

**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
(IN LIQUIDATION)
ACN 092 311 469**

**TIMBERCORP SECURITIES LIMITED
(IN LIQUIDATION) ACN 092 311 469
IN ITS CAPACITY AS RESPONSIBLE ENTITY OF THE
2001 TIMBERCORP OLIVE PROJECT (ARSN 094 382 082)
First Plaintiff**

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

**SUPPLEMENTARY AND REPLY AFFIDAVIT OF MARK ANTHONY KORDA
2001 TIMBERCORP OLIVE PROJECT (ARSN 094 382 082)**

Date of document: 9 July 2009
Filed on behalf of: the Plaintiffs
Prepared by:
Arnold Bloch Leibler
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(Leon Zwier)

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





- 2 On 23 April 2009, we were appointed as voluntary administrators of TSL pursuant to section 436A of the *Corporations Act 2001 (Cth)* (**Act**). Other partners of KordaMentha 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 Companies**).
- 3 On 29 June 2009 the voluntary administrators convened a meeting of the creditors of TSL and a separate meeting of the creditors of Timbercorp Group Companies. The creditors resolved to wind up TSL and the Timbercorp Group Companies respectively. I am therefore now a liquidator of TSL.
- 4 I make this affidavit to supplement my previous affidavit regarding the 2001 Timbercorp Olive Project (ARSN 119 182 179) (**2001 Olive Scheme Affidavit**). I also make this affidavit to reply to the affidavit of Paul Miller sworn 3 July 2009 and filed in this proceeding (**Miller Affidavit**).
- 5 In my 2001 Olive Scheme Affidavit I defined terms for certain entities and agreements and I adopt the same defined terms in this affidavit.
- 6 **Month by Month Cashflow Analysis**
- 6.1 In my 2001 Olive Scheme Affidavit I did not provide detailed analysis of the projected month-by-month cashflow of the 2001 Olive Scheme for the 2010 Harvest Result. My staff have now collated this information using Timbercorp management data. My staff have prepared a spreadsheet detailing the projected cashflow, including receipts, costs and distributions, for the 2010 Harvest Result (**Cashflow Analysis**). Now produced and shown to me marked **MAK-12** is the Cashflow Analysis.
- 6.2 Some obligations to provide scheme services, such as capital expenditure for water, lie contractually with a Timbercorp Group Company rather than TSL. Those Timbercorp Group Companies are unable to meet their obligations due to their insolvency. It is therefore assumed for the purpose of the analysis that TSL will step in to ensure the services are provided to facilitate the continuation of the scheme. It is necessary to look through to the obligations that the Timbercorp Group has with various external service providers. If these obligations are not met by TSL then the scheme cannot continue.
- 6.3 The Cashflow Analysis shows the timing of scheme receipts and expenses. It shows that the expenses the 2001 Olive Scheme incurs are not matched to when those

costs can be recovered from the Growers. To demonstrate this, the Cashflow Analysis shows when receipt of proceeds from crop sales and Grower receipts are projected to occur. The projection is based on Timbercorp management's estimate of when crop sale proceeds are received and historical data of the timing and percentage of Grower receipts across the months of the 2010 Harvest Result. (This is explained in more detail at paragraph 7.6 below). These estimates are compared to estimates of when the operating costs of the scheme need to be met.

7 Monthly Scheme Receipts

Crop Sale Proceeds & Deductions on Receipt

- 7.1 The first line of the Cashflow Analysis shows the estimated gross sale proceeds for the 2010 Harvest Result. This assumes that all of the 2010 Harvest Result proceeds are received in financial years after the 2009-2010 financial year (**FY10**). This is because the harvest does not end until June each year and historically proceeds are received in the financial years following the harvest. As in the Solvency Spreadsheet, the Joint Venture partner's 10% share is deducted before arriving at the "Gross Grower Proceeds".
- 7.2 The next three lines are the deductions from the Gross Grower Proceeds for what Timbercorp management refer to as the "Sales & Related Costs", "Processing Fee" and "Storage Fee". These are deducted from the "Gross Grower Proceeds" at the time TSL receives those proceeds pursuant to clause 10.2 of the supplementary Grower Agreement dated 1 October 2008 (**Supplementary Grower Agreement**). These deductions are therefore included in the line "Deductions from Crop Proceeds (as proceeds received)". Now produced and shown to me marked **MAK-13** is a copy of the Supplementary Grower Agreement dated. (Clause 10 of the Grower Agreement (without the supplementary clause) is exhibited at MAK-5 of my 2001 Olive Scheme Affidavit).
- 7.3 The Cashflow Analysis does not incorporate any of the anticipated distributions to Growers from the 2008 and 2009 crops. I believe based on legal advice and the observations made by Finkelstein J in the Federal Court of Australia No. VID 332 of 2009 and No. VID 335 of 2009 on 7 May 2009 (transcript exhibited as MAK-12 to my 2001 Almond Scheme Affidavit) that these proceeds are an entitlement of the Growers unless stated in the Key Scheme Documents and not otherwise available to meet working capital requirements of the Scheme. Other than the fees that TSL is entitled to deduct pursuant to the Key Scheme Documents before distribution of the

balance to the Growers, I believe there are no provisions to retain these funds to meet working capital requirements.

- 7.4 The Cashflow Analysis does not include prior years' crop sale proceeds of Growers who have defaulted on their obligation to pay. The Constitution (exhibited as MAK-1 to my 2001 Olive Scheme Affidavit) states that TSL is entitled to use the defaulting Grower's prior year proceeds to satisfy the Grower's obligations, as set out in clause 13.7 of the Constitution. Defaulting Grower's crop sale proceeds are receipted to reimburse TSL (and form an asset of TSL available for all of its creditors). The surplus (if any) is paid to the Grower. The defaulting Grower's crop proceeds are not therefore part of the Cashflow Analysis as they are not a 2001 Olive Scheme asset.

Grower Scheme Costs

- 7.5 The Cashflow Analysis shows another line of estimated scheme receipts from the Growers paying invoices for scheme costs. This is shown on the line "Grower Scheme Costs" and includes the "Admin Fee", "Farm Operating Costs", "Technical Fee", "BB Management Fee", "Licence Fee" and "AOA Levy". These costs are explained in paragraph 6 and 9 of my 2001 Olive Scheme Affidavit. (At paragraph 4.1(d) of exhibit PM-1 to the Miller Affidavit, Mr Miller questions how the licence fee is calculated. This fee is explained at paragraph 9.7(f) of my 2001 Olive Scheme Affidavit but I give further explanation at paragraph 8.3 below.) The "Grower Scheme Costs" are shown as received from October 2009 to March 2010. This is because in accordance with the Grower Agreement, Growers can only be invoiced once each year. For the 2001 Olive Scheme Growers are required to pay on 31 October each year (Supplemental Grower Agreement, clause 10.2(b), exhibited as MAK-13).
- 7.6 The analysis assumes that 33.9% of Growers will pay their invoices by 31 October 2009, 37.0% in November, 10.6% in December, 3.0% in January, 5.1% in February and 2.1% in March or April and that 8.3% will not pay their invoices at all. I am informed by Mark Pryn, General Manager, Accounting and Treasury of Timbercorp and believe that this reflects the actual timing of receipts by value issued to Growers in October 2008 for all TSL schemes (with the exception of the 1998 and 1999 Eucalypt Schemes which are invoiced in May of each year and the Table Grape Schemes which were not invoiced at all in October 2008). The Cashflow Analysis assumes that if invoices are raised in September 2009 that the same pattern of receipts would be observed.

- 7.7 The actual pattern is likely to be different given the liquidation of TSL and the Timbercorp Group Companies. As I discuss in paragraph 10 of my 2001 Olive Scheme Affidavit, we consider that some Growers would default on payment of the scheme costs if they were invoiced and that the proportion of defaulting Growers is likely to increase (compared to the number of defaults on invoices raised in October 2008) given the liquidation of TSL and the Timbercorp Group Companies. I also note that for any Growers who do default on their obligations, TSL has to bear the burden of meeting their costs until such time as the crop sale proceeds are receipted (from Post June 2010). In the interim, TSL does not have the working capital to fund these Growers' obligations.

Deductions from Crop Sale Proceeds prior to Distribution

- 7.8 The other source of estimated scheme receipts is the deductions that TSL is entitled to make before distributing the "Total Grower Proceeds". These deductions are shown in the line "Deductions from Crop Proceeds (prior to distribution)". For the 2001 Olive Scheme, TSL is entitled to deduct, immediately before distributing the proceeds to the Growers, what Timbercorp management refer to as the "TIM Management Fee" (Supplemental Grower Agreement, clause 10.2(c)(i), exhibited as MAK-13). This is included in the line "Deductions from Crop Proceeds (prior to distribution)".
- 7.9 The Cashflow Analysis assumes that only Growers who pay their invoices will receive a distribution of crop sale proceeds. We have assumed (as discussed in paragraph 7.6 above) that 8.3% of Growers will default on their obligation to pay. Accordingly the Cashflow Analysis assumes that only 91.7% of "Total Grower Proceeds" will be distributed to Growers.

8 Monthly Scheme Costs & Distributions

- 8.1 Costs to an equivalent amount to the "TIM Management Fee" and the "Admin Fee" charged to Growers could have been shown as incurred across the 2010 Harvest Year as, arguably, the Timbercorp Group Companies are incurring these costs over the course of the year in the provision of the necessary corporate services (for example for finance, Grower management, information technology, communications, horticultural and legal services), not just when they are entitled to invoice Growers. For simplicity we have chosen not to allocate a share of these fees across the 2010 Harvest Year and have instead assumed that the cost is incurred when crop proceeds are received. We note that if this allocation method was applied to all TSL

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schemes the Timbercorp Group Companies would be required to fund any working capital requirements arising from the need to provide corporate services prior to the "Admin Fee" being recovered from Grower invoices or the "TIM Management Fee" being recovered from crop proceeds.

- 8.2 Operating Costs - BBMB invoices OML (a Timbercorp Group Company) monthly in advance for operating costs. Timbercorp holds 19.4% of the shares in BBMB's parent company Boundary Bend Limited (ACN 115 131 667) but BBMB is not one of the Timbercorp Group Companies. These costs must be paid as they fall due to continue the scheme. OML is in liquidation and is unable to meet this cost. As such, the Cashflow Analysis shows the obligation falling to TSL. This gives rise to a working capital requirement to the extent the costs are incurred before they are recoverable from Growers. Phasing of costs across the year are based on Timbercorp management's estimates of when costs are incurred.
- 8.3 Occupancy Cost - The Land for the 2001 Olive Scheme is the subject of a chain of occupancy agreements pursuant to which licence fees or rental is paid (including the Grower's "licence fee" shown in the Solvency Analysis). This chain is described in paragraph 5.2(c) and (d) of my 2001 Olive Scheme Affidavit. The liquidator's solicitors have also prepared a summary of the chain of occupancy agreements and the amount payable under each (**Occupancy Summary**). Now produced and shown to me marked **MAK-14** is the Occupancy Summary. Under the Head Lease, TSL is obliged to pay rental to the Landowner of \$1 if and when demanded by the Landowner. The Landowner is a Timbercorp Group Company and this payment would be shown in the line "Occupancy Cost - Internal". The \$1 payment has been rounded down in the Cashflow Analysis and therefore is not included. There are no other head leases for the 2001 Olive Scheme and therefore there is nothing included in the line "Occupancy Cost - External". The Cashflow Analysis does not represent the fact that the Land is encumbered by a mortgage (as discussed in paragraph 14 of my 2001 Olive Scheme Affidavit). As such the Cashflow Analysis understates the true cost of operating the 2001 Olive Scheme by the amount required to maintain the Timbercorp Group Companies' interest in the Land.
- 8.4 Water and non-Water Capital Expenditure - Toby Smith, Operations Manager (Horticulture) of Timbercorp has informed me that permanent water and irrigation infrastructure is required to be readied for the high water use periods of spring and summer. This advice is the basis of the phasing of capital expenditure requirements for the 2001 Olive Scheme. As such the analysis spreads capital expenditure equally

over August, September and October in preparation for the high water use periods. The analysis assumes that TSL will have to step in for the Landowner as it will be unable to meet this commitment.

- 8.5 Temporary water - Timbercorp management have estimated when temporary water for the 2010 crop will be required. If temporary water is not purchased the olive trees cannot be fully irrigated and there will be no, or reduced, crop yield and the olive trees will be damaged or die. The Landowner is in liquidation and unable to meet this cost. As such, the cashflow shows the obligation falling to TSL. This gives rise to a working capital requirement that is unfunded.
- 8.6 I note that in my 2001 Olive Scheme Affidavit, at paragraph 9.7 I state that Temporary Water is an operating expense that the Growers are responsible for paying. That is not correct. In the 2001 Olive Scheme the Landowner is responsible for payment of Temporary Water. It is an expense that TSL must meet and is unfunded as it cannot be recovered from the Growers.
- 8.7 George Kalil, a Grower in the 2000 Olive "scheme" (a private administered by the Timbercorp Group Companies but not required to be registered under the Corporations Act) and a member of a committee of creditors of TSL, has brought to my attention that the Growers of the 2001 Olive Scheme may have been invoiced in prior years for the cost of temporary water when the Landowner (who is also the joint venture partner) should have met this cost. I am still investigating this matter. If the Growers have been incorrectly invoiced for this expense then they may have an unsecured claim against the Landowner. However, this does not affect the Solvency or Cashflow Analysis.

Net Operating Cashflow

- 8.8 The analysis of the estimated 2010 Harvest Result on a month-by-month basis identifies a shortfall from July to August 2009. It shows that during this period there will be an estimated "Cumulative Scheme Cashflow - Before CAPEX" of \$809,000 (**Shortfall**). The Shortfall cannot be funded by the Growers as there is no entitlement to demand payment before 31 October 2009 and TSL does not have the capacity to meet the Shortfall. The 2001 Olive Scheme is therefore insolvent.
- 8.9 To the extent that additional capital expenditure is required (that cannot be recovered from Growers under the Key Scheme Documents) TSL's "Cumulative Net Cashflow" deficit to the end of August is estimated at \$1,316,000 (**Shortfall with CAPEX**).

- 8.10 In summary, the analysis suggests that the 2001 Olive Scheme is insolvent because:
- a) There is an estimated "Cumulative Scheme Cashflow - Before CAPEX" deficit of \$1,090,000 to the end of September 2009; and
 - b) TSL does not have the capacity to fund the capital expenditure and temporary water requirement of \$227,000 identified as necessary to the end of September 2009.
- 8.11 In other words the 2001 Olive Scheme cannot meet these expenses as they fall due for payment.

Additional Analysis

- 8.12 The analysis only includes the Grower's share of Grower Proceeds and Operating Expenditure as it is assessing the solvency of the Scheme and the Joint Venture Partner is not a participant in the Scheme. That is, the Joint Venture Partner's share of crop proceeds and costs is not included in the analysis. The Joint Venture Partner is a Timbercorp Group Company and is insolvent. If, as is projected, the costs of the scheme exceed the revenues, TSL will be exposed to an additional liability for the 10 percent of the scheme costs that the Joint Venture Partner, but for its insolvency, would have paid. The amount of this liability to TSL is detailed in the last line of the analysis, "JV Partner: Unfunded share of operating deficit". The estimated additional exposure for TSL is \$120,000 for the 2001 Olive Scheme to the end of September 2009.

9 Miller Affidavit

- 9.1 Exhibited as PM-1 is a report prepared by Mr Miller reviewing the assumptions and variables in the Solvency Analysis and Viability Analysis in my 2001 Olive Scheme Affidavit (**Report**).
- 9.2 Mr Miller questions three variables in the Solvency Analysis and Viability Analysis:
- (a) He observes at page 2 of the Report that he has assumed an extraction rate of 18% oil volume per tonne of olives. Toby Smith, Operations Manager (Horticulture) of Timbercorp has informed me that the estimated extraction rate of oil volume per tonne of olives is 18.5%;

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- (b) He questions why “despite there being up to 7 years difference in the time of planting of the trees, that there are only up to 2 years difference in the assumed time to maturity of the orchards” (page 3). Toby Smith, Operations Manager (Horticulture) of Timbercorp has informed me that the estimate for the orchard maturity for the 2001 Olive Scheme is based on a combination of historical performance and input from Timbercorp’s site managers on future performance. There are a range of reasons that the orchards are estimated to mature at similar times. These include differences in orchard establishment techniques, storm damage to earlier orchards setting production back, change in pollination design on earlier orchards and biannual bearing;
- (c) He questions the price of \$350/ML assumed in the Solvency Analysis and states that “when [permanent water] allocations increase the price reduces markedly”. Toby Smith, Operations Manager (Horticulture) of Timbercorp has told me that the average price for water over the last 12 months was \$353/ML (ranging from \$270-\$580). We accept that the price per mega litre may decrease if permanent water allocations increase (decrease in demand from all purchasers will lower the price). However, TSL will not need to purchase as much water and therefore any decrease in the price per mega litre will have less impact on the overall solvency of the scheme.

9.3 The primary conclusion of the Report is that “operating costs are well above industry norms” (paragraph 4.2, page 6). I cannot offer an opinion on whether the operating costs are or are not above industry norms. They are the operating costs that are provided for in the Key Scheme Documents and other agreements between TSL, Timbercorp, the Timbercorp Group Companies and other parties for the provision of scheme services. TSL is insolvent and cannot provide the working capital to meet those costs. It is the inability to finance that working capital that, along with the reasons referred to in my 2001 Olive Scheme Affidavit, leads us to the conclusion that the 2001 Olive Scheme is insolvent. Any replacement RE would need the financial strength to be able to meet the immediate working capital requirements. No potential replacement RE that has approached us has confirmed it has the financial strength to meet those requirements.

9.4 Even if a new responsible entity was appointed on the basis that it would:

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- (a) seek an amendment to the Constitution to accelerate and increase Grower's payment obligations; and
- (b) seek contracts with other scheme service providers or renegotiate existing contracts —

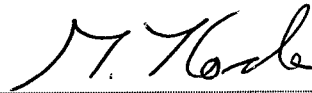
it will take time for the necessary amendments to be made and payments to be received. Working capital will be required in the interim or the crop will waste and therefore any replacement responsible entity will need immediate access to cash.

9.5 While it is ultimately a decision for the Growers as to whether or not they would prefer to have a replacement RE, we are obliged to act in the Growers' best interests. We are concerned to ensure that the Growers understand the risk of a new responsible entity being appointed that renders invoices to Growers but then, because it lacks the requisite financial strength, is unable to meet the working capital requirements of the scheme.

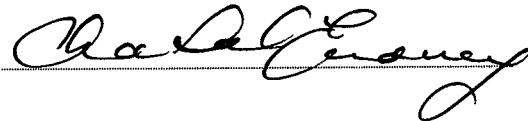
SWORN by the abovenamed deponent at)

Melbourne in the State of Victoria)

this 9 day of July 2009)



Before me:



CHANTAL ENCAVEY
Arnold Bloch Leibler
Level 21, 333 Collins Street
Melbourne 3000
An Australian Legal Practitioner within the
meaning of the Legal Profession Act 2004

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CERTIFICATE IDENTIFYING EXHIBIT

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This is the exhibit marked "MAK-12" now produced and shown to MARK ANTHONY KORDA
at the time of swearing his affidavit on 9 July 2009.

Before me:



CHANTAL ENCAVEY
Arnold Bloch Leibler
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An Australian Legal Practitioner within the
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Exhibit "MAK-12"
Cashflow Analysis

"MAK-12"

2001 Olive Project

Gross Sales	Jul-09 (\$'000)	Aug-09 (\$'000)	Sep-09 (\$'000)	Oct-09 (\$'000)	Nov-09 (\$'000)	Dec-09 (\$'000)	Jan-10 (\$'000)	Feb-10 (\$'000)	Mar-10 (\$'000)	Apr-10 (\$'000)	May-10 (\$'000)	Jun-10 (\$'000)	Post Jun-10 (\$'000)	Total (\$'000)
less: JV Partners Share													9,424 (942)	9,424 (942)
Gross Grower Proceeds	0	0	0	0	0	0	0	0	0	0	0	0	8,482	8,482
less: Sales & Related Costs													(359)	(359)
less: Processing Fee													(812)	(812)
less: Storage Fee													(47)	(47)
Growers Net Proceeds	0	0	0	0	0	0	0	0	0	0	0	0	7,264	7,264
TIM Mgmt Fee													(548)	(548)
Admin Fee													(355)	(355)
Farm Operating Costs	(444)	(251)	(223)	(414)	(467)	(417)	(333)	(374)	(338)	(523)	(923)	(365)	0	(5,071)
Technical Fee	(10)	(10)	(10)	(10)	(10)	(10)	(10)	(10)	(10)	(10)	(10)	(10)	0	(117)
BB Management Fee	(48)	(48)	(48)	(48)	(48)	(48)	(48)	(48)	(48)	(48)	(48)	(48)	0	(572)
Occupancy Costs - Internal	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Occupancy Costs - External	0	0	0	0	0	0	0	0	0	0	0	0	0	0
AOA Levy							(13)						0	(13)
Total Operating Expenditure	(501)	(308)	(280)	(471)	(524)	(474)	(403)	(431)	(396)	(581)	(980)	(423)	(903)	(6,676)
Net Operating Cashflow	(501)	(308)	(280)	(471)	(524)	(474)	(403)	(431)	(396)	(581)	(980)	(423)	6,361	587
Cumulative Operating Cashflow - Before CAPEX	(501)	(809)	(1,090)	(1,561)	(2,085)	(2,560)	(2,963)	(3,394)	(3,790)	(4,371)	(5,351)	(5,774)	587	587
Project Receipts & Distributions - TSL														
Grower Scheme Costs	0	0	0	2,077	2,267	650	184	313	129	0	0	0	0	5,620
Distributions to Growers	0	0	0	0	0	0	0	0	0	0	0	0	(7,778)	(7,778)
Deductions from Crop Proceeds(as proceeds received)	0	0	0	0	0	0	0	0	0	0	0	0	1,218	1,218
Deductions from: Crop Proceeds (prior to distribution)	0	0	0	0	0	0	0	0	0	0	0	0	548	548
Net Project Receipts & Distributions - TSL	0	0	0	2,077	2,267	650	184	313	129	0	0	0	(6,011)	(392)
Net Scheme Cashflow - Before CAPEX	(501)	(308)	(280)	1,606	1,743	175	(219)	(119)	(267)	(581)	(980)	(423)	349	195
Cumulative Scheme Cashflow - Before CAPEX	(501)	(809)	(1,090)	517	2,259	2,435	2,215	2,097	1,830	1,249	269	(154)	195	195
Water - Capital Expenditure	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Temp Water	0	(26)	(158)	(95)	(225)	(241)	(160)	(47)	(65)	0	0	0	0	(1,018)
Non-Water - Capital Expenditure	0	(21)	(21)	(21)	0	0	0	0	0	0	0	0	0	(64)
2010 Capital Expenditure	0	(47)	(180)	(117)	(225)	(241)	(160)	(47)	(65)	0	0	0	0	(1,082)
Net Op Cashflow (after Receipts and CAPEX)	(501)	(356)	(460)	1,489	1,518	(66)	(380)	(166)	(332)	(581)	(980)	(423)	349	(887)
Cumulative Net Cashflow	(501)	(857)	(1,316)	173	1,691	1,625	1,246	1,080	748	167	(813)	(1,236)	(887)	(887)
Additional Information:														
Alternative: Replace PWR water with Temp Water	0	0	0	0	0	0	0	0	0	0	0	0	0	0
JV Partner: Unfunded share of operating deficit	(56)	(34)	(31)	(52)	(58)	(53)	(45)	(48)	(44)	(65)	(109)	(47)	707	65

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Before me:



CHANTAL ENCAVEY
Arnold Bloch Leibler
Level 21, 333 Collins Street
Melbourne 3000

An Australian legal practitioner within the
meaning of the Legal Profession Act 2004

Exhibit "MAK-13"
Grower obligations under
Grovelot Management Agreement

"MAK-13"

Supplemental Grovelot Management Agreement

for

**2001 Timbercorp Olive Project
(ARSN 094 382 082)**

NM TAYLOR
LAWYERS

Level 7
350 Collins Street
MELBOURNE VIC 3000

Telephone: 9600 3525
Facsimile: 9600 3527
Ref: NMT/01145

Details of this Supplemental Grovelot Management Agreement

Date of the Agreement:

This Supplemental Agreement is made on 1st October 2008

Parties to the Deed:

1. **Timbercorp Securities Limited**
ACN 092 311 469
Level 8, 461 Bourke Street
MELBOURNE VIC 3000

in its personal capacity and as Responsible Entity of the 2001 Timbercorp Olive Project
(Project)

(Timbercorp Securities)

2. Each several Grower named in the First Schedule to the Management Agreement.

(Grower)

3. **Olivecorp Land Pty Ltd**
ACN 090 141 512
Level 8, 461 Bourke Street
MELBOURNE VIC 3000

(Olivecorp)

Background to the Agreement

- A. Under the Management Agreements the Responsible Entity has been engaged by the Growers to cultivate and maintain Olive Trees on, and generally manage, the relevant Grovelots and to harvest the Olives, procure the processing of the Olives and sell the Product on behalf of the Growers.
- B. Clause 19.6 of the Management Agreements provides that any modification of the Management Agreement must be in writing and signed by the parties to that agreement.
- C. Timbercorp Securities has been appointed attorney under power of each Grower to execute this Supplemental Agreement.
- D. The Responsible Entity on behalf of itself and as Responsible Entity on behalf of the

Growers wishes to amend the Management Agreements and has satisfied itself that the amendments contained in this Supplemental Agreement will not adversely affect the rights of the Growers.

Operative Provisions:

1. INTERPRETATION

1.1 Definitions

Words and expressions defined in the Management Agreements have the same meanings when used in this Supplemental Agreement, as modified or inserted by the Schedule to this Supplemental Agreement.

"Management Agreements" means the agreements named Grovelot Management Agreement between Timbercorp Securities Limited in its personal capacity and each several Grower named in the First Schedule to the Management Agreement and dated in respect of each several Grower the date on which Timbercorp Securities has accepted the Grower's application for Grovelots being offered under the Prospectus, and as amended by Deed made by the Responsible Entity on 8 June 2006.

1.2 Construction

In this Supplemental Agreement:

- (a) headings and boldings are for convenience only and do not affect the interpretation of this Supplemental Agreement;
 - (b) words importing the singular include the plural and vice versa;
 - (c) words importing a gender include any gender;
 - (d) other parts of speech and grammatical forms of a word or phrase defined in this Supplemental Agreement have a corresponding meaning;
 - (e) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any governmental agency;
 - (f) a reference to any thing (including, but not limited to, any right) includes a part of that thing but nothing in this paragraph 1.2(f) implies that performance of part of an obligation constitutes performance of the obligation;
 - (g) a reference to a paragraph, clause or schedule is a reference to a paragraph and clause of, and schedule to, this Supplemental Agreement and a reference to this Supplemental Agreement includes any schedule;
 - (h) a reference to a document includes all amendments or supplements to, or replacements or novations of, that document;
 - (i) a reference to a party to a document includes that party's successors and permitted assigns; and
 - (j) a reference to a document includes any agreement in writing and any certificate, notice, instrument or other document of any kind.
-

2. AMENDMENTS

2.1 Supplemental Agreement is Supplemental

This Supplemental Agreement is supplemental to the Management Agreements and, except as otherwise provided in this Supplemental Agreement, the Management Agreements remain in full force and effect.

2.2 Amendments to the Management Agreement

Timbercorp Securities, each Grower and the Land Owner agree to modify and amend the provisions of the Management Agreements as provided in the Schedule to this Supplemental Agreement.

2.3 Ratification and Confirmation

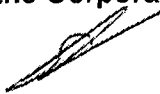
In all other respects, the parties confirm and ratify the terms and conditions of the Management Agreements.

2.4 Operative Date

The modifications and amendments made by this Supplemental Agreement are deemed to be made to all Management Agreements and take effect from the date of the Supplemental Agreement.

Executed as an Agreement

EXECUTED by TIMBERCORP)
SECURITIES LIMITED (in its own)
right) in accordance with section)
127 of the Corporations Act:)



Signature

Sol Charles Rabinowicz

Full Name

Director

Position Held

Signature


Mark Hamilton Pryn

Full Name

Secretary

Position Held

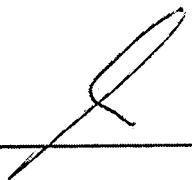
EXECUTED by TIMBERCORP)
SECURITIES LIMITED for and on)
behalf of the Joint Venturers)
pursuant to a Power of Attorney)
dated the dates of the)
Applications made by the Joint)
Venturers to participate in the)
Project and who declares that it)
has not received any notice of the)
revocation of such Power of)
Attorney.

Signature 

Sol Charles Rabinowicz

Full Name

Director


Signature 

Mark Hamilton Pryn

Full Name

Director/Secretary

EXECUTED by OLIVECORP LAND)
PTY LTD in accordance with)
section 127 of the Corporations)
Act:

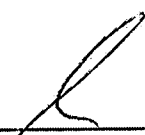
Signature 

Sol Charles Rabinowicz

Full Name

Director

Position Held

Signature 

Mark Hamilton Pryn

Full Name

Secretary

Position Held

SCHEDULE MANAGEMENT AGREEMENT AMENDMENTS

The Management Agreements are amended as follows:

1. by inserting a definition of Effective Date as the date of the Supplemental Agreement amending the Management Agreements made by Timbercorp Securities Limited and each of the several Growers and the landowner as Joint Venturers;
2. by the replacement of clause 10.2 in each of the Management Agreements with the following:

"10.2 Additional Management Fee

- (a) For each Financial Year after the Effective Date commencing on 1 October 2008 and each subsequent 1 October until final harvest of the Olives under the Project, the Responsible Entity will estimate the costs of operating the relevant Grovelots, which will include an allocation of overhead costs incurred by the Responsible Entity or its contractors that will not exceed \$70 per relevant Grovelot Indexed to CPI (adopting 30 June 2001 as the base year) as adjusted under paragraph 10.2(b) (iii);
- (b) The Responsible Entity will:
 - (i) notify the Participant Grower of the estimated costs of operating the relevant Grovelots under paragraph 10.2(a) and the amount required to be paid by the Grower on 31 October of the relevant year and the amount, if any, required to be paid by the Grower subsequently, as determined by the Responsible Entity in its absolute discretion and the Grower:
 - (A) must pay the amounts at the times and in such manner notified by the Responsible Entity ;and
 - (B) to the extent that the Responsible Entity determines that amounts are to be paid out of Proceeds, the Grower authorises and requests the Responsible Entity to deduct such amounts out of and at the time Proceeds are received by the Responsible Entity as the Responsible Entity in respect of the sale of Olive Oil.
 - (ii) notify the Grower of its Participating Interest of the actual cost of the Responsible Entity's operating the relevant Grovelots for the preceding Financial Year including overhead costs incurred by the Responsible Entity or its contractors, which the Grower must pay by 31 October of the year in which the Responsible Entity gives the notification unless a later date is stipulated; and
 - (iii) adjust that part of the estimated costs of operating the relevant Grovelots for the current Financial Year as determined by the Responsible Entity under sub-paragraph (ii) by the difference between the actual costs and the costs estimated by the Responsible Entity under paragraph 10.2(a) for the preceding Financial Year, unless the surplus per relevant Grovelot has been added to, or the excess per relevant Grovelot has been deducted from, the distribution of Proceeds made to the Grower following the end of the preceding Financial Year.

-
- (c) The Responsible Entity will be entitled to be paid the following additional management fees in a Financial Year out of, and immediately prior to, any distribution:
- (i) 7.5% of the Gross Proceeds in that Financial Year; and
 - (ii) 25% of so much of the Annual Net Proceeds in a Financial Year as exceeds the Incentive Fee Threshold. But, if in the immediately preceding Financial Year, the Net Proceeds were less than the Incentive Fee Threshold the sum of the deficit must be deducted from the Net Proceeds when calculating the fee payable to the Responsible Entity under this paragraph in respect of the Financial Year to which reference is first made."

**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
(IN LIQUIDATION)**

ACN 092 311 469

**TIMBERCORP SECURITIES LIMITED
(IN LIQUIDATION) ACN 092 311 469
IN ITS CAPACITY AS RESPONSIBLE ENTITY OF THE
2001 TIMBERCORP OLIVE PROJECT (ARSN 094 382 082)
First Plaintiffs**

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

CERTIFICATE IDENTIFYING EXHIBIT

Date of document: *9* July 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-14**" now produced and shown to **MARK ANTHONY KORDA**
at the time of swearing his affidavit on *9* July 2009.

Before me:



CHANTAL ENCAVEY
Arnold Bloch Leibler
Level 21, 333 Collins Street
Melbourne 3000

An Australian Legal Practitioner within the
meaning of the Legal Profession Act 2004

Exhibit "MAK-14"
Occupancy Summary

TIMBERCORP
2001 OLIVE SCHEME: SUMMARY OF RENTAL PAYMENT OBLIGATIONS

Lease Agreement	Doc ID	When is rent payable?	Amount payable
Head Lease between Olivecorp Land Pty Ltd (Olivecorp) (Lessor) and Timbercorp Securities Ltd (TSL) (Lessee)	O 2001 008 O 2001 008A O 2001 011	Payable by TSL to Olivecorp if/when demanded by Olivecorp (cl 4)	\$1.00 pa (cl 4)
Sub-lease between TSL (Lessor) and Olivecorp (Lessee)	O 2001 009 O 2001 009A O 2001 010	Payable by Olivecorp to TSL if/when demanded by TSL (cl 3)	\$1.00 pa (cl 3)
Joint Venture Agreement between Olivecorp (Landowner), TSL (Responsible Entity) and the Growers (Licensee)	O 2001 002	Payable by the Growers to Olivecorp on 30 September of each year (cl 7.1(a))	<p>\$400 per Grovelot reviewable annually from 30 June 2001 being the greater of the licence fee payable immediately prior to the review date or the amount calculated by:</p> <p>NL (licence fee payable) = L (previous licence fee) x NCPI/CPI</p> <p>NCPI is the CPI weighted average of 8 capital cities prior to the review date</p> <p>CPI is the CPI weighted average of 8 capital cities (or a substitute accepted by the Australian Government) as last published by the ABS prior to the immediately preceding review date (cl 7.1 & 7.2)</p>