEM disputes the necessity to do so, the disputed matter will be dealt with in accordance with clause 20.

### **16.3 OH&S Procedures**

The parties agree to develop a manual of policies, practices and procedures as soon as reasonably practicable in relation to the performance by the parties of their obligations under this Agreement in respect to occupational health and safety. However, in the event that the parties are unable to agree on any matter which is the subject of this clause 16.3 then the disputed matter will be dealt with in accordance with clause 20.

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## **17 TERMINATION**

### **17.1 Termination by Olivecorp**

Olivecorp may at any time, by notice in writing to BBEM, immediately terminate this Agreement upon the occurrence of any of the following:

- (a) BBEM becomes an externally administered body corporate (as defined in section 9 of the *Corporations Act 2001*);
- (b) BBEM defaults in the performance of any material obligation it owes to Olivecorp under this Agreement and, where the default is capable of remedy, BBEM does not remedy the default within 30 days after it is given written notice of the default by Olivecorp;
- (c) BBEM is in breach of, or default under, any of the provisions contained in clause 17.4.

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## **17.2 Termination of Agreement by BBEM**

BBEM may at any time, by notice in writing to Olivecorp, immediately terminate this Agreement upon the occurrence of any of the following:

- (a) Olivecorp defaults in the performance of any other material obligation it owes to BBEM under this Agreement and, where the default is capable of remedy, Olivecorp does not remedy the default within 30 days after it is given written notice of the default by BBEM;
- (b) Olivecorp is in breach of, or default under, any of the provisions contained in clause 17.3.

## **17.3 Olivecorp Warranties**

Olivecorp represents and warrants to BBEM that as at the date of this Agreement:

- (a) it is incorporated or registered and validly existing under the laws of its place of incorporation or registration and has the power to carry on its business;
- (b) it has full power and legal capacity to enter into, exercise its rights and perform its own obligations under this Agreement;
- (c) the execution and performance of all of its obligations under this Agreement have been properly authorised;
- (d) neither its execution of, nor its exercise of its rights or performance of its obligations under this Agreement will:
  - (i) contravene or conflict with any applicable law to which it or any of its property is subject or any order of any government agency binding on it or any of the property;
  - (ii) contravene any undertaking or instrument;
  - (iii) contravene or conflict with its constituent documents;
- (e) no litigation, arbitration or administrative proceedings are taking place, pending or, to the knowledge of any of its officers, threatened against it or any of its property which if adversely determined, could have, either separately or in aggregate, an adverse effect on its business operations, assets, financial conditions or prospects which does or is likely to have a material adverse effect on its ability to perform its obligations under this Agreement;
- (f) no meeting has been convened or resolution proposed, or application presented, and no order has been made for its winding up;
- (g) no distress execution or other similar order or process has been levied on any of its property or assets;
- (h) no receiver or manager, provisional liquidator, officer of the court, controller or other external administrator has been appointed in relation to it; and
- (i) no voluntary arrangement has been proposed or reached with any of its creditors.

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## **17.4 BBEM Warranties**

BBEM represents and warrants that, as at the date of this Agreement:

- (a) it is incorporated or registered and validly existing under the laws of its place of incorporation or registration and has the power to carry on its business;
- (b) it has the skill, expertise, capacity and staff necessary to perform the duties and obligations under this Agreement as manager of the Grove;
- (c) it has full power and legal capacity to enter into, exercise its rights and perform its own obligations under this Agreement;
- (d) the execution and performance of all of its obligations under this Agreement have been properly authorised;
- (e) neither its execution of, nor its exercise of its rights or performance of its obligations under this Agreement will:
  - (i) contravene or conflict with any applicable law to which it or any of its property is subject or any order of any government agency binding on it or any of the property;
  - (ii) contravene any undertaking or instrument;
  - (iii) contravene or conflict with its constituent documents;
- (f) no litigation, arbitration or administrative proceedings are taking place, pending or, to the knowledge of any of its officers, threatened against it or any of its property which if adversely determined, could have, either separately or in aggregate, an adverse effect on its business operations, assets, financial conditions or prospects which does or is likely to have a material adverse effect on its ability to perform its obligations under this Agreement;
- (g) no meeting has been convened or resolution proposed, or application presented, and no order has been made for its winding up;
- (h) no distress execution or other similar order or process has been levied on any of its property or assets;
- (i) no receiver or manager, provisional liquidator, officer of the court, controller or other external administrator has been appointed in relation to it;
- (j) no voluntary arrangement has been proposed or reached with any of its creditors.

## **17.5 Effect of Termination**

- (a) Upon termination of this Agreement by BBEM or expiration of the Term, the Land Owner must permit BBEM, within 30 days after termination, at its own expense, to enter upon the Land and to remove all of its employees, contractors and agents from the Land, together with all their equipment, tools, plant, vehicles and machinery.
- (b) The termination of this Agreement will terminate the rights and obligations of the parties under this Agreement except to the extent that those rights and obligations are expressed to survive termination. The termination of this Agreement will not prejudice any right, power or remedy to the extent that it

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accrued prior to or on termination.

## 17.6 Default Interest

Without limiting any other rights BBEM may have, if Olivecorp fails to pay on the due date an amount payable by it under this Agreement, Olivecorp must pay interest on the amount outstanding calculated daily on all overdue monies (excluding interest under this clause) until the same is paid in full at the rate 2% above the rate prescribed under section 2 of the Penalty Interest Rates Act 1984 (Vic) on the date the amount became due.

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## 18 INDEMNITY

BBEM must indemnify and keep indemnified Olivecorp against any liability, demand, loss, costs, charges and expenses (but excluding consequential loss) which may be incurred by Olivecorp as a result of any breach of BBEM's obligations under this Agreement, or any neglect, wilful misconduct, acting in bad faith or fraud on the part of BBEM or any of its employees, servants or agents.

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## 19 GST

- (a) If any supply made by a party ("**Supplier**") to the other ("**Recipient**") under this Agreement is a taxable supply (according to GST Law) so that the Supplier is liable to GST, the parties agree that the consideration payable for that taxable supply represents the value of the taxable supply (the "**GST Exclusive Amount**") and not the price for that taxable supply.
- (b) In addition to the GST Exclusive Amount for a taxable supply under this Agreement, the Recipient must pay to the Supplier a further amount in respect of the taxable supply calculated as an amount equal to the GST Exclusive Amount multiplied by the GST Rate in force from time to time.
- (c) The GST payable under clause 19(b) is payable by the Recipient without deduction or set-off of any other amount, at the same time and on the same basis as the GST Exclusive Amount is payable by the Recipient under this Agreement.
- (d) The right of a Supplier to payment under this clause is subject to a valid tax invoice, which complies with GST Law, being issued and delivered by the Supplier to the Recipient.
- (e) If a payment to satisfy a claim or a right to claim under or in connection with this Agreement, for example, a claim for damages for breach of contract, gives rise to a liability to pay GST, the payment is the GST Exclusive Amount and an additional amount must be paid to the Supplier in accordance with clause 19(b).
- (f) If a decision making body orders that a payment be made to a party to satisfy a claim under or in connection with this Agreement, and such payment will give rise to a liability to pay GST, the parties authorise the decision making body to order that a further amount, calculated as an amount equal to the payment multiplied by the GST Rate, be paid to the party in whose favour the order is made.
- (g) If a party has a claim under or in connection with this Agreement for a cost on which that party must pay GST, the claim is for the cost plus all GST, except any GST for which that party is entitled to an input tax credit, including a



**OLIVE TREE  
SUPPLY AGREEMENT**

**[2007 Timbercorp Olive Project  
– Suttons Grove 300 trees]**

**PARTIES**

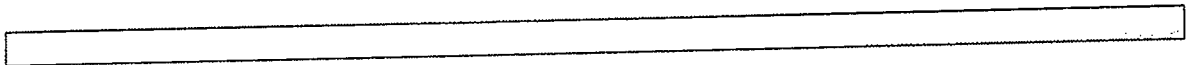
**PENGALA PTY LTD**  
ABN 79 084 730 101

**AND**

**BB OLIVES PTY LTD**  
ABN 86 083 992 367

**AND**

**BOUNDARY BEND ESTATE MANAGEMENT PTY LTD**  
ABN 91 080 184 925



## 2.2 Payment of Purchase Price

- (a) The Purchaser will pay the Supplier the purchase price for the 2007 Trees by the following installments:
  - (i) \$248,472 on 14 October 2006 (which sum the supplier acknowledges having received);
  - (ii) \$248,472 on 30 June 2007 (which sum the supplier acknowledges having received);
  - (iii) The balance of the purchase price (\$124,236) on 30 September 2007.
- (b) The Purchaser will pay the Supplier the purchase price for the Additional Quantity, if any, within 30 days of invoicing by the Supplier.

## 2.3 Default Interest

Without limiting any other rights the Supplier may have, if the Purchaser fails to pay on the due date an amount payable by it under this Agreement, the Purchaser must pay interest on the amount outstanding calculated daily on all overdue monies (excluding interest under this clause) until the same is paid in full at the rate 2% above the rate prescribed under section 2 of the Penalty Interest Rates Act 1984 (Vic) on the date the amount became due.

## 3 DELIVERY

### 3.1 Delivery

- (a) Subject to clause 3.3, the Supplier will deliver the 2007 Trees to the Land during the Delivery Period in accordance with the Delivery Schedule.
- (b) The Supplier will commence delivery of the 2007 Trees to the Land on 1<sup>st</sup> September 2007 and will complete delivery on or before 15 October 2007, or such later date as the Purchaser agrees ('**2007 Delivery Period**').
- (c) The Supplier will liaise with the Purchaser and agree a schedule ('**Delivery Schedule**') identifying each date within the Delivery Period ('**Delivery Date**') on which deliveries are to be made and the quantities of the 2007 Trees to be delivered on those dates. The Purchaser may vary a Delivery Date, or a quantity of 2007 Trees to be delivered, on 10 Business Days prior notice to the Supplier.
- (d) For the purpose of this Agreement, "**Delivery**" will be deemed to have occurred when the 2007 Trees are unloaded from the delivery vehicle onto the ground at the Land.

### 3.2 Delivery Charge

- (a) Prior to delivery of the 2007 Trees from the Supplier's nursery to the Land the Supplier will advise the Purchaser in writing of the cost of delivery ("**Delivery Charge**") The Delivery Charge must reflect the reasonable cost to the Supplier of making the delivery.

# **CAPITAL WORKS AGREEMENT**

## **2007 TIMBERCORP OLIVE PROJECT**

**B.B. OLIVES PTY LTD**  
**ABN 86 083 992 367**

**BOUNDARY BEND ESTATE MANAGEMENT PTY LTD**  
**ABN 91 080 184 925**

## 1.2 Construction

In this agreement, unless expressed or implied to the contrary:

- (a) a reference to this agreement includes a variation or replacement of it;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of it;
- (c) the singular includes the plural and vice versa;
- (d) if a word is defined, cognate words have corresponding definitions;
- (e) a reference to a person includes a firm, body corporate, an unincorporated association or an authority;
- (f) a reference to a person includes the person's legal personal representatives, successors, substitutes (including persons taking by novation) and permitted assigns and transferees;
- (g) a reference to a gender includes the other genders;
- (h) a reference to \$ or **dollars** is a reference to Australian dollars;
- (i) a reference to a clause, recital or schedule is to a clause, recital or schedule in or to this agreement; and
- (j) the defined terms in **clause 1.1** have the meanings given to them in that clause except where the context otherwise requires.

## 1.3 Headings

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

## 1.4 Severance

Each word, phrase, sentence, paragraph and clause (**a provision**) of this agreement is severable and, if a court of law determines that a provision is unenforceable, illegal or void, the court of law shall sever that provision, which shall become inoperative, and such severance shall not affect the other provisions of this agreement.

# 2. TERM

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The term of this agreement commences on the date of this agreement and, unless terminated earlier under **clause 6** or otherwise, terminates on the earlier of:

- (a) the date on which both parties have fully performed and satisfied all of their obligations under and in accordance with this agreement; and

- (b) the date of lawful termination or expiry of the Olive Grove Management Agreement, for whatever reason.

### **3. ENGAGEMENT OF BBEM**

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#### **3.1 Engagement**

The Land Owner engages BBEM as an independent contractor to carry out the Development Services, in consideration for payment of the fees set out in this agreement and otherwise on and subject to the terms and conditions of this agreement.

#### **3.2 Acceptance of Engagement**

BBEM accepts its engagement under **clause 3.1** on and subject to the terms and conditions of this agreement.

#### **3.3 Commencement of services**

The parties acknowledge and agree that,;

- (a) BBEM has commenced performance of certain of the Development Services prior to the date of this agreement and that BBEM will perform all other Development Services as provided for in, or contemplated by this agreement;
- (b) The Land Owner paid BBEM for the Development Services in relation to Grove 700 in November 2006.

### **4. DEVELOPMENT SERVICES**

---

#### **4.1 Development**

Subject to **clause 4.5(d)**, BBEM will (having regard to the Establishment Plan, good workmanlike and commercially responsible standards and Best Horticultural Practice) provide the following services in relation to the development of Grove 700 and Grove 300:

- (a) (**Establishment Plan**) within 30 days of the signing of this agreement, prepare and submit to the Land Owner an establishment plan for the performance of the works contemplated by this **clause 4** on terms reasonably acceptable to the Land Owner. The Establishment Plan must include a project timeline and comprehensive capital works budget. The Land Owner must, within a further 7 days, notify BBEM in writing either that:
  - (i) it accepts such establishment plan without amendment; or
  - (ii) it requires reasonable amendment to such establishment plan and provides full particulars of such amendments to BBEM.

If the Land Owner requires reasonable amendment to the establishment plan, then BBEM and the Land Owner will negotiate in good faith an establishment plan on reasonable terms for acceptance within a further period of 7 days. If,

**STORAGE AGREEMENT**  
**BETWEEN**  
**PENGALA PTY LTD**  
**AND**  
**BOUNDARY BEND LIMITED**  
**AND**  
**BOUNDARY BEND MANAGEMENT (BOORT) PTY LTD**  
**AND**  
**OLIVECORP MANAGEMENT LIMITED**  
**AND**  
**TIMBERCORP LIMITED**

## 1.2 Interpretation

In this Agreement unless the contrary intention appears:

- (a) a reference to a clause, schedule, annexure or appendix is a reference to a clause of or schedule, annexure or appendix to this Agreement and references to this Agreement include any recital, schedule, annexure or appendix;
- (b) a reference to this Agreement or another instrument includes any variation or replacement of either of them;
- (c) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (d) the singular includes the plural and vice versa;
- (e) the word person includes a firm, a body corporate, an unincorporated association or an authority;
- (f) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, but not limited to, persons taking by novation) and assigns;
- (g) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day; and
- (h) a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later.

## 1.3 Headings

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

## 2. TERM

### 2.1 Commencement and Termination

This Agreement will commence on the date of execution and, subject to clause 2.2 and clause 11, will continue until terminated by Pengala or Olivecorp by not less than 2 years prior written notice to the other party.

### 2.2 Minimum Term per Commissioned Tank

- (a) It is the intention of the parties that this Agreement must continue in effect for a minimum term of 5 years in respect of each Commissioned Tank.
- (b) Olivecorp undertakes that it will not give notice to terminate this Agreement under clause 2.1 in respect of any particular Commissioned Tank prior to the 3rd anniversary of the date on which that Tank is Commissioned. Should Olivecorp exercise its right under this clause in respect of a Commissioned Tank, for the purposes of clause 4.2, the Reserved Storage Capacity will be reduced accordingly.
- (c) This Agreement will cease to have effect when it has been terminated in respect of all Commissioned Tanks.

## 3. APPLICATION OF AGREEMENT

### 3.1 Storage Requirement Exceeding Boort Storage Capacity

The parties acknowledge and agree that:

**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**



**2007 OLIVE PROJECT  
WATER ENCUMBRANCES**

<b>Property</b>	<b>Owner</b>	<b>Water Share ID</b>	<b>Volume</b>	<b>First Mortgagee</b>	<b>Mortgage ID</b>
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"

Delivered by LANDATA®. Land Registry timestamp 04/02/2007 13:03 Page 1 of 16  
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Form 26

## 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: A70003 (Suttons TOP 2007)

Customer 1608A

Code:



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registers  
Victorian

**AE871871Y**

01/02/2007 \$94.60 66



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)

CA 47 Parish of Koorkab Crown Grant Vol.8876 Fol. 208

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 2032

Commencement date:

19 January 2007

Rental:

\$272,400.00 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: 19 January 2007

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

## ANNEXURE PAGE

Approved Form A1  
Victorian Land Titles Office

### Transfer of Land Act 1958

This is page 5 of *Approved Form 26 (Lease)* dated 19 January 2007 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

- (i) if a party comprises two or more persons, this Lease binds them jointly and each of them severally; and
- (j) the word "**include**" or "**includes**" is to be read as if the expression "**(but is not limited to)**" immediately followed such word and the word "**including**" is to be read as if the expression "**(but not limited to)**" immediately followed such word.
- (k) headings are for convenience only and do not affect the interpretation of this Lease

## 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 to the Lessor the Rent (by instalments, if appropriate) within 60 days of the date on which the Lessee receives the rent from the Growers under the Sub-leases.

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 PAGE**
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 the *Approved Form* to which it is attached.
5. All pages must be attached together by being stapled in the top left corner.

**AE871871Y**



## ANNEXURE PAGE

Approved Form A1  
Victorian Land Titles Office

Transfer of Land Act 1958

This is page 7 of *Approved Form 26 (Lease)* dated 19 January 2007 between B.B. OLIVES PTY LTD ACN 083 992 867 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

### 7. INSPECTION OF LAND

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

### 8. QUIET ENJOYMENT

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

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

#### 9.1. Assignment by Lessee

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

#### 9.2. Lessor consents to Lessee sub-letting

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

Approval No. 330056A



1. If there is insufficient space to accommodate the required information in a page, 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 PAGE**
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**AE871871Y**

01/02/2007 \$94.50 66



## 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: A70003

**(ANDERSON TOP 2006 and 2007)**

Customer 1608A

Code:

### Privacy Collection

The information collected under this Act is used for the purpose of maintaining public registers and indexes.

Victorian Land Registry.



**AE864547Y**

29/01/2007 \$94.60 66



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)*

CA 49 and 50 Parish of Koorkab CT Vol.10193 Fol. 951 and 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 2032

Commencement date:

19 January 2007

Rental:

\$1,072,000.00

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: 19 January 2007

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

## ANNEXURE PAGE

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Victorian Land Titles Office

Transfer of Land Act 1958

This is page 5 of *Approved Form 26 (Lease)* dated 19 January 2007 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

- (i) If a party comprises two or more persons, this Lease binds them jointly and each of them severally; and
- (j) the word "include" or "includes" is to be read as if the expression "(but is not limited to)" immediately followed such word and the word "including" is to be read as if the expression "(but not limited to)" immediately followed such word.
- (k) headings are for convenience only and do not affect the interpretation of this Lease

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#### 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 to the Lessor the Rent (by instalments, if appropriate) within 60 days of the date on which the Lessee receives the rent from the Growers under the Sub-leases.

Approval No. 330056A

# A1



- 1. If there is insufficient space to accommodate the required information in a panel of the Approved Form insert the words "See Annexure Page 2" (or as the case may be) and enter all the information on the Annexure Page under the appropriate panel heading. **THE BACK OF THE ANNEXURE PAGE IS NOT TO BE USED**
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**AE864547Y**



## ANNEXURE PAGE

Approved Form A1  
Victorian Land Titles Office

### Transfer of Land Act 1958

This is page 7 of *Approved Form 26 (Lease)* dated 19 January 2007 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

## 7 INSPECTION OF LAND

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

## 8 QUIET ENJOYMENT

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

## 9 ASSIGNMENTS, SUB-LEASES AND MORTGAGES

### 9.1 Assignment by Lessee

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

### 9.2 Lessor consents to Lessee sub-letting

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

Approval No. 330056A

# A1



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## AE864547Y

29/01/2007 \$94.60 66





**Sub-lease**

**B. B. Olives Pty Ltd**

**Timbercorp Securities Limited**

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

**2007 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

---

The Land Owner is entitled to:

- (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: