

**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 -**

**2008 TIMBERCORP OLIVE PROJECT (ARSN 129 307 722)**

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Date of document: June 2009

Filed on behalf of: the Plaintiffs

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

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

- 2 On 23 April 2009, we were appointed as voluntary administrators of TSL pursuant to section 436A of the *Corporations Act 2001 (Cth)* (**Act**). Various partners of Korda Mentha 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 2008 Timbercorp Olive Project, which has the Australian Registered Scheme Number 129 307 722 (**2008 Olive Scheme**).
- 5 **2008 Olive Scheme Documents**
- 5.1 The 2008 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 2008 Olive Scheme is constituted by the following documents:
- (a) the constitution dated 17 January 2008 (O 2008 001), and supplemental deed dated 21 February (O 2008 001A), which binds TSL (in its capacity as responsible entity for each scheme) and each of the Growers (**Constitution**);
  - (b) a product disclosure statement dated 26 February 2008 (O 2008 000) describing the 2008 Olive Scheme including a summary of the key documents and application and power of attorney forms (**PDS**);
  - (c) a custody agreement undated (O 2008 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 Ltd as custodian to hold the Scheme Assets (**Custody Agreement**);

- (d) the 2008 Olive Scheme was operated at five properties on which the crop was to be grown (collectively the **Land**). Four of the properties had a head lease agreement, whilst the fifth had a sub-lease agreement (collectively the **Leases**). The lease agreements were:
- (i) a lease dated 25 February 2008 (O 2008 004) by which TSL (in its personal capacity) leased the Grove 300, 'Suttons' property from the land owner B. B. Olives Pty Ltd (ACN 083 992 367) (Administrators Appointed) (**Landowner**) (**Head Lease 1**);
  - (ii) a lease dated 25 February 2008 (O 2008 004A) by which TSL (in its personal capacity) leased the Grove 200, 'Andersons' property from the Landowner (**Head Lease 2**);
  - (iii) a lease dated 25 February 2008 (O 2008 004C) by which TSL (in its personal capacity) leased the 'Ryans' property from the Landowner (**Head Lease 3**);
  - (iv) a lease dated 6 March 2008 (O 2008 004D) concluded between TSL (in its personal capacity) and the land owners, Bend Estate Management Pty Ltd (ABN 91 080 184 925) (**BBEM**), Boundary Bend Nominees (No One) Pty Ltd (ACN 115 765 583), Boundary Bend Nominees (No Two) Pty Ltd (ACN 115 765 387) and Boundary Bend Nominees (No Three) Pty Ltd (ACN 115 765 538) (none of which are a subsidiary of Timbercorp Ltd) with respect to the 'Grove 520' land, comprising: volume 10723, folio 001 ('A'); volume 10936, folios 805 to 806; volume 10935, folios 980 to 981; and volume 10936, folios 654 to 655 (**Head Lease 4**); and
  - (v) a sublease dated 25 February 2008 (O 2008 004B), by which TSL (in its personal capacity) subleased the 'Westmores' property from Almond Land Pty Ltd (Administrators Appointed) ACN 091 460 392 (**Almond Land**) (**Sub-Lease**)

Title searches have been conducted in respect of each certificate of title that comprises the Land. Copies of the title searches have been copied onto the

computer disc marked MAK-1. Now produced and shown to me marked **MAK-2** is a table prepared by my solicitors setting out the title particulars for the Land. Where the volume and folio number or certificate of title for the relevant section of Land has changed since the Lease between the Land Owner and TSL was entered into, the new volume and folio numbers are set out in MAK-2;

(e) several surrenders and regrants of leases with respect to the abovementioned properties. Those were:

(i) a surrender of lease agreement dated 25 February 2008 (O 2008 004 1), by which TSL agreed to surrender Head Lease 1 in exchange for a similar but not identical lease to be granted by the Landowner in respect of the same land (**Surrender of Head Lease 1**);

(ii) a surrender and regrant of Head Lease 1 dated 25 February 2008 (O 2008 004 2), by which TSL agreed to completely surrender Head Lease 1 to enable a regrant of the same lease, including a later completion date for the Scheme than previously existed (**Surrender and Regrant of Head Lease 1**);

(iii) a surrender of lease agreement dated 25 February 2008 (O 2008 004A 1), by which TSL agreed to surrender Head Lease 2 in exchange for a similar but not identical lease to be granted by the Landowner in respect of the same land (**Surrender of Head Lease 2**); and

(iv) a surrender and regrant of Head Lease 2 dated 25 February 2008 (O 2008 004A 2), by which TSL agreed to completely surrender Head Lease 2 to enable a regrant of the same lease, including a later completion date for the Scheme than previously existed (**Surrender and Regrant of Head Lease 2**).

(f) five license agreements between TSL (in its personal capacity), the respective landowners of the Leases and the Growers, by which each Grower licenses to use part of the Land (known as a **Grovelot**) for the cultivation of olive trees and the harvesting and processing of olives, namely:

(i) a license agreement (O 2008 005) granted in respect of the 'Suttons' land;

- (ii) a license agreement (O 2008 005A) granted in respect of the 'Andersons' land;
- (iii) a license agreement (O 2008 005B) granted in respect of the 'Westmores' land;
- (iv) a license agreement (O 2008 005C) granted in respect of the 'Ryans' land; and
- (v) a license agreement (O 2008 005D) granted in respect of the 'Grove 520' land,

(collectively the **Licence Agreements**);

- (g) an undated management agreement (O 2008 007), by which TSL (in its capacity as responsible entity) engaged Olivecorp Management Limited (ACN 089 542 343) (Administrators appointed) (**OML**) to manage the Grovelots, procure the processing of the olives into olive oil and market the olive oil (**Management Agreement**);
- (h) an undated grower agreement (O 2008 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 Grovelots, and to do other things (**Grower Agreement**);
- (i) a management agreement dated 28 February 2008 (O 2008 008), by which the OML engaged BBEM to cultivate and manage the Grovelots, a task that included harvesting, processing and marketing of the crop (**Olive Grove Management Agreement**);
- (j) a distribution agreement dated 20 May 2006 (O 2006 013) by which the OML engaged Boundary Bend Marketing Pty Ltd (ACN 118 216 863) (**BBM**) as exclusive distributor of the products of the 2008 Olive Scheme (**Distribution Agreement**); and
- (k) a tree supply agreement dated 12 June 2008 (O 2008 009), between BB Olives Pty Ltd (ACN 083 992 367) (Administrators Appointed) and Pengala Pty Ltd (ACN 084 730 101) (**Pengala**) by which Pengala agrees to sell and supply olive trees to be planted on the Grovelots (**Tree Supply Agreement**);

- (l) a capital works agreement dated 12 June 2008 (O 2008 010), by which B.B. Olives Pty Ltd (ACN 083 992 367) (Administrators Appointed) engaged BBEM as an independent contractor to undertake the capital works necessary to establish the grove on the land (**Capital Works Agreement**).

**(Key Scheme Documents)**

- 5.3 Now produced and shown to me marked **MAK-3** is a structure diagram for the 2008 Olive Scheme.
- 5.4 There are 815 Growers in the 2008 Olive Scheme and 7,028 grovelots. Now produced and shown to me marked **MAK-4** is a confidential exhibit (on computer disc) listing the Growers for the 2008 Olive Scheme.

**6 Growers' Contributions to the 2008 Olive Scheme**

- 6.1 The Growers' obligations to contribute to the 2008 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 Licences 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 Licences (under clause 9.3(a)).
- 6.4 TSL (as responsible entity), as agent and attorney for each Grower, entered into the Licences with the Landowner and TSL (in its personal capacity). Under the Licences, each Grower (amongst other things):
- (a) must pay an annual licence fee per Grovelot to TSL (clause 7.1);
  - (b) must, at its own expense, undertake the Grovelot Operations, which include the growing and cultivating of Olives on, and management of, the relevant Grovelots, (clause 8.2(a)); and

(c) must, at its own expense, comply or procure compliance with the Grower Agreement (clause 8.2(j)).

6.5 Under the Grower Agreement, the Growers must pay annual management fees and charges to TSL (in its personal capacity) (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 Licences;

(b) the Grower Agreement;

(c) the Constitution; and

(d) any fees or other amounts due and payable under the constituent documents of any other Timbercorp project (Constitution clause 13.7(a)).

**(Deductions)**

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 2008 Olive Scheme**

7.1 The solvency of the 2008 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 2008 Olive Scheme is represented by a collection of contracts which create rights and impose obligations.

7.2 To analyse whether the 2008 Olive Scheme is solvent I have instructed my staff to prepare an expected cashflow statement for the 2010 harvest, to show the forecast

cash flow for the 2008 Olive Scheme. Now produced and shown to me marked **MAK-6** is the Solvency Analysis (**Solvency Analysis**).

## 8 **Cashflow - Historic**

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

## 9 **Projected Cashflow 2010**

- 9.1 The 2010 crop commences after the 2009 harvest and will conclude with the receipt of sale proceeds from the 2010 crop (**2010 Harvest Result**). The Solvency Analysis shows the projected net operating cashflow for the 2010 Harvest Result.
- 9.2 The Solvency Analysis spreadsheet shows the expected net cashflow from the 2010 harvest by taking the Gross Grower Proceeds (from the gross 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 estimated yield in litres per year for the 2008 Olive Scheme from the first crop in 2009 is summarised below:



<b>Crop Year</b>	<b>2009*</b>	<b>2010*</b>
Yield (Litres)	796,435	1,724,534
*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:

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

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

- 9.4 BBM deducts sales and related costs including a brokerage charge of 1.5% of gross sales and an estimate of sales and marketing overheads relating to bulk oil sales (approximately \$0.13 per litre for the 2010 crop) prior to remitting proceeds to TSL (through the Agency Account).
- 9.5 In addition before proceeds are distributed to Growers the TIM Variable Management Fee is deducted. This is a fee that TSL charges the Growers to manage the lot on the Growers' behalf. It is charged at 3% of the Growers' net sales proceeds.
- 9.6 The Grower's are responsible for the payment of operating expenditure. Even though the Timbercorp Group can no longer provide services for the 2004 Olive Scheme, I have assumed an alternative provider will charge a like fee. The key variables and assumptions underpinning the expenses analysis are:
- (a) Processing fee - a fee of \$165 per tonne adjusted annually for the Consumer Price Index;
- (b) Base Admin Fee per Lot - this fee is billed by TSL to administer the 2008 Olive Scheme. It is calculated as a fixed charge per lot of \$42.50 (base) and adjusted annually for the Consumer Price Index. Timbercorp Group management have advised us that this fee is effectively levied as part of the

Farm Operating Costs in the first three years of the scheme - the 2008 Olive Scheme is in its third year;

- (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. Timbercorp Group management have advised us that this fee is effectively levied as part of the Farm Operating Costs in the first three years of the scheme - the 2008 Olive Scheme is in its third year;
- (e) BB Management Fee - BBEM, a wholly owned subsidiary of Boundary Bend Limited (ACN 115 131 667) (**BB**), provides grove management services. It is charged on a per hectare basis increasing annually for the CPI. The base rate for the Grovelots that are leased from the Boundary Bend entities (Headlease 4) commenced at \$500 per hectare. The base rate for the Grovelots lease from the Landowner commenced at \$200 per hectare. Timbercorp Group management have advised us that this fee is effectively levied as part of the Farm Operating Costs in the first three years of the scheme - the 2008 Olive Scheme is in its third year;
- (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 for mature groves at Boundary Bend). However, during drought years, the relevant water authorities apply a set allocation to the permanent water rights that limits the amount of water available to be used during the year. The allocation determined by the water authority is based on available water in the system. Management's FY2010 forecast assumes an allocation of 40% which is consistent with current allocations. As a result of the 40% allocation of permanent water rights, there will be a requirement to

purchase temporary water to meet the shortfall. Temporary water is estimated to cost \$350 per mega litre which is based on the current cost. The percentage allocation for water historically are:

<b>Crop Year</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010*</b>
Total – Murray Allocation	29%	57%	33%	40%
*Forecast				

Timbercorp Group management have advised us that this fee is effectively levied as part of the Farm Operating Costs in the first three years of the scheme - the 2008 Olive Scheme is in its third year;

- (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 Licences. 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.

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

### *Net Operating Cashflow (excluding capital expenditure)*

- 9.8 The conclusion from this analysis is that for the 2010 Harvest Result the Growers will have to meet a shortfall of \$2,932,858 (approximately) as project costs are greater than gross proceeds.
- 9.9 Timbercorp Group needs to pay for scheme costs (spread over the course of the year) but the timing of these expenses is not matched to when Timbercorp Group can recover those costs from Growers. Growers are invoiced annually for those costs. TSL has no capacity to fund the schemes until those costs are recovered. Furthermore, the Act provides that for a 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.
- 9.10 TSL has not invoiced Growers for the 2010 crop. Historically, the Timbercorp Group have not asked for payment until 31 October 2009 and invoices would not ordinarily have been raised at this point in the year. For the avoidance of any misunderstanding, I do not consider that it is in the best interests of the Growers to raise invoices for the estimated scheme costs for the 2010 financial year, on an accelerated basis, or at all, because:
- (a) As I have deposed in my Directions and Olives and Almonds Affidavits, TSL is insolvent;
  - (b) It is likely that some of the Growers in the 2008 Olives Scheme will default on their participation (as detailed below); and
  - (c) As TSL has no capacity to absorb any funding shortfall arising from any defaults on grower project invoices the scheme is insolvent.

### *Capital Expenditure*

- 9.11 In addition to the operating expenditure, the 2008 Olive Scheme must meet capital expenditure to achieve projected crop harvests. This capital expenditure requirement is largely to acquire additional permanent water rights and/or to provide irrigation infrastructure.

9.12 There is expected capital expenditure for water of \$3,811,095 (approximately) for the 2010 Harvest Result.

9.13 There is expected expenditure for water related infrastructure, referred to in the Solvency Analysis as "Non Water Capital Expenditure", of \$1,125,835 (approximately). It is not necessary to install 100% of the water supply infrastructure for the grove when the trees are planted. Pumping infrastructure and rising mains are installed as determined by the water requirements of the trees on an annual basis. All necessary irrigation infrastructure has been delivered for the benefit of the Boort olive grove. 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 2008 Olive Scheme terminate their participation in the 2008 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 0.1% of the total number of Grovelots in the Schemes. As neither company has sufficient resources to meet the fees which would be payable in respect of their ongoing participation in the Schemes, both have indicated they intend to terminate their participation on 30 June 2009, unless the Schemes are terminated by special resolution or Court order.

10.3 We consider it likely that some Growers in the 2008 Olive Scheme and the other Olive Schemes will terminate their participation or default in payment. Now produced and shown to me marked **MAK-7** is a summary of the Grower's defaults on loans and payment of obligations that has been prepared using figures provided by Timbercorp Group Management. It shows:

- (a) level of unpaid scheme invoices - Growers were invoiced a total of \$11.6m in October 2008 of which \$0.4m or 4% of the total remains unpaid for the 2008 Olive Scheme costs;

- (b) loans in arrears - 80% of Growers in the 2008 Olive Scheme have taken out loans with Timbercorp Finance Pty Ltd (ACN 054 581 190) (Administrators Appointed) (**Timbercorp Finance**) and \$9.8m or 43% 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 33 in March 2009 to 168 in May 2009 for the 2008 Olive Scheme.
- 10.4 Furthermore, Timbercorp Finance is no longer in a position to provide finance to Growers to meet their obligations in the 2008 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 even 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 2008 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 2008 Olive Scheme over its life.
- 11.2 The Viability Analysis is based on Timbercorp management's cashflow model for the 2008 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 per litre (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 2009 level of 33%.

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 per litre and \$7 per 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 \$14.7m is still required for this scheme in addition to the cash flows identified above. As such, the actual NPV for the scheme, from a grower perspective, will be lower than the amounts included in the sensitivity analysis to the extent growers need to make additional contributions to meet the capital expenditure requirements.

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

## 12 **Sale of Olives**

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

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

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

13.1 Based on legal advice, I believe that if the Court orders that the 2008 Olive Scheme is to be wound up in accordance with the Constitution, most of the agreements that constitute the Scheme will also end. Upon termination of the Project, the following agreements will automatically terminate:

- (a) the Custody Agreement (cl 10.1);
- (b) the Management Agreement (cl 2.2);
- (c) the Grower Agreement (cl 2.1(c));
- (d) the Sutton Lease (cl 11.1);
- (e) the Anderson Lease (cl 11.1);
- (f) the Westmore Lease (cl 11.1) ;
- (g) the Ryans Lease (cl 11.1);
- (h) the Sutton Licence (cl 4.1(b)(iv));
- (i) the Anderson Licence (cl 4.1(b)(iv));
- (j) the Westmore Licence (cl 4.1(b)(iv));
- (k) the Ryans Licence (cl 4.1(b)(iv));
- (l) the Grove 520 Licence (cl 4.1(b)(iv));
- (m) the Olive Grove Management Agreement (cl 2); and
- (n) the Capital Works Agreement (cl 2(b)).



The following agreements are not automatically terminated upon the winding up of the project:

- (o) the Grove 520 Lease;
- (p) the Side Deed; and
- (q) the Deed of Consent and Variation.

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

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

14.1 Based on legal advice I believe that the structure of the 2008 Olive Scheme means that there are a number of impediments to restructuring it. I discuss these below.

##### *Encumbrances on land title*

14.2 MAK-2 sets out the details of the registered instruments by which the Land is encumbered. With the exception of the 'Grove 520' property, the Land is encumbered by mortgages to BOSI Security Services Ltd ABN 63 009 413 852 (**BOSI**) granted by the Landowner in respect of the 'Suttons', 'Andersons' and 'Ryans' properties, and by Almond Land in respect of the 'Westmores' property (together, the **Mortgagors**).

14.3 The Mortgage over the Land has been granted as security for the BOS Syndicated Facility (**BOS Facility**). By Syndicated Loan Agreement dated 15 December 2006, as amended and restated on 30 December 2008, Bos International (Australia) Limited 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.

14.4 The BOS Facility is secured by:

- (a) a featherweight fixed and floating dated 29 January 2007 granted by Timbercorp Limited in favour of BWA Custodians Ltd (ACN 009 413 852) in its capacity as Security Trustee;
- (b) various fixed charges;
- (c) real property mortgages over land owned by the Mortgagors;

- (d) water mortgages granted by the Mortgagors;
- (e) unlimited guarantees and indemnities by a number of companies in the Timbercorp Group;

(collectively the **BOS Securities**).

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

*Encumbrances on water rights*

14.6 Now produced and shown to me marked **MAK-10** is a table prepared by my solicitors (based on information provided by Timbercorp Group management) setting out the details of the water rights (**Water Rights**) utilised by the 2008 Olive Scheme, along with details of the registered instruments by which the Water Rights are encumbered. The Water Rights are leased, along with the Land, pursuant to the Head Lease and Sub-Lease.

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

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

15.1 As I deposed in my Directions Affidavit and Olives and Almonds Affidavit, I consider that TSL is insolvent. If the Court does not wind up the 2008 Olive Scheme then TSL will default on its obligations under the 2008 Olive Scheme. Based on legal advice, I believe that if TSL does default then:

- (a) under clause 10.6 of each License Agreement, if the related Head Lease terminates due to TSL's default or otherwise) the Land Owner agrees to step into the shoes of TSL under the License Agreement and allow each Grower to continue to use the land as contemplated under the License Agreement (a **Step In Provision**);
- (b) under the Step In Provision, all obligations of the Growers under the License Agreements will presumably be owed to and are enforceable by the Land Owner (including payment of the license fee 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 License Agreement;

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

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

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

\_\_\_\_\_

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

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

**LIST E**

No 7114 of 2009

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

**ACN 092 311 469**

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

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

**CERTIFICATE IDENTIFYING EXHIBIT**

---

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

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

---

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

Before me: .....

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

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

**LIST E**

No 7114 of 2009

**IN THE MATTER OF TIMBERCORP SECURITIES LIMITED  
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IN ITS CAPACITY AS RESPONSIBLE ENTITY OF EACH OF THE MANAGED  
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(Leon Zwier)

---

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

Before me: .....

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

# 2008 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	Vol 8876 Fol 208	BOSI Security Services Ltd	AG323075S
B B Olives Pty Ltd		Boundary Bend - Vic - Grove 200/700 (Andersons)	Vol 10193 Fols 951 and 952	Vol 10193 Fols 951 and 952	BOSI Security Services Ltd	AG323075S
Almond Land Pty Ltd		Boundary Bend - Vic - Westmores	Lot 5 of Vol 10405 Fol 425 (cancelled title)	Vol 11062 Fol 245		
B B Olives Pty Ltd		Boundary Bend - Vic - Ryans	Vol 10674 Fols 758, 759, 760 and 761	Vol 10674 Fols 758, 759, 760 and 761	BOSI Security Services Ltd	AG323075S
	Boundary Bend Estate Management Pty Ltd, Boundary Bend Nominees (No 1) Pty Ltd, Boundary Bend Nominees (No 2) Pty Ltd and Boundary Bend Nominees (No 3) Pty Ltd	Boundary Bend - Vic - Grove 520	Vol 10723 Fol 001 (area marked A) Vol 10936 Fols 805 and 806 Vol 10935 Fols 980 and 981 Vol 10936 Fols 654 and 655	Vol 10723 Fol 001 (area marked A) Vol 10936 Fols 805 and 806 Vol 10935 Fols 980 and 981 Vol 10936 Fols 654 and 655	N/A	N/A

"MAK-2"

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

**LIST E**

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

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

**CERTIFICATE IDENTIFYING EXHIBIT**

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

Solicitor's Code: 54  
DX 38455 Melbourne  
Tel: 9229 9999  
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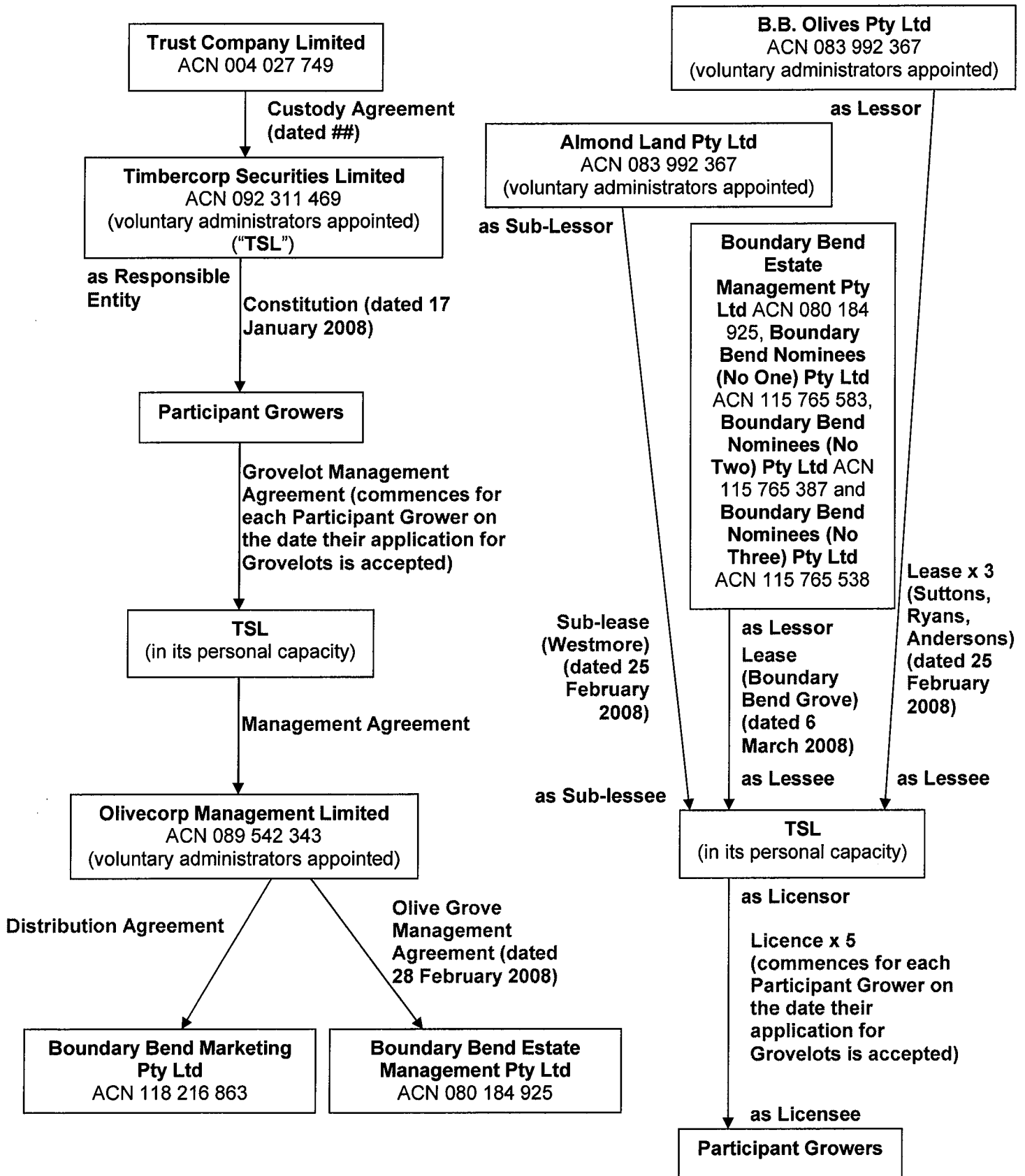
---

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 2008 Olive Scheme**

## STRUCTURE DIAGRAM 2008 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**

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

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

---

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

Before me: .....

**Exhibit "MAK-4"**  
**Confidential exhibit - CD of Register of Growers  
and Sale Agreements for the 2008 Olive Scheme**

r43.06

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

**LIST E**

No 7114 of 2009

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

**ACN 092 311 469**

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

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

**CERTIFICATE IDENTIFYING EXHIBIT**

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

Solicitor's Code: 54  
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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**

**2008 Timbercorp Olive Project**

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

**2008 Timbercorp Olive Project**

**[EXECUTION COPY]**

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### **10.3 Register of Participant Growers**

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

### **10.4 Chargee**

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

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

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

---

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

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

- (a) subject to the requirements of ASIC and of the Corporations Act, to receive and hold the Application Moneys;
- (b) to invest any money held in a Special Trust Account in any Authorised Investment;
- (c) to invest moneys standing in the Agency Account in any Authorised Investment in accordance with clause 16;
- (d) to use the Application Moneys of the Participant Grower in discharging the Participant Grower's obligations under the Agreements or under this Deed;
- (e) to prepare reports and accounts in relation to the Grove Services and in relation to the processing of Crop and the sale of Product or Crop;
- (f) to monitor the performance of all parties to the Project Documents;
- (g) to appoint agents to enter into the Project Documents on behalf of a Participant Grower and to exercise all rights and powers of the Participant Grower under any Project Documents;
- (h) generally to enter, make or engage in transactions, undertakings, activities and arrangements of every kind and nature which a natural person of full age and capacity could enter, make or engage in and which constitute or are part of or relate to or are incidental to the Grove Services on behalf of the Participant Grower;
- (i) to appoint auditors to audit and/or monitor the accounting records and other records of the Responsible Entity and any party to a Project Document in relation to the Crop and Product from the Project;
- (j) subject to there being adequate moneys in respect of any costs or expenses

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(or indemnities satisfactory to the Responsible Entity instead of them), to make claims and bring legal or arbitration proceedings against any person who is a party to any Agreement or Project Document, to take legal or other arbitral or alternative dispute resolution proceedings on behalf of the Participant Grower or Participant Growers and to defend or compromise any claim or legal or arbitral proceedings arising out of the interest of the Participant Grower and relating to any Agreement;

- (k) to execute any deed, agreement, certificate or other document and to do all such things as are necessary or desirable to further the powers granted to the Responsible Entity in this clause 11, including for the purposes of protecting, insofar as is legally possible, the Participant Grower's tenure to its Grovelots; and
- (l) to lease the Land from the Land Owners, and licence it to, the Participant Grower under the Licence Agreements.

---

## **12. AGENCY ACCOUNT**

### **12.1 Agency Account**

The Responsible Entity must keep or cause to be kept a separate Agency Account or Agency Accounts for the purpose of depositing the Proceeds and any other money that the Responsible Entity may hold for the Participant Grower, other than Application Moneys and interest on Application Moneys.

### **12.2 Use of Moneys in Agency Account**

Subject to clause 16.3, the Responsible Entity must hold the moneys standing to the credit of the Participant Grower in the Agency Account for the Participant Grower to be dealt with in accordance with the provisions of this Deed.

### **12.3 Bank Account May be Interest Earning**

The bank account or accounts in which the Responsible Entity deposits moneys standing in any Agency Account may be interest earning. Any interest so earned will be treated as Proceeds.

### **12.4 Pooling of Moneys**

Moneys held by the Responsible Entity for any of the Participant Growers may be pooled in any one or more bank accounts with moneys held on behalf of any other Participant Growers.

---

## **13. PROCESSING OF CROP AND SALE OF PRODUCT**

### **13.1 Olives, Crop and Product of the Project**

On and from the Entitlement Date:

- (a) Subject to clause 13.2, each Participant Grower is entitled to a several share of the whole of the Olives and the Crop in each Financial Year in proportion to the Participant Grower's Participating Interest.

---

## 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 Licence Agreements 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 Licence Agreements 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

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

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

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

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

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

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



- 
- (d) The Responsible Entity may pay out of the Agency Account any amount for which the Responsible Entity would be entitled to be indemnified under paragraph 23.2(a).
- 

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

### **24.1 Liability Limited**

Except as provided by any express indemnity given by any Participant Grower to the Responsible Entity, and except as provided in clause 26.6, 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.

---

## **25. COMPLAINTS PROCEDURE**

### **25.1 Procedure**

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

### **25.2 Complaints Officer**

- (a) The Responsible Entity must appoint an internal complaints officer

# **Grovelot Management Agreement**

**Timbercorp Securities Limited**

**Each Several Participant Grower  
named in the Schedule to the  
Licence Agreements**

## **2008 Timbercorp Olive Project**

---

## **8. ADMINISTRATIVE SERVICES**

### **8.1 Services**

Timbercorp Securities agrees to provide the following administrative services throughout the Term of the Agreement:

- (a) prepare reports to Participant Growers on the allocation and location of Participant Growers' Grovelots;
  - (b) prepare reports to Participant Growers detailing the work to be done on each Participant Grower's Grovelot;
  - (c) prepare reports to Participant Growers on the matters described in clauses 13.5 and 13.6;
  - (d) prepare a statement to the Participant Grower in each Financial Year to assist with the preparation of income tax returns;
  - (e) record the Participant Grower's transactions and make payments on behalf of the Participant Grower;
  - (f) provide general administrative management of the Project;
  - (g) review the sales and marketing plan for the Project; and
  - (h) co-ordinate visits of Participant Growers to inspect their Grovelots.
- 

## **9. ACCESS TO GROVE**

### **9.1 Timbercorp Securities has Access**

Timbercorp Securities and its invitees will be entitled to such access to the Grovelots and Olive Trees as is necessary or desirable to perform Timbercorp Securities' obligations under this Agreement, the Constitution and the agreements in respect of the Grovelots of all Participant Growers in the Project.

### **9.2 Removal of Timbercorp Securities' Property after Termination**

Timbercorp Securities may remove from the Grovelots such plant and equipment, implements, furniture and other items brought onto the Grovelots within one month after the termination of this Agreement and may enter the Grovelots for the purpose of removing such items.

### **9.3 Roads and Tracks**

- (a) Timbercorp Securities is entitled (but has no obligation) to construct and maintain roads and tracks on the Grovelots primarily and principally to provide access to and from the Grove from a public road for the:
  - (i) cultivation, maintenance and tending of the Olive Trees and the Olives;
  - (ii) harvesting of the Olives; and
  - (iii) removal of the Olives.
- (b) Where Timbercorp Securities has removed any material for road building purposes, Timbercorp Securities must use reasonable endeavours to return

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the surface of the land to an appearance as close as possible to the appearance of the surface of surrounding land.

#### **9.4 Participant Grower's Access**

Provided the Participant Grower first gives Timbercorp Securities 7 days' prior notice in writing, Timbercorp Securities must permit the Participant Grower or its duly authorised representatives to have access, at the Participant Grower's expense and risk, at all reasonable times to the relevant Grovelots and the facilities located on them.

#### **9.5 Warranty as to Access**

The Participant Grower warrants that:

- (a) it has the right to grant access to the relevant Grovelots for the performance by Timbercorp Securities of its obligations under this Agreement, the Constitution and the Project Documents in respect of the relevant Grovelots of all Participant Growers in the Project; and
- (b) the exercise by Timbercorp Securities of its rights under this Agreement will not constitute a trespass against, or an interference with the rights of, the Land Owners, any of the other Participant Growers in the Project or any person who derives title through or under the Land Owners or any of the Participant Growers in the Project.

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

Timbercorp Securities will not be liable for any failure to perform its obligations under this Agreement, which arises because it is denied access to, or possession or occupation of, the Grove or any part of it by any Participant Growers in the Project.

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### **10. NO LEASE OR LICENCE**

This Agreement does not create or confer any leasehold or proprietary interest or licence in favour of Timbercorp Securities concerning the relevant Grovelots.

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### **11. TIMBERCORP SECURITIES' FEES**

#### **11.1 Annual Fee and Charges Payable by the Participant Growers**

A Participant Grower must pay Timbercorp Securities the following management fees and charges:

- (a) in consideration of the services described in clause 5.2 and all other services to be provided under this Agreement in the period from the Commencement Date to 30 June 2008, an amount of \$5,181.81 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 \$1,000 per Grovelot payable on 31 October 2008; and
  - (ii) for each Grovelot, an amount equal to 1.5% 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

**Grovelot Management  
Agreement**

**Timbercorp Securities Limited**

**Each Several Participant Grower  
named in the Schedule to the  
Licence Agreements**

**2008 Timbercorp Olive Project**

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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 2009 to 30 June 2010:
  - (i) an amount of \$1,000 per Grovelot payable on 31 October 2009; and
  - (ii) for each Grovelot, an amount equal to 1.5% 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 Intentionally Deleted**

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

- (a) For each Financial Year after 30 June 2010 commencing on 31 October 2010 and each subsequent 31 October, Timbercorp Securities will be entitled to be paid in respect of all the Participant Grower's relevant Grovelots, the estimated costs of operating the relevant Grovelots (which will include an allocation of overhead costs incurred by Timbercorp Securities or its contractors that will not exceed \$50 per relevant Grovelot, Indexed (adopting 30 June 2008 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.

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- (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 Licence Agreements, the Project Documents and the Constitution including any amounts which are outstanding and in arrears; and
- (b) pay the deducted amounts to the persons entitled to them.

#### **11.5 Incentive Fee**

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

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

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

#### **11.7 Capacity**

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

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

Without limiting any other rights Timbercorp Securities may have under clause 11.9, if the Participant Grower fails to make payment of any amount due under this Agreement, Timbercorp Securities may pay on behalf of the Participant Grower, from its own funds, any such expense owing by the Participant Grower and Timbercorp Securities will be entitled to be reimbursed the amount so paid together with interest thereon calculated

# **Licence Agreement**

**B. B. Olives Pty Ltd**

**Timbercorp Securities Limited**

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

## **2008 Timbercorp Olive Project**

### **ANDERSONS LICENCE AGREEMENT**

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

Level 7  
350 Collins Street  
MELBOURNE VIC 3000

Telephone: 9600 3525  
Facsimile: 9600 3527



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- (d) at the option of the Responsible Entity, the contemporaneous execution of one or more of the Suttons Licence Agreement, Westmores Licence Agreement and/or the Ryans Licence Agreement,

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. LICENCE FEES**

### **7.1 Licence Fees**

- (a) A Participant Grower must pay Timbercorp Securities the following licence fees per Grovelot:
- (i) for the period from the Commencement Date until 30 June 2008, nil;
  - (ii) for each of the Financial Years ending 30 June 2009 and 2010, \$500 multiplied by the Andersons Proportion payable on 31 October 2008 and 2009 respectively;
  - (iii) for each of the Financial Years ending 30 June 2011 and 2012, \$545.45 multiplied by the Andersons Proportion payable on 31 October 2010 and 2011 respectively;
  - (iv) for the Financial Year ending 30 June 2013, \$1,042.72 multiplied by the Andersons Proportion payable on 31 October 2012;
  - (v) for the Financial Year ending 30 June 2014, \$1,070 multiplied by the Andersons Proportion payable on 31 October 2013; and
  - (vi) on 31 October of each subsequent Financial Year during the Term, an amount equal to the Licence Fees payable on the immediately preceding 31 October, Indexed.

### **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 licence fees and other amounts paid to Timbercorp Securities under this Agreement 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 Agreement, Timbercorp Securities may pay on behalf of the Participant Grower, from its own funds, any such expense owing by the Participant Grower and Timbercorp Securities will be entitled to be reimbursed 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 Agreement:

- (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 Andersons Lots 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 Andersons Lots;
- (b) use the relevant Andersons Lots 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

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relevant Andersons Lots;

- (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 Andersons Lots 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, Timbercorp and the Land Owner and their employees, agents and contractors to enter upon the relevant Andersons Lots from time to time with or without equipment for the purposes of observing the state of the relevant Andersons Lots;
- (h) permit Timbercorp Securities and its employees, agents and contractors to enter upon the relevant Andersons Lots from time to time with or without equipment for the purpose of performing its obligations under this Agreement and the Grovelot Management Agreement;
- (i) permit the Land Owner and its employees, agents and contractors to enter upon the relevant Andersons Lots from time to time with or without equipment for the purpose of performing its obligations under this Agreement;
- (j) comply or procure compliance with the provisions of the Grovelot Management Agreement; and
- (k) give such rights of way and free access to the occupiers of any other Grovelots adjoining the relevant Andersons Lots and their agents and contractors, as are necessary for their proper use and enjoyment of their Andersons Lots, 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 Andersons Lots.

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

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

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# **Licence Agreement**

**B. B. Olives Pty Ltd**

**Timbercorp Securities Limited**

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

## **2008 Timbercorp Olive Project**

### **SUTTONS LICENCE AGREEMENT**

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

Level 7  
350 Collins Street  
MELBOURNE VIC 3000

Telephone: 9600 3525  
Facsimile: 9600 3527

- 
- (b) Timbercorp Securities entering into the Suttons Head Lease with the Land Owner in respect of the Suttons Grove;
  - (c) the contemporaneous execution of the Boundary Bend Licence Agreement and the Andersons Licence Agreement; and
  - (d) at the option of the Responsible Entity, the contemporaneous execution of the Westmores Licence Agreement and/or Ryans Licence Agreement,

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. LICENCE FEES**

### **7.1 Licence Fees**

- (a) A Participant Grower must pay Timbercorp Securities the following licence fees per Grovelot:
  - (i) for the period from the Commencement Date until 30 June 2008, nil;
  - (ii) for each of the Financial Years ending 30 June 2009 and 2010, \$500 multiplied by the Suttons Proportion payable on 31 October 2008 and 2009 respectively;
  - (iii) for each of the Financial Years ending 30 June 2011 and 2012, \$545.45 multiplied by the Suttons Proportion payable on 31 October 2010 and 2011 respectively;
  - (iv) for the Financial Year ending 30 June 2013, \$1,042.72 multiplied by the Suttons Proportion payable on 31 October 2012;
  - (v) for the Financial Year ending 30 June 2014, \$1,070 multiplied by the Suttons Proportion payable on 31 October 2013; and
  - (vi) on 31 October of each subsequent Financial Year during the Term, an amount equal to the Licence Fees payable on the immediately preceding 31 October, Indexed.

### **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

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(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 licence fees and other amounts paid to Timbercorp Securities under this Agreement 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 Agreement, Timbercorp Securities may pay on behalf of the Participant Grower, from its own funds, any such expense owing by the Participant Grower and Timbercorp Securities will be entitled to be reimbursed 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 Agreement:

- (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 Suttons Lots 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 Suttons Lots;
- (b) use the relevant Suttons Lots 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 Suttons Lots;
  - (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 Suttons Lots 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, Timbercorp and the Land Owner and their employees, agents and contractors to enter upon the relevant Suttons Lots from time to time with or without equipment for the purposes of observing the state of the relevant Suttons Lots;
  - (h) permit Timbercorp Securities and its employees, agents and contractors to enter upon the relevant Suttons Lots from time to time with or without equipment for the purpose of performing its obligations under this Agreement and the Grovelot Management Agreement;
  - (i) permit the Land Owner and its employees, agents and contractors to enter upon the relevant Suttons Lots from time to time with or without equipment for the purpose of performing its obligations under this Agreement;
  - (j) comply or procure compliance with the provisions of the Grovelot Management Agreement; and
  - (k) give such rights of way and free access to the occupiers of any other Grovelots adjoining the relevant Suttons Lots and their agents and contractors, as are necessary for their proper use and enjoyment of their Suttons Lots, 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 Suttons Lots.

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

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

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## **9. RIGHTS AND OBLIGATIONS OF THE LAND OWNER**

### **9.1 Obligations of the Land Owner**

The Land Owner must duly and punctually pay or cause to be paid all rates, taxes and

# **Licence Agreement**

**Boundary Bend Land Owners**

**Timbercorp Securities Limited**

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

**Timbercorp Limited**

## **2008 Timbercorp Olive Project**

### **BOUNDARY BEND LICENCE AGREEMENT**

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

Level 7  
350 Collins Street  
MELBOURNE VIC 3000

Telephone: 9600 3525  
Facsimile: 9600 3527



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## **6. CONDITIONS PRECEDENT**

### **6.1 Conditions Precedent**

This Agreement is subject to and conditional on:

- (a) the Participant Grower entering into the Grovelot Management Agreement with Timbercorp Securities on or before the Commencement Date;
- (b) Timbercorp Securities having entered into or contemporaneously herewith entering into the Boundary Bend Lease with the Land Owner in respect of the Boundary Bend Grove on or before the Commencement Date;
- (c) Timbercorp Securities not exercising its right to terminate the Boundary Bend Lease on or before 15 June 2008 in accordance with its right of termination set out therein;
- (d) the contemporaneous execution of the Andersons Licence Agreement;
- (e) at the option of the Responsible Entity, the contemporaneous execution of one or more of the BBO Licence Agreements other than the Andersons Licence Agreement,

### **6.2 Reasonable Endeavours**

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

## **7. LICENCE FEES**

### **7.1 Licence Fees**

- (a) A Participant Grower must pay Timbercorp Securities the following licence fees per Boundary Bend Lot:
  - (i) for the period from the Commencement Date until 30 June 2008, nil;
  - (ii) for each of the Financial Years ending 30 June 2009 and 2010, \$500 multiplied by the Boundary Bend Proportion payable on 31 October 2008 and 2009 respectively;
  - (iii) for each of the Financial Years ending 30 June 2011 and 2012, \$545.45 multiplied by the Boundary Bend Proportion payable on 31 October 2010 and 2011 respectively;
  - (iv) for the Financial Year ending 30 June 2013, \$1,042.72 multiplied by the Boundary Bend Proportion payable on 31 October 2012;
  - (v) for the Financial Year ending 30 June 2014, \$1,070 multiplied by the Boundary Bend Proportion payable on 31 October 2013; and
  - (vi) on 31 October of each subsequent Financial Year during the Term, an amount equal to the Licence Fees payable on the immediately

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preceding 31 October, Indexed.

## **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 licence fees and other amounts paid to Timbercorp Securities under this Agreement 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 Agreement, Timbercorp Securities may pay on behalf of the Participant Grower, from its own funds, any such expense owing by the Participant Grower and Timbercorp Securities will be entitled to be reimbursed 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 Agreement:

- (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 Boundary Bend Lots solely for the purpose

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of the Grovelot Operations.

## **8.2 Grower's duties**

The Participant Grower must, at its expense:

- (a) undertake the Grovelot Operations on the relevant Boundary Bend Lots;
- (b) use the relevant Boundary Bend Lots 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 Boundary Bend Lots;
- (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 Boundary Bend Lots in accordance with Best Horticultural Practices including, without limitation, using soil management technique methods to reduce erosion and maintain soil quality;
- (g) permit Timbercorp and Timbercorp Securities and their employees, agents and contractors to enter upon the relevant Boundary Bend Lots from time to time with or without equipment for the purposes of observing the state of the relevant Boundary Bend Lots;
- (h) permit Timbercorp Securities and its employees, agents and contractors to enter upon the relevant Boundary Bend Lots from time to time with or without equipment for the purpose of performing its obligations under this Agreement and the Grovelot Management Agreement;
- (i) permit the Land Owner and its employees, agents and contractors to enter upon the relevant Boundary Bend Lots from time to time with or without equipment for the purpose of observing the state of the relevant Boundary Bend Lots;
- (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 Boundary Bend Lots and their agents and contractors, as are necessary for their proper use and enjoyment of their Boundary Bend Lots, 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 Boundary Bend Lots.

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

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

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#### **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 Agreement.

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### **9. RIGHTS OF THE LAND OWNER AND TIMBERCORP**

#### **9.1 Rights of the Land Owner**

The Participant Grower agrees and acknowledges that the Land Owner is entitled to:

- (a) full and free access for the purposes of carrying out its obligations and exercising its rights under the Boundary Bend Lease with or without vehicles to the Boundary Bend Lots along any road or track or any neighbouring land owned or occupied by Timbercorp Securities, Timbercorp, the Land Owner, other Participant Growers or any other person which gives access to the Boundary Bend Lots;
- (b) full and free access with or without vehicles to the relevant Boundary Bend Lots for the purpose of accessing neighbouring land owned or occupied by Timbercorp Securities, Timbercorp, the Land Owner, other Participant Growers or any other person.

#### **9.2 Rights of Timbercorp Securities**

The Participant Grower agrees and acknowledge that Timbercorp Securities is entitled to:

- (a) full and free access for the purposes of carrying out its obligations and exercising its rights under the Boundary Bend Lease with or without vehicles to the Boundary Bend Lots along any road or track or any neighbouring land owned or occupied by Timbercorp Securities, Timbercorp, the Land Owner, other Participant Growers or any other person which gives access to the Boundary Bend Lots;
- (b) full and free access with or without vehicles to the relevant Boundary Bend Lots for the purpose of accessing neighbouring land owned or occupied by Timbercorp Securities, Timbercorp, the Land Owner, other Participant Growers or any other person.

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### **10. TERMINATION OF AGREEMENT**

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

The Participant Grower may terminate this Agreement by notice in writing to 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 Timbercorp Securities or any part of its

# **Licence Agreement**

**B. B. Olives Pty Ltd**

**Timbercorp Securities Limited**

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

## **2008 Timbercorp Olive Project**

### **RYANS LICENCE AGREEMENT**

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

Level 7  
350 Collins Street  
MELBOURNE VIC 3000

Telephone: 9600 3525  
Facsimile: 9600 3527

- 
- (b) Timbercorp Securities entering into the Ryans Head Lease with the Land Owner in respect of the Ryans Grove;
  - (c) the contemporaneous execution of the Boundary Bend Licence Agreement and the Andersons Licence Agreement; and
  - (d) at the option of the Responsible Entity, the contemporaneous execution of the Suttons Licence Agreement and/or the Westmores Licence Agreement,

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. LICENCE FEES**

### **7.1 Licence Fees**

- (a) A Participant Grower must pay Timbercorp Securities the following licence fees per Grovelot:
  - (i) for the period from the Commencement Date until 30 June 2008, nil;
  - (ii) for each of the Financial Years ending 30 June 2009 and 2010, \$500 multiplied by the Ryans Proportion payable on 31 October 2008 and 2009 respectively;
  - (iii) for each of the Financial Years ending 30 June 2011 and 2012, \$545.45 multiplied by the Ryans Proportion payable on 31 October 2010 and 2011 respectively;
  - (iv) for the Financial Year ending 30 June 2013, \$1,042.72 multiplied by the Ryans Proportion payable on 31 October 2012;
  - (v) for the Financial Year ending 30 June 2014, \$1,070 multiplied by the Ryans Proportion payable on 31 October 2013; and
  - (vi) on 31 October of each subsequent Financial Year during the Term, an amount equal to the Licence Fees payable on the immediately preceding 31 October, Indexed.

### **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

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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 licence fees and other amounts paid to Timbercorp Securities under this Agreement 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 Agreement, Timbercorp Securities may pay on behalf of the Participant Grower, from its own funds, any such expense owing by the Participant Grower and Timbercorp Securities will be entitled to be reimbursed 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 Agreement:

- (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 Ryans Lots 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 Ryans Lots;

- 
- (b) use the relevant Ryans Lots 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 Ryans Lots;
  - (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 Ryans Lots 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, Timbercorp and the Land Owner and their employees, agents and contractors to enter upon the relevant Ryans Lots from time to time with or without equipment for the purposes of observing the state of the relevant Ryans Lots;
  - (h) permit Timbercorp Securities and its employees, agents and contractors to enter upon the relevant Ryans Lots from time to time with or without equipment for the purpose of performing its obligations under this Agreement and the Grovelot Management Agreement;
  - (i) permit the Land Owner and its employees, agents and contractors to enter upon the relevant Ryans Lots from time to time with or without equipment for the purpose of performing its obligations under this Agreement;
  - (j) comply or procure compliance with the provisions of the Grovelot Management Agreement; and
  - (k) give such rights of way and free access to the occupiers of any other Grovelots adjoining the relevant Ryans Lots and their agents and contractors, as are necessary for their proper use and enjoyment of their Ryans Lots, 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 Ryans Lots.

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

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

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# **Licence Agreement**

**B. B. Olives Pty Ltd**

**Timbercorp Securities Limited**

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

## **2008 Timbercorp Olive Project**

**WESTMORES LICENCE AGREEMENT**

**NM TAYLOR**  
LAWYERS

Level 7  
350 Collins Street  
MELBOURNE VIC 3000

Telephone: 9600 3525  
Facsimile: 9600 3527

- 
- (b) Timbercorp Securities entering into the Westmores Head Lease with the Land Owner in respect of the Westmores Grove;
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- (b) use the relevant Westmores Lots 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 Westmores Lots;
  - (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 Westmores Lots 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, Timbercorp and the Land Owner and their employees, agents and contractors to enter upon the relevant Westmores Lots from time to time with or without equipment for the purposes of observing the state of the relevant Westmores Lots;
  - (h) permit Timbercorp Securities and its employees, agents and contractors to enter upon the relevant Westmores Lots from time to time with or without equipment for the purpose of performing its obligations under this Agreement and the Grovelot Management Agreement;
  - (i) permit the Land Owner and its employees, agents and contractors to enter upon the relevant Westmores Lots from time to time with or without equipment for the purpose of performing its obligations under this Agreement;
  - (j) comply or procure compliance with the provisions of the Grovelot Management Agreement; and
  - (k) give such rights of way and free access to the occupiers of any other Grovelots adjoining the relevant Westmores Lots and their agents and contractors, as are necessary for their proper use and enjoyment of their Westmores Lots, 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 Westmores Lots.

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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-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**

**2008 Olive Scheme - Forecast 2010 Harvest Result**

**2008 Timbercorp Olive Project (ARSN 129 307 722)**

Gross Grower Proceeds	8,191,539
less: Sales & Related Costs	(347,063)
Growers Net Proceeds	7,844,476
TIM Mgmt Fee	(235,334)
Admin Fee	0
Farm Operating Costs	(7,028,000)
Technical Fee	0
BB Management Fee	0
Temp Water	0
Licence Fee	(3,514,000)
AOA Levy	0
Total Operating Expenditure	(10,777,334)
<b>Grower Net Operating Cashflow before CAPEX</b>	<b>(2,932,858)</b>
Water Capital Expenditure	(3,811,095)
Non Water Capital Expenditure	(1,125,835)
2010 Capital Expenditure	(4,936,930)
<b>Net Operating Cashflow after CAPEX</b>	<b>(7,869,788)</b>

**2010 Crop Variables**

a	Litres per Ha (4 lots per hectare)	982
a	Litres per Lot	245
b	Wholesale Price (litre) \$	4.75
	Net Sales Price (litre) \$ - Wholesale less sales & related costs	4.55
d	Sold Area (Ha)	1,757.00
e	Water Allocation	40%
e	Temp Water Price \$	350
f	TIM Variable Mgmt Fee (PDS)	3.00%
g	JV Share	0%
h	Processing Fee (per tonne adjusted annually for CPI from Project C'ment)	\$165
i	Base Admin Fee per Lot (Adjusted annually for CPI from Project C'ment)	42.50
j	Licence Fee per Lot (FY10 Rate per PDS)	500
k	CPI Assumption	2.5%

**Net Operating Cashflow Incurred to Date**

2008	(36,417,831)
2009	(10,542,000)
Total	<b>(46,959,831)</b>
Number of Grovelots	7,028
Cumulative Cashflow per Grovelot	
2008	(5,182)
2009	(1,500)
Total	<b>(6,682)</b>

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

**LIST E**

No 7114 of 2009

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(UNDER ADMINISTRATION)**

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First Plaintiffs**

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

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

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(Leon Zwier)

---

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**

# 2008 Timbercorp Olive Project (ARSN 129 307 722)

" MAK - 7 "

Project: 2008 Olive Early – 7,028 lots					
Grower Obligations	Total Arrears	Amount		%	
		Invoiced (Oct 2008)	Outstanding	Outstanding	
	\$413,974	\$11,596,200	\$413,974	4%	
<b>Timbercorp Finance Funding</b>					
	Amount Borrowed	Value of loans in arrears	% of loans in arrears		
	\$22,614,221	\$9,826,353	43.4%		
Percentage of growers with loans <sup>1</sup>	79.9%				
Failed Direct Debits	Pre Appointment (March) #	Pre Appointment Value	Post Appointment (May) #	Post Appointment Value	
	33	\$51,049	168	\$88,940	
1. This is funding provided by Timbercorp Finance. Status of loans provided by other lenders is unknown.					
<b>Lots held by Timbercorp Group</b>					
Timbercorp Ltd		▪	0		
Timbercorp Finance Ltd		▪	0		
Timbercorp Lot Investments		▪	7		



KordaMentha

Liability limited by a scheme approved under Professional Standards Legislation



r43.06

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

2008 Timbercorp Olive Project (ARSN 128 307 722) - 2008 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	2033	
Base				(1,217)	(1,573)	(1,270)	(1,323)	(966)	(672)	(516)	(449)	(460)	(470)	(481)	(493)	(504)	(516)	(528)	(541)	(553)	(566)	(580)	(594)	(608)	(622)	(633)	2,051	
\$ 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	7.78	7.98	7.78	
4.00				(1,249)	(1,692)	(1,476)	(1,605)	(1,327)	(1,095)	(890)	(936)	(958)	(981)	(1,005)	(1,030)	(1,055)	(1,080)	(1,106)	(1,133)	(1,161)	(1,189)	(1,218)	(1,248)	(1,278)	(1,309)	(1,340)	1,762	
5.00				(1,184)	(1,504)	(1,152)	(1,160)	(757)	(428)	(249)	(168)	(172)	(175)	(179)	(183)	(187)	(190)	(194)	(199)	(203)	(207)	(212)	(216)	(221)	(226)	(231)	2,218	
6.00				(1,217)	(1,573)	(1,270)	(1,323)	(966)	(672)	(516)	(449)	(460)	(470)	(481)	(493)	(504)	(516)	(528)	(541)	(553)	(566)	(580)	(594)	(608)	(622)	(633)	2,051	
7.00				(1,054)	(1,127)	(902)	(269)	384	906	1,214	1,366	1,401	1,437	1,473	1,511	1,549	1,589	1,629	1,671	1,713	1,757	1,802	1,847	1,894	1,942	2,000	3,129	
8.00				(898)	(938)	(1,171)	176	954	1,573	1,945	2,133	2,187	2,243	2,299	2,358	2,417	2,479	2,541	2,606	2,671	2,739	2,808	2,879	2,952	3,026	3,100	3,584	
2008 Timbercorp Olive Project (ARSN 128 307 722) - 2008 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	2033	
-15%				(1,217)	(1,573)	(1,270)	(1,323)	(966)	(672)	(820)	(867)	(891)	(915)	(939)	(964)	(990)	(1,017)	(1,044)	(1,072)	(1,100)	(1,129)	(1,158)	(1,187)	(1,216)	(1,245)	(1,274)	1,743	
Base				(1,217)	(1,573)	(1,270)	(1,323)	(966)	(672)	(516)	(449)	(460)	(470)	(481)	(493)	(504)	(516)	(528)	(541)	(553)	(566)	(580)	(594)	(608)	(622)	(633)	2,051	
15%				(1,217)	(1,573)	(1,270)	(1,323)	(966)	(672)	(213)	69	72	74	77	79	82	85	88	91	94	97	100	103	107	110	114	2,559	
2008 Timbercorp Olive Project (ARSN 128 307 722) - 2008 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	2033	
Base				(1,217)	(1,573)	(1,270)	(1,323)	(966)	(672)	(516)	(449)	(460)	(470)	(481)	(493)	(504)	(516)	(528)	(541)	(553)	(566)	(580)	(594)	(608)	(622)	(633)	2,051	
40%				(1,217)	(1,669)	(1,521)	(1,690)	(1,333)	(1,040)	(894)	(817)	(827)	(838)	(849)	(860)	(872)	(883)	(896)	(908)	(921)	(934)	(947)	(961)	(975)	(990)	(1,005)	3,933	2,051
60%				(1,217)	(1,573)	(1,411)	(1,568)	(1,211)	(917)	(694)	(694)	(705)	(715)	(726)	(738)	(749)	(761)	(773)	(786)	(798)	(811)	(825)	(839)	(853)	(867)	(881)	3,933	2,051
80%				(1,217)	(1,476)	(1,302)	(1,445)	(1,088)	(795)	(639)	(572)	(582)	(593)	(604)	(615)	(627)	(638)	(651)	(663)	(676)	(689)	(702)	(716)	(730)	(745)	(759)	3,933	2,051

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 675 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 \$12.7m for permanent water rights and \$1.93m for other CAPEX is still required for this scheme in addition to the cash flows identified above. Growers may expect a reduction in future licence fees to the extent it relates to permanent water or other infrastructure requirements.

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

**LIST E**

No 7114 of 2009

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INVESTMENTS SCHEMES LISTED IN SCHEDULE 1  
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Second and Third Plaintiffs**

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Date of document: June 2009  
Filed on behalf of: the Plaintiffs  
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Lawyers and Advisers  
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(Leon Zwier)

---

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

Before me: .....

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

"MAK-9"

## Lease

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

Lodged at the Land Titles Office by:

Name: Donaldson Trumble

Phone: 9672 5800

Address: 84 Williams Street, Melbourne

Ref: 070489

(Suttons 2007 and 2008 Olives)

Customer 1215V

Code:



**AF697177C**

05/03/2008 \$97 66

**Privacy**

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



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

Land: *(volume and folio reference)*

**Vol 8876 Folio 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 2033

Commencement date:

19 January 2007

Rental:

\$100 per annum

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

As appears from the annexure of 16 pages, making 17 in total

Dated: 25 February 2008

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

**AF697177C**



Form A1  
Lands Office

## ANNEXURE PAGE

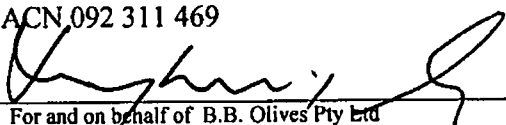
### Transfer of Land Act 1958

This is page 11 of *Approved Form 26 (Lease)* dated 25 February 2008 between ~~Timbercorp Securities Ltd~~ 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

## 11. TERMINATION

- 11.1.** If all the Projects end 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 a Project due to a termination of its Grovelot Management Agreement and the Suttons Licence Agreement or the relevant Sub-lease ("**Past Grower**"):
- (a) with the consent of the Lessor, the Lessee may sub-underlease or license the Lessor to occupy and use that part of the Land that was occupied by the Past Grower under its Suttons Licence Agreement or 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 licensing 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 at any time after 30 June 2032 by notice in writing to the other if the terms of all of the Suttons Licence Agreements are not extended from 29 June 2031 until 29 June 2033 under clause 4.2 of the Suttons Licence Agreements.

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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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.

# Lease

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

Lodged at the Land Titles Office by:

Name: Donaldson Trumble

Phone: 9672 5800

Address: 84 Williams Street, Melbourne

Ref: 070489

(Andersons 2006, 2007 and 2008 Olives)

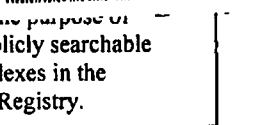
Customer 1215V

Code:



**AF697152U**

05/03/2008 \$97 66



**Privacy C**

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

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

Land: *(volume and folio reference)*

**Vol 10193 Folio 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 2033**

Commencement date:

**27 April 2006**

Rental:

**\$100 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 17 pages, making 18 in total**

Dated: 25 February 2008

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

**AF697152U**



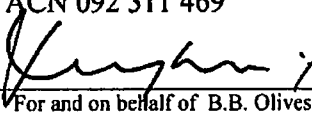
## ANNEXURE PAGE

### Transfer of Land Act 1958

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Signatures of the parties:

  
for and on behalf of Timbercorp Securities Limited

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

#### 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 all the Projects end 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 a Project due to a termination of its Grovelot Management Agreement and the Andersons Licence Agreement or the relevant Sub-lease ("**Past Grower**"):

- (a) with the consent of the Lessor, the Lessee may sub-underlease or license the Lessor to occupy and use that part of the Land that was occupied by the Past Grower under its Andersons Licence Agreement or 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;

Approval No. 330056A

**A1**



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**AF697152U**



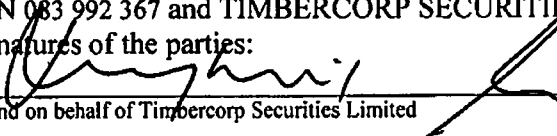
A1  
Office

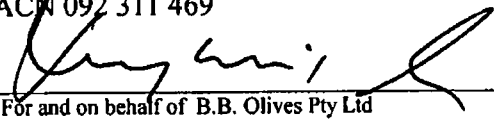
## ANNEXURE PAGE

### Transfer of Land Act 1958

This is page 12 of *Approved Form 26 (Lease)* dated 25 February 2008 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

- (b) the sub-underleasing or licensing 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 at any time after 30 June 2032 by notice in writing to the other if the terms of all of the Andersons Licence Agreements are not extended from 29 June 2031 until 29 June 2033 under clause 4.2 of the Andersons Licence Agreements.

## 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 Andersons Licence Agreement or a 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**



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# Sub-Lease

Section 71(1) Transfer of Land Act 1958

Lodged at the Land Titles Office by:

Name: Donaldson Trumble

Phone: 9672 5800

Address: 84 William St, Melbourne

Ref: DW: 074089- 2008 Olives Westmores

Customer 1215V

Code:

## Privacy Collection Statement

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

The Sub Lessor, being the registered proprietor of the lease, sub-leases to the sub-lessee the land to be held by the sub-lessee for the term and at the yearly rental subject to the covenants and conditions contained in this sub-lease.

Land: *(volume and folio reference)*

**Lot 5 on the attached plan, being part of the land comprised in Certificate of Title Volume 10405 Folio 425**

Lease:

Sub- Lessor: *(full name)*

**ALMOND LAND PTY LTD** ACN 091 460 392 Level 8, 461 Bourke Street, Melbourne, Victoria, 3000

Sub- 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 2033

Commencement date:

1 November 2007

Rental:

\$100 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 15 pages, making 16 in total (and 3 pages of plans)

Dated: 25 February 2008

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

Australia and New Zealand Banking Group Limited, mortgagee under mortgage V002553M consents to this within lease.

To: Registrar of Titles

Please register the within lease, and upon completion, titles to issue to ANZ

# ANNEXURE PAGE

Approved Form A1  
Victorian Land Titles Office

Transfer of Land Act 1958

This is page 10 of *Approved Form 29 (Sub-Lease)* dated 25 February 2008 between ALMOND LAND PTY LTD ACN 091 460 392 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 Almond Land Pty Ltd

## 10.4. Lessor discharged from obligations

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

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

The Lessor's rights under this clause 10 are subject to the rights granted by the Lessor to the Growers under paragraph 9.3.

## 11. TERMINATION

11.1. If the Project end 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 Westmores Licence Agreement ("**Past Grower**");

- (a) with the consent of the Lessor, the Lessee may sub-underlease or license the Lessor to occupy and use that part of the Land that was occupied by the Past Grower under its Westmores Licence Agreement, 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;

Approval No. 330056A

# A1



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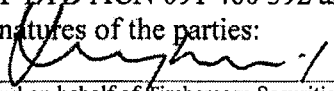
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Approved Form A1  
Victorian Land Titles Office

## Transfer of Land Act 1958

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Signatures of the parties:

  
for and on behalf of Timbercorp Securities Limited

  
for and on behalf of Almond Land Pty Ltd

- (b) the sub-underleasing or licensing 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 at any time after 30 June 2032 by notice in writing to the other if the terms of all of the Westmores Licence Agreements are not extended from 29 June 2031 until 29 June 2033 under clause 4.2 of the Westmores Licence Agreements.

## 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 Westmores Licence Agreement.

- 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



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# Lease

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

Lodged at the Land Titles Office by:

Name: Donaldson Trumble

Phone: 9672 5800

Address: 84 Williams Street, Melbourne

Ref: 070489

(Ryans 2007 and 2008 Olives)

Customer 1215V

Code:

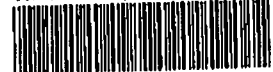


Private  
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and is used for the purpose of  
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registers and indexes in the  
Victorian Land Registry.

**AF697220E** 6

05/03/2008 \$97 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)

**Vol 10674 Folio 758-761**

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 2033

Commencement date:

1 January 2008

Rental:

\$100 per annum

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

As appears from the annexure of 15 pages, making 16 in total

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05/03/2008 \$97

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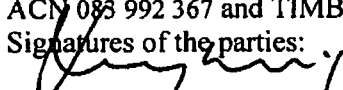


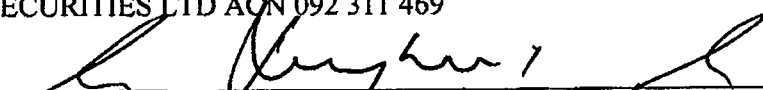
## ANNEXURE PAGE

### Transfer of Land Act 1958

This is page 10 of *Approved Form 26 (Lease)* dated 25 February 2008 between B.B. OLIVES PTY LTD ACN 088 992 367 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

## 11. TERMINATION

**11.1.** If the Project end 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 Ryans Licence Agreement ("**Past Grower**"):

- (a) with the consent of the Lessor, the Lessee may sub-underlease or license the Lessor to occupy and use that part of the Land that was occupied by the Past Grower under its Ryans Licence Agreement, 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 licensing 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 at any time after 30 June 2032 by notice in writing to the other if the terms of all of the Ryans Licence Agreements are not extended from 29 June 2031 until 29 June 2033 under clause 4.2 of the Ryans Licence Agreements.

Approval No. 330056A

**A1**



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5. All pages must be attached together by being stapled in the top left corner.

**2008 Timbercorp Olive  
Project**

**Management Agreement**

**Timbercorp Securities Limited**

**Olivecorp Management Limited**

**2008 Timbercorp Olive Project**

- 
- (i) a reference to a clause, recital or schedule is to a clause, recital or schedule in or to this Agreement;
  - (j) if a party comprises two or more persons, this Agreement binds them jointly and each of them severally unless a contrary intention is expressed in the Agreement;
  - (k) if any of the persons comprising the Participant Grower is a trustee, this Agreement binds that person in its capacity as a trustee and personally; and
  - (l) the word "**include**" or "**includes**" is to be read as if the expression "**(but is not limited to)**" immediately followed such word and the word "**including**" is to be read as if the expression "**(but not limited to)**" immediately followed such word.

### **1.3 Headings**

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

### **1.4 Capacity of TSL**

TSL enters into this Agreement in its personal capacity.

### **1.5 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.

---

## **2. TERM**

### **2.1 Commencement Date**

This Agreement will commence on the Commencement Date.

### **2.2 Termination Date**

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

- (a) termination of the Project; and
- (b) 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 2031; or
  - (ii) if the Project is extended under clause 2.2 of the Grovelot Management Agreement, 30 June 2033.

---

## **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.

**Grovelot Management  
Agreement**

**Timbercorp Securities Limited**

**Each Several Participant Grower  
named in the Schedule to the  
Licence Agreements**

**2008 Timbercorp Olive Project**



---

## **1.4 Participant Grower and Agreement**

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

## **1.5 Delegation**

Timbercorp Securities is entitled to:

- (a) delegate any of its obligations under this Agreement to; and
- (b) exercise any of its rights under this Agreement, through

its employees, agents and contractors but any delegation by Timbercorp Securities does not release Timbercorp Securities from liability under this Agreement.

## **1.6 Payments under this Agreement**

The Participant Growers that are Joint Venturers agree and acknowledge that Timbercorp Securities granting time, waiver or other indulgence to, compounding or compromising with, or wholly or partially releasing, one of the Joint Venturers in any way, from any obligation under this Agreement does not:

- (a) cause the other Joint Venturers' obligations and liabilities under this Agreement to be reduced or avoided;
- (b) prejudicially affect Timbercorp Securities' rights against the other Joint Venturers' under this Agreement.

## **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.

---

# **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 of 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 2031.

- 
- (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 Licence Agreements are 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 2033,
- if:
- (c) before 30 June 2030, 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 2031 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.

---

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

### **3.1 No Partnership etc**

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

### **3.2 Project**

The parties expressly agree and acknowledge that:

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

**Olive Grove Management  
Agreement**

**[2008 Timbercorp Olive Project]**

**Ollvecorp Management Limited**

**B.B. Olives Pty Ltd**

**Timbercorp Securities Limited**

**Boundary Bend Estate  
Management Pty Ltd**

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.

## 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.

## 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

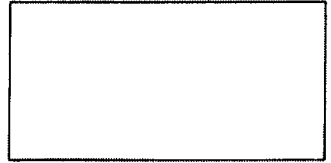
BBEM will carry out the Services as an independent contractor of Olivecorp.

### 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;
  - (iii) in accordance with Best Horticultural Practice; and
  - (iv) in a manner consistent with the best interests of all the Growers.
- (b) The phrase "commercially reasonable manner" means, in any particular circumstances, a manner which BBEM honestly believes is commercially

# **CAPITAL WORKS AGREEMENT**

## **2008 TIMBERCORP OLIVE PROJECT**



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

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

- (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**

---

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.

# **Licence Agreement**

**B. B. Olives Pty Ltd**

**Timbercorp Securities Limited**

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

## **2008 Timbercorp Olive Project**

### **SUTTONS LICENCE AGREEMENT**

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

Level 7  
350 Collins Street  
MELBOURNE VIC 3000

Telephone: 9600 3525  
Facsimile: 9600 3527

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### **3. GRANT OF LICENCE AND WATER LICENCES**

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

- (a) Timbercorp Securities grants to the Participant Grower and the Participant Grower takes from Timbercorp Securities a licence, effective from the Commencement Date, to use and occupy the relevant Suttons Lots for the sole purpose of conducting the Grovelot Operations.
- (b) Timbercorp Securities represents and warrants that:
  - (i) as at the date of execution of this Agreement, the Suttons Head Lease is valid and subsisting;
  - (ii) Timbercorp Securities is entitled under the Suttons Head Lease to grant the licence under this Agreement; and
  - (iii) any consents which may be required to the granting of the licence under this Agreement have been, or will be, obtained.

#### **3.2 Water Licences**

- (a) Subject to paragraph 3.2(b), the Land Owner must purchase Water Licences progressively, commensurate with the requirements of the Olive Trees at their particular stage of maturity, at or before the commencement of each irrigation season.
- (b) The Land Owner may, prior to the Olive Trees reaching the stage of commercial maturity, acquire temporary water rights for a particular season in lieu of the Water Licences that would otherwise be required for that season.
- (c) 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; and
  - (ii) take all steps to avoid interfering with the supply of water to the relevant Suttons Lots and to avoid any actions that would prejudice the Participant Grower's rights under this Agreement.
- (d) The Participant Grower acknowledges that the temporary water rights purchased or procured do not attach to the Suttons Lots of any of the Participant Growers, are not attributable to the Project and will at all times remain the property of the Land Owner or Timbercorp, as the case may require.

---

### **4. TERM**

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

- (a) This Agreement will commence on the Commencement Date.



- 
- (b) Subject to clauses 4.2, 6, 10.1 to 10.3 and clause 10.5, this Agreement will continue until the earlier of:
- (i) the date which is one day before the expiry or termination of the Suttons Head Lease;
  - (ii) termination of the Participating Grower's Participating Interest in the Project;
  - (iii) 29 June 2031, or if clause 4.2 applies, 29 June 2033; 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 Agreement shall be extended and clause 4.1(b) (iii) shall be read and construed as 29 June 2033.

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

- (a) At the end of this Agreement, the Participant Grower must return the relevant Suttons Lots to the Land Owner in good condition, but the Participant Grower is not required to remove Olive Trees or restore the relevant Suttons Lots to their original condition.
- (b) Any structures or plant and equipment of any description which belong to the Participating Grower must be removed from the relevant Suttons Lots within 30 days after the end of this Agreement. If the Participating Grower does not comply with this requirement then, as between Timbercorp Securities, the Land Owner and the Participant Grower, all structures and plant and equipment remaining on the relevant Suttons Lots at the time will become the absolute property of the Land Owner.
- (c) The Land Owner has no obligation to pay the Participant Grower or Timbercorp Securities any compensation at the end, or on termination, of this Agreement, including for any structures and plant and equipment remaining on the relevant Suttons Lots that become the absolute property of the Land Owner in accordance with paragraph 4.3(b).
- (d) The Land Owner and Timbercorp Securities has no obligation to pay the Participant Grower any compensation at the end, or on termination, of this Agreement, including for any structures and plant and equipment remaining on the relevant Suttons Lots that become the absolute property of the Land Owner in accordance with paragraph 4.3(b).

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### **5. TIMBERCORP SECURITIES' OBLIGATIONS AND RIGHTS**

#### **5.1 Obligations**

Timbercorp Securities must:

- (a) maintain for the Term of the Project all approvals, licences or permits required

# **Licence Agreement**

**B. B. Olives Pty Ltd**

**Timbercorp Securities Limited**

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

## **2008 Timbercorp Olive Project**

**ANDERSONS LICENCE AGREEMENT**

**NM TAYLOR**  
LAWYERS

Level 7  
350 Collins Street  
MELBOURNE VIC 3000

Telephone: 9600 3525  
Facsimile: 9600 3527

---

Grower takes from Timbercorp Securities a licence, effective from the Commencement Date, to use and occupy the relevant Andersons Lots for the sole purpose of conducting the Grovelot Operations.

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

### **3.2 Water Licences**

- (a) Subject to paragraph 3.2(b), the Land Owner must purchase Water Licences progressively, commensurate with the requirements of the Olive Trees at their particular stage of maturity, at or before the commencement of each irrigation season.
- (b) The Land Owner may, prior to the Olive Trees reaching the stage of commercial maturity, acquire temporary water rights for a particular season in lieu of the Water Licences that would otherwise be required for that season.
- (c) 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; and
  - (ii) take all steps to avoid interfering with the supply of water to the relevant Andersons Lots and to avoid any actions that would prejudice the Participant Grower's rights under this Agreement.

The Participant Grower acknowledges that the temporary water rights acquired or procured do not attach to the Andersons Lots of any of the Participant Growers, are not attributable to the Project and will at all times remain the property of the Land Owner or Timbercorp, as the case may require.

---

## **4. TERM**

### **4.1 Term of Agreement**

- (a) This Agreement will commence on the Commencement Date.
- (b) Subject to clauses 4.2, 6, 10.1 to 10.3 and clause 10.5, this Agreement will continue until the earlier of:
  - (i) the date which is one day before the expiry or termination of the Andersons Head Lease;

- 
- (ii) termination of the Participating Grower's Participating Interest in the Project;
  - (iii) 29 June 2031, or if clause 4.2 applies, 29 June 2033; 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 Agreement shall be extended and clause 4.1(b) (iii) shall be read and construed as 29 June 2033.

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

- (a) At the end of this Agreement, the Participant Grower must return the relevant Andersons Lots to the Land Owner in good condition, but the Participant Grower is not required to remove Olive Trees or restore the relevant Andersons Lots to their original condition.
- (b) Any structures or plant and equipment of any description which belong to the Participating Grower must be removed from the relevant Andersons Lots within 30 days after the end of this Agreement. If the Participating Grower does not comply with this requirement then, as between Timbercorp Securities, the Land Owner and the Participant Grower, all structures and plant and equipment remaining on the relevant Andersons Lots at the time will become the absolute property of the Land Owner.
- (c) The Land Owner has no obligation to pay the Participant Grower or Timbercorp Securities any compensation at the end, or on termination, of this Agreement, including for any structures and plant and equipment remaining on the relevant Andersons Lots that become the absolute property of the Land Owner in accordance with paragraph 4.3(b).
- (d) The Land Owner and Timbercorp Securities has no obligation to pay the Participant Grower any compensation at the end, or on termination, of this Agreement, including for any structures and plant and equipment remaining on the relevant Andersons Lots that become the absolute property of the Land Owner in accordance with paragraph 4.3(b).

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### **5. TIMBERCORP SECURITIES' OBLIGATIONS AND RIGHTS**

#### **5.1 Obligations**

Timbercorp Securities must:

- (a) maintain for the Term of the Project all approvals, licences or permits required by any Authority for the establishment and ownership of all the Andersons Lots;
- (b) allow the Participant Grower to peaceably and quietly hold and enjoy the Andersons Lots without any interruption by Timbercorp Securities or any person claiming through or under Timbercorp Securities;

## **Licence Agreement**

**B. B. Olives Pty Ltd**

**Timbercorp Securities Limited**

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

## **2008 Timbercorp Olive Project**

### **WESTMORES LICENCE AGREEMENT**

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

Level 7  
350 Collins Street  
MELBOURNE VIC 3000

Telephone: 9600 3525  
Facsimile: 9600 3527

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### **3. GRANT OF LICENCE AND WATER LICENCES**

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

- (a) Timbercorp Securities grants to the Participant Grower and the Participant Grower takes from Timbercorp Securities a licence, effective from the Commencement Date, to use and occupy the relevant Westmores Lots for the sole purpose of conducting the Grovelot Operations.
- (b) Timbercorp Securities represents and warrants that:
  - (i) as at the date of execution of this Agreement, the Westmores Head Lease is valid and subsisting;
  - (ii) Timbercorp Securities is entitled under the Westmores Head Lease to grant the licence under this Agreement; and
  - (iii) any consents which may be required to the granting of the licence under this Agreement have been, or will be, obtained.

#### **3.2 Water Licences**

- (a) Subject to paragraph 3.2(b), the Land Owner must purchase Water Licences progressively, commensurate with the requirements of the Olive Trees at their particular stage of maturity, at or before the commencement of each irrigation season.
- (b) The Land Owner may, prior to the Olive Trees reaching the stage of commercial maturity, acquire temporary water rights for a particular season in lieu of the Water Licences that would otherwise be required for that season.
- (c) 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; and
  - (ii) take all steps to avoid interfering with the supply of water to the relevant Westmores Lots and to avoid any actions that would prejudice the Participant Grower's rights under this Agreement.
- (d) The Participant Grower acknowledges that the temporary water rights purchased or procured do not attach to the Westmores Lots of any of the Participant Growers, are not attributable to the Project and will at all times remain the property of the Land Owner or Timbercorp, as the case may require.

---

### **4. TERM**

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

- 
- (a) This Agreement will commence on the Commencement Date.
  - (b) Subject to clauses 4.2, 6, 10.1 to 10.3 and clause 10.5, this Agreement will continue until the earlier of:
    - (i) the date which is one day before the expiry or termination of the Westmores Head Lease;
    - (ii) termination of the Participating Grower's Participating Interest in the Project;
    - (iii) 29 June 2031, or if clause 4.2 applies, 29 June 2033; 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 Agreement shall be extended and clause 4.1(b) (iii) shall be read and construed as 29 June 2033.

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

- (a) At the end of this Agreement, the Participant Grower must return the relevant Westmores Lots to the Land Owner in good condition, but the Participant Grower is not required to remove Olive Trees or restore the relevant Westmores Lots to their original condition.
- (b) Any structures or plant and equipment of any description which belong to the Participating Grower must be removed from the relevant Westmores Lots within 30 days after the end of this Agreement. If the Participating Grower does not comply with this requirement then, as between Timbercorp Securities, the Land Owner and the Participant Grower, all structures and plant and equipment remaining on the relevant Westmores Lots at the time will become the absolute property of the Land Owner.
- (c) The Land Owner has no obligation to pay the Participant Grower or Timbercorp Securities any compensation at the end, or on termination, of this Agreement, including for any structures and plant and equipment remaining on the relevant Westmores Lots that become the absolute property of the Land Owner in accordance with paragraph 4.3(b).
- (d) The Land Owner and Timbercorp Securities has no obligation to pay the Participant Grower any compensation at the end, or on termination, of this Agreement, including for any structures and plant and equipment remaining on the relevant Westmores Lots that become the absolute property of the Land Owner in accordance with paragraph 4.3(b).

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## **5. TIMBERCORP SECURITIES' OBLIGATIONS AND RIGHTS**

### **5.1 Obligations**

Timbercorp Securities must:

## **Licence Agreement**

**B. B. Olives Pty Ltd**

**Timbercorp Securities Limited**

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

## **2008 Timbercorp Olive Project**

**RYANS LICENCE AGREEMENT**

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

Level 7  
350 Collins Street  
MELBOURNE VIC 3000

Telephone: 9600 3525  
Facsimile: 9600 3527



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### **3. GRANT OF LICENCE AND WATER LICENCES**

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

- (a) Timbercorp Securities grants to the Participant Grower and the Participant Grower takes from Timbercorp Securities a licence, effective from the Commencement Date, to use and occupy the relevant Ryans Lots for the sole purpose of conducting the Grovelot Operations.
- (b) Timbercorp Securities represents and warrants that:
  - (i) as at the date of execution of this Agreement, the Ryans Head Lease is valid and subsisting;
  - (ii) Timbercorp Securities is entitled under the Ryans Head Lease to grant the licence under this Agreement; and
  - (iii) any consents which may be required to the granting of the licence under this Agreement have been, or will be, obtained.

#### **3.2 Water Licences**

- (a) Subject to paragraph 3.2(b), the Land Owner must purchase Water Licences progressively, commensurate with the requirements of the Olive Trees at their particular stage of maturity, at or before the commencement of each irrigation season.
- (b) The Land Owner may, prior to the Olive Trees reaching the stage of commercial maturity, acquire temporary water rights for a particular season in lieu of the Water Licences that would otherwise be required for that season.
- (c) 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; and
  - (ii) take all steps to avoid interfering with the supply of water to the relevant Ryans Lots and to avoid any actions that would prejudice the Participant Grower's rights under this Agreement.
- (d) The Participant Grower acknowledges that the temporary water rights purchased or procured do not attach to the Ryans Lots of any of the Participant Growers, are not attributable to the Project and will at all times remain the property of the Land Owner or Timbercorp, as the case may require.

---

### **4. TERM**

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

- (a) This Agreement will commence on the Commencement Date.

- 
- (b) Subject to clauses 4.2, 6, 10.1 to 10.3 and clause 10.5, this Agreement will continue until the earlier of:
- (i) the date which is one day before the expiry or termination of the Ryans Head Lease;
  - (ii) termination of the Participating Grower's Participating Interest in the Project;
  - (iii) 29 June 2031, or if clause 4.2 applies, 29 June 2033; 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 Agreement shall be extended and clause 4.1(b) (iii) shall be read and construed as 29 June 2033.

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

- (a) At the end of this Agreement, the Participant Grower must return the relevant Ryans Lots to the Land Owner in good condition, but the Participant Grower is not required to remove Olive Trees or restore the relevant Ryans Lots to their original condition.
- (b) Any structures or plant and equipment of any description which belong to the Participating Grower must be removed from the relevant Ryans Lots within 30 days after the end of this Agreement. If the Participating Grower does not comply with this requirement then, as between Timbercorp Securities, the Land Owner and the Participant Grower, all structures and plant and equipment remaining on the relevant Ryans Lots at the time will become the absolute property of the Land Owner.
- (c) The Land Owner has no obligation to pay the Participant Grower or Timbercorp Securities any compensation at the end, or on termination, of this Agreement, including for any structures and plant and equipment remaining on the relevant Ryans Lots that become the absolute property of the Land Owner in accordance with paragraph 4.3(b).
- (d) The Land Owner and Timbercorp Securities has no obligation to pay the Participant Grower any compensation at the end, or on termination, of this Agreement, including for any structures and plant and equipment remaining on the relevant Ryans Lots that become the absolute property of the Land Owner in accordance with paragraph 4.3(b).

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## **5. TIMBERCORP SECURITIES' OBLIGATIONS AND RIGHTS**

### **5.1 Obligations**

Timbercorp Securities must:

- (a) maintain for the Term of the Project all approvals, licences or permits required

# **Licence Agreement**

**Boundary Bend Land Owners**

**Timbercorp Securities Limited**

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

**Timbercorp Limited**

## **2008 Timbercorp Olive Project**

### **BOUNDARY BEND LICENCE AGREEMENT**

**NM TAYLOR**  
LAWYERS

Level 7  
350 Collins Street  
MELBOURNE VIC 3000

Telephone: 9600 3525  
Facsimile: 9600 3527

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## **4. TERM**

### **4.1 Term of Agreement**

- (a) This Agreement will commence on the Commencement Date.
- (b) Subject to clauses 4.2, 6, 10.1 to 10.3 and clause 10.5, this Agreement will continue until the earlier of:
  - (i) the date which is one day before the expiry of the Boundary Bend Lease;
  - (ii) termination of the Participating Grower's Participating Interest in the Project;
  - (iii) 29 June 2031, or if clause 4.2 applies, 29 June 2033; 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 Agreement shall be extended and clause 4.1(b) (iii) shall be read and construed as 29 June 2033.

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

- (a) At the end of this Agreement, the Participant Grower must return the relevant Boundary Bend Lots to Timbercorp Securities in good condition, but the Participant Grower is not required to remove Olive Trees or restore the relevant Boundary Bend Lots to their original condition.
- (b) Any structures or plant and equipment of any description which belong to the Participating Grower must be removed from the relevant Boundary Bend Lots within 30 days after the end of this Agreement. If the Participating Grower does not comply with this requirement then, as between Timbercorp Securities and the Participant Grower, all structures and plant and equipment remaining on the relevant Boundary Bend Lots at the time will become the absolute property of Timbercorp Securities.
- (c) Neither the Land Owner nor Timbercorp has any obligation to pay the Participant Grower any compensation at the end, or on termination, of this Agreement, including for any structures and plant and equipment remaining on the relevant Boundary Bend Lots that become the absolute property of the Land Owner in accordance with paragraph 4.3(b).
- (d) Timbercorp Securities has no obligation to pay the Participant Grower any compensation at the end, or on termination, of this Agreement, including for any structures and plant and equipment remaining on the relevant Boundary Bend Lots that, as between Timbercorp Securities and the Participant Grower, become the absolute property of Timbercorp Securities in accordance with paragraph 4.3(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 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**

**2008 OLIVE PROJECT  
WATER ENCUMBRANCES**

Property	Company	Water Share ID	Volume	First Mortgagee	Mortgage ID
Boundary Bend	B.B. Olives Pty Ltd	WEE018318	4972.3	BOSI Security Services Ltd	MOR001534
Boundary Bend	B.B. Olives Pty Ltd	WEE035530	206.0	BOSI Security Services Ltd	MOR001534
Boundary Bend	B.B. Olives Pty Ltd	WEE035721	2356.0	BOSI Security Services Ltd	MOR001534
Boundary Bend	B.B. Olives Pty Ltd	WEE035747	994.0	BOSI Security Services Ltd	MOR001534
Boundary Bend	B.B. Olives Pty Ltd	WEE037487	250.0	BOSI Security Services Ltd	MOR001534
Boundary Bend	B.B. Olives Pty Ltd	WEE042816	40.0	BOSI Security Services Ltd	MOR001534
Boundary Bend	B.B. Olives Pty Ltd	WEE045492	523.5		
Ryans	B.B. Olives Pty Ltd	WEE015733	59.5	BOSI Security Services Ltd	MOR001534
Ryans	B.B. Olives Pty Ltd	WEE035862	150.0	BOSI Security Services Ltd	MOR001534
Ryans	B.B. Olives Pty Ltd	WEE035966	598.0	BOSI Security Services Ltd	MOR001534
Ryans	B.B. Olives Pty Ltd	WEE036124	250.0	BOSI Security Services Ltd	MOR001534
Ryans	B.B. Olives Pty Ltd	WEE038953	332.5	BOSI Security Services Ltd	MOR001534

"MAK - 10"

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-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**

## **Licence Agreement**

**B. B. Olives Pty Ltd**

**Timbercorp Securities Limited**

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

## **2008 Timbercorp Olive Project**

### **SUTTONS LICENCE AGREEMENT**

**NM TAYLOR**  
LAWYERS

Level 7  
350 Collins Street  
MELBOURNE VIC 3000

Telephone: 9600 3525  
Facsimile: 9600 3527



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other charges levied by government or competent Authority in respect of all Suttons Lots.

## **9.2 Rights of the Land Owner**

The Participant Grower agrees and acknowledges that the Land Owner is entitled to:

- (a) full and free access for the purposes of carrying out its obligations and exercising its rights under the Suttons Head Lease with or without vehicles to the Suttons Lots along any road or track or any neighbouring land owned or occupied by Timbercorp Securities, Timbercorp, the Land Owner, other Participant Growers or any other person which gives access to the Suttons Lots;
- (b) full and free access with or without vehicles to the relevant Suttons Lots for the purpose of accessing neighbouring land owned or occupied by Timbercorp Securities, Timbercorp, the Land Owner, other Participant Growers or any other person.

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## **10. TERMINATION OF AGREEMENT**

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

The Participant Grower may terminate this Agreement by notice in writing to 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 Agreement 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.

#### **10.1A Deemed Termination**

This Agreement will terminate with immediate effect if the Participant Grower's Boundary Bend Licence Agreement, Andersons Licence Agreement, Westmores Licence Agreement and/or Ryans Licence Agreement is terminated, other than under clause 10.3 or 10.4 of the respective agreements described above.

### **10.2 Termination of Agreement by Timbercorp Securities**

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the relevant Suttons Lots under clause 10.4 is without prejudice to any rights and obligations that may have accrued prior to the date of termination.

- (b) Termination of this Agreement in respect of any number of all of the relevant Suttons Lots or part of the relevant Suttons Lots under this clause 10 does not affect the rights or obligations of the parties in respect of any other Suttons Lots or any other part of the reduced relevant Suttons Lots.
- (c) If this Agreement is terminated under clause 10.2 in relation to all of the Suttons Lots of the Participant Grower, the Participant Grower, loses all rights and interest as a participant in the Project.
- (d) 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.

#### **10.6 Termination of Suttons Head Lease**

If the Suttons Head Lease terminates before it would otherwise have expired by the effluxion of time, then the following provisions apply:

- (a) the Land Owner and the Participant Grower agree that this Agreement will continue with all necessary modifications as if the Land Owner were named as the licensor in lieu of Timbercorp Securities from the termination of the Suttons Head Lease;
- (b) In the event that the Participant Grower pays Licence Fees to Timbercorp Securities rather than the Land Owner, then Timbercorp Securities must pay to the Land Owner all Licence Fees so paid under this Agreement (on a GST exclusive basis) within 30 days after receiving the Licence Fees from the Participant Grower;
- (c) To the extent that the amount paid to the Land Owner under paragraph (b) is less than the rent that the Land Owner would have otherwise received from Timbercorp Securities under the Suttons Head Lease for each anniversary from the commencement date of the Suttons Head Lease, Timbercorp Securities must pay to the Land Owner the shortfall within 30 days after the Land Owner gives Timbercorp Securities notice in writing requesting such payment to be made; and
- (d) To the extent that at any given time the amount paid by Timbercorp Securities to the Land Owner under paragraph (b) is more than the rent which the Land Owner would have otherwise received from Timbercorp Securities under the Suttons Head Lease for each anniversary from the commencement date of the Suttons Head Lease at that time, the Land Owner must refund the excess to Timbercorp Securities within 30 days.

#### **10.7 Land Owner's liability**

Timbercorp Securities and the Participant Grower agree and acknowledge that the Land Owner will not be liable for any loss or damage incurred by them arising out of, or in connection with, this Agreement, other than any loss or damage incurred by them arising out of, or in connection with, any act or omission of the Land Owner after it becomes the licensor under this Agreement in accordance with clause 10.6.

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# **Licence Agreement**

**B. B. Olives Pty Ltd**

**Timbercorp Securities Limited**

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

## **2008 Timbercorp Olive Project**

**ANDERSONS LICENCE AGREEMENT**

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

Level 7  
350 Collins Street  
MELBOURNE VIC 3000

Telephone: 9600 3525  
Facsimile: 9600 3527

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## **9. RIGHTS AND OBLIGATIONS OF THE LAND OWNER**

### **9.1 Obligations of the Land Owner**

The Land Owner must duly and punctually pay or cause to be paid all rates, taxes and other charges levied by government or competent Authority in respect of all Andersons Lots.

### **9.2 Rights of the Land Owner**

The Participant Grower agrees and acknowledges that the Land Owner is entitled to:

- (a) full and free access for the purposes of carrying out its obligations and exercising its rights under the Andersons Head Lease with or without vehicles to the Andersons Lots along any road or track or any neighbouring land owned or occupied by Timbercorp Securities, Timbercorp, the Land Owner, other Participant Growers or any other person which gives access to the Andersons Lots;
- (b) full and free access with or without vehicles to the relevant Andersons Lots for the purpose of accessing neighbouring land owned or occupied by Timbercorp Securities, Timbercorp, the Land Owner, other Participant Growers or any other person.

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## **10. TERMINATION OF AGREEMENT**

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

The Participant Grower may terminate this Agreement by notice in writing to 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 Agreement 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.

#### **10.1A Deemed Termination**

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

#### **10.6 Termination of Andersons Head Lease**

If the Andersons Head Lease terminates before it would otherwise have expired by the effluxion of time, then the following provisions apply:

- (a) the Land Owner and the Participant Grower agree that this Agreement will continue with all necessary modifications as if the Land Owner were named as the licensor in lieu of Timbercorp Securities from the termination of the Andersons Head Lease;
- (b) In the event that the Participant Grower pays Licence Fees to Timbercorp Securities rather than the Land Owner, then Timbercorp Securities must pay to the Land Owner all Licence Fees so paid under this Agreement (on a GST exclusive basis) within 30 days after receiving the Licence Fees from the Participant Grower;
- (c) To the extent that the amount paid to the Land Owner under paragraph (b) is less than the rent that the Land Owner would have otherwise received from Timbercorp Securities under the Andersons Head Lease for each anniversary from the commencement date of the Andersons Head Lease, Timbercorp Securities must pay to the Land Owner the shortfall within 30 days after the Land Owner gives Timbercorp Securities notice in writing requesting such payment to be made; and
- (d) To the extent that at any given time the amount paid by Timbercorp Securities to the Land Owner under paragraph (b) is more than the rent which the Land Owner would have otherwise received from Timbercorp Securities under the Andersons Head Lease for each anniversary from the commencement date of the Andersons Head Lease at that time, the Land Owner must refund the excess to Timbercorp Securities within 30 days.

#### **10.7 Land Owner's liability**

Timbercorp Securities and the Participant Grower agree and acknowledge that the

## **Licence Agreement**

**B. B. Olives Pty Ltd**

**Timbercorp Securities Limited**

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

## **2008 Timbercorp Olive Project**

### **WESTMORES LICENCE AGREEMENT**

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

Level 7  
350 Collins Street  
MELBOURNE VIC 3000

Telephone: 9600 3525  
Facsimile: 9600 3527

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## **9. RIGHTS AND OBLIGATIONS OF THE LAND OWNER**

### **9.1 Obligations of the Land Owner**

The Land Owner must duly and punctually pay or cause to be paid all rates, taxes and other charges levied by government or competent Authority in respect of all Westmores Lots.

### **9.2 Rights of the Land Owner**

The Participant Grower agrees and acknowledges that the Land Owner is entitled to:

- (a) full and free access for the purposes of carrying out its obligations and exercising its rights under the Westmores Head Lease with or without vehicles to the Westmores Lots along any road or track or any neighbouring land owned or occupied by Timbercorp Securities, Timbercorp, the Land Owner, other Participant Growers or any other person which gives access to the Westmores Lots;
- (b) full and free access with or without vehicles to the relevant Westmores Lots for the purpose of accessing neighbouring land owned or occupied by Timbercorp Securities, Timbercorp, the Land Owner, other Participant Growers or any other person.

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## **10. TERMINATION OF AGREEMENT**

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

The Participant Grower may terminate this Agreement by notice in writing to 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 Agreement 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.

#### **10.1A Deemed Termination**

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

#### **10.6 Termination of Westmores Head Lease**

If the Westmores Head Lease terminates before it would otherwise have expired by the effluxion of time, then the following provisions apply:

- (a) the Land Owner and the Participant Grower agree that this Agreement will continue with all necessary modifications as if the Land Owner were named as the licensor in lieu of Timbercorp Securities from the termination of the Westmores Head Lease;
- (b) In the event that the Participant Grower pays Licence Fees to Timbercorp Securities rather than the Land Owner, then Timbercorp Securities must pay to the Land Owner all Licence Fees so paid under this Agreement (on a GST exclusive basis) within 30 days after receiving the Licence Fees from the Participant Grower;
- (c) To the extent that the amount paid to the Land Owner under paragraph (b) is less than the rent that the Land Owner would have otherwise received from Timbercorp Securities under the Westmores Head Lease for each anniversary from the commencement date of the Westmores Head Lease, Timbercorp Securities must pay to the Land Owner the shortfall within 30 days after the Land Owner gives Timbercorp Securities notice in writing requesting such payment to be made; and
- (d) To the extent that at any given time the amount paid by Timbercorp Securities to the Land Owner under paragraph (b) is more than the rent which the Land Owner would have otherwise received from Timbercorp Securities under the Westmores Head Lease for each anniversary from the commencement date of the Westmores Head Lease at that time, the Land Owner must refund the excess to Timbercorp Securities within 30 days.

#### **10.7 Land Owner's liability**

Timbercorp Securities and the Participant Grower agree and acknowledge that the



## **Licence Agreement**

**B. B. Olives Pty Ltd**

**Timbercorp Securities Limited**

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

## **2008 Timbercorp Olive Project**

**RYANS LICENCE AGREEMENT**

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

Level 7  
350 Collins Street  
MELBOURNE VIC 3000

Telephone: 9600 3525  
Facsimile: 9600 3527

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## **9. RIGHTS AND OBLIGATIONS OF THE LAND OWNER**

### **9.1 Obligations of the Land Owner**

The Land Owner must duly and punctually pay or cause to be paid all rates, taxes and other charges levied by government or competent Authority in respect of all Ryans Lots.

### **9.2 Rights of the Land Owner**

The Participant Grower agrees and acknowledges that the Land Owner is entitled to:

- (a) full and free access for the purposes of carrying out its obligations and exercising its rights under the Ryans Head Lease with or without vehicles to the Ryans Lots along any road or track or any neighbouring land owned or occupied by Timbercorp Securities, Timbercorp, the Land Owner, other Participant Growers or any other person which gives access to the Ryans Lots;
- (b) full and free access with or without vehicles to the relevant Ryans Lots for the purpose of accessing neighbouring land owned or occupied by Timbercorp Securities, Timbercorp, the Land Owner, other Participant Growers or any other person.

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## **10. TERMINATION OF AGREEMENT**

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

The Participant Grower may terminate this Agreement by notice in writing to 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 Agreement 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.

#### **10.1A Deemed Termination**

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

#### **10.6 Termination of Ryans Head Lease**

If the Ryans Head Lease terminates before it would otherwise have expired by the effluxion of time, then the following provisions apply:

- (a) the Land Owner and the Participant Grower agree that this Agreement will continue with all necessary modifications as if the Land Owner were named as the licensor in lieu of Timbercorp Securities from the termination of the Ryans Head Lease;
- (b) In the event that the Participant Grower pays Licence Fees to Timbercorp Securities rather than the Land Owner, then Timbercorp Securities must pay to the Land Owner all Licence Fees so paid under this Agreement (on a GST exclusive basis) within 30 days after receiving the Licence Fees from the Participant Grower;
- (c) To the extent that the amount paid to the Land Owner under paragraph (b) is less than the rent that the Land Owner would have otherwise received from Timbercorp Securities under the Ryans Head Lease for each anniversary from the commencement date of the Ryans Head Lease, Timbercorp Securities must pay to the Land Owner the shortfall within 30 days after the Land Owner gives Timbercorp Securities notice in writing requesting such payment to be made; and
- (d) To the extent that at any given time the amount paid by Timbercorp Securities to the Land Owner under paragraph (b) is more than the rent which the Land Owner would have otherwise received from Timbercorp Securities under the Ryans Head Lease for each anniversary from the commencement date of the Ryans Head Lease at that time, the Land Owner must refund the excess to Timbercorp Securities within 30 days.

#### **10.7 Land Owner's liability**

# **Licence Agreement**

**Boundary Bend Land Owners**

**Timbercorp Securities Limited**

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

**Timbercorp Limited**

## **2008 Timbercorp Olive Project**

### **BOUNDARY BEND LICENCE AGREEMENT**

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

Level 7  
350 Collins Street  
MELBOURNE VIC 3000

Telephone: 9600 3525  
Facsimile: 9600 3527

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#### **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 Agreement.

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### **9. RIGHTS OF THE LAND OWNER AND TIMBERCORP**

#### **9.1 Rights of the Land Owner**

The Participant Grower agrees and acknowledges that the Land Owner is entitled to:

- (a) full and free access for the purposes of carrying out its obligations and exercising its rights under the Boundary Bend Lease with or without vehicles to the Boundary Bend Lots along any road or track or any neighbouring land owned or occupied by Timbercorp Securities, Timbercorp, the Land Owner, other Participant Growers or any other person which gives access to the Boundary Bend Lots;
- (b) full and free access with or without vehicles to the relevant Boundary Bend Lots for the purpose of accessing neighbouring land owned or occupied by Timbercorp Securities, Timbercorp, the Land Owner, other Participant Growers or any other person.

#### **9.2 Rights of Timbercorp Securities**

The Participant Grower agrees and acknowledge that Timbercorp Securities is entitled to:

- (a) full and free access for the purposes of carrying out its obligations and exercising its rights under the Boundary Bend Lease with or without vehicles to the Boundary Bend Lots along any road or track or any neighbouring land owned or occupied by Timbercorp Securities, Timbercorp, the Land Owner, other Participant Growers or any other person which gives access to the Boundary Bend Lots;
- (b) full and free access with or without vehicles to the relevant Boundary Bend Lots for the purpose of accessing neighbouring land owned or occupied by Timbercorp Securities, Timbercorp, the Land Owner, other Participant Growers or any other person.

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### **10. TERMINATION OF AGREEMENT**

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

The Participant Grower may terminate this Agreement by notice in writing to 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 Timbercorp Securities or any part of its

- 
- (b)) is less than the rent and other monies that the Land Owner would have otherwise received from Timbercorp Securities under the Boundary Bend Lease (had the same not terminated) for each year from the commencement date of the Boundary Bend Lease, Timbercorp Securities must pay to the Land Owner the shortfall within 30 days after the Land Owner gives Timbercorp Securities notice in writing requesting such payment to be made provided that if and to the extent that any of the shortfall so paid to the Land Owner arises as a consequence of or is attributable to the non-payment of Licence Fees or other amounts by the Grower ('Unpaid Licence Fees') the Land Owner must assign its right and entitlement to the Unpaid Licence Fees to or as directed by Timbercorp and must do all things reasonably necessary to enable the assignee, at the assignee's own cost, to enforce payment of the Unpaid Licence Fees including, if necessary, by permitting the assignee to commence and prosecute legal action for the recovery of the Unpaid Licence Fees in the name of the Land Owner;
- (d) to the extent that at any given time the amount paid to the Land Owner under this Agreement (either by the Participant Grower or by Timbercorp Securities under paragraph (b)) is more than the rent and other monies which the Land Owner would have otherwise received from Timbercorp Securities under the Boundary Bend Lease (had the same not terminated) for each year from the commencement date of the Boundary Bend Lease, the Land Owner must refund the excess to Timbercorp Securities within 30 days; and
- (e) without limiting paragraph (a), the Land Owner specifically acknowledges and agrees that the obligations assumed by the Land Owner will include the obligation to provide the benefit of the Water Licences and procure access to the Drainage Dam and provide the Additional Entitlement pursuant to and in accordance with clause 3.2.

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

### **11.1 Force Majeure**

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

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

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

### **11.3 Liability**

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

### **11.4 Definition of Force Majeure**

For the purposes of this Agreement, "**Force Majeure**" means any event or

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from the 30 June next following the expiration of the period of notice.

#### **10.4 Reduction of Boundary Bend Lots**

If, in respect of the relevant Boundary Bend Lots:

- (a) part of the relevant Boundary Bend Lots 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 Boundary Bend Lots is no longer commercially viable,

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

#### **10.6 Termination of Boundary Bend Lease**

If the Boundary Bend Lease terminates other than by effluxion of time prior to the expiration or termination of the Project, then the following provisions apply:

- (a) the Land Owner and the Participant Grower agree that this Agreement will continue with all necessary modifications as if the Land Owner were named as the licensor in lieu of Timbercorp Securities from the termination of the Boundary Bend Lease;
- (b) in the event that the Participant Grower pays Licence Fees to Timbercorp Securities rather than the Land Owner, then Timbercorp Securities must pay to the Land Owner all Licence Fees so paid under this Agreement (on a GST exclusive basis) within 30 days after receiving the Licence Fees from the Participant Grower;
- (c) to the extent that the amount paid to the Land Owner under this Agreement (either by the Participant Grower or by Timbercorp Securities under paragraph

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undertaking;

- (b) Timbercorp Securities ceases to carry on business; or
- (c) Timbercorp Securities 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.

#### **10.1A Deemed Termination**

This Agreement will terminate with immediate effect if the Participant Grower's BBO Licence Agreements are terminated, other than under clause 10.3 or 10.4 of the BBO Licence Agreements.

#### **10.2 Termination of Agreement by Timbercorp Securities**

- (a) Subject to paragraphs 10.2(b) and 10.2(c) and without prejudice to Timbercorp Securities' rights under this Agreement, Timbercorp Securities may terminate this Agreement in respect of all the Boundary Bend Lots of the Participant Grower, with immediate effect, if the Participant Grower fails to make a payment within the time required under this Agreement in relation to any Boundary Bend Lot of the Participant Grower or the Constitution or commits a material breach of this Agreement in relation to any Boundary Bend Lot 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 Boundary Bend Lots**

If, in respect of the relevant Boundary Bend Lots:

- (a) the whole or a substantial part of the relevant Boundary Bend Lots 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 Boundary Bend Lots is no longer commercially viable,

the Participant Grower may terminate this Agreement in respect of the relevant Boundary Bend Lots by giving not less than 4 months prior written notice of such termination to Timbercorp Securities. Termination under this clause takes effect on and