

**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
2004 TIMBERCORP OLIVE PROJECT (ARSN 108 744 378)
First Plaintiff**

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

SUPPLEMENTARY AND REPLY AFFIDAVIT OF MARK ANTHONY KORDA

2004 TIMBERCORP OLIVE PROJECT (ARSN 108 744 378)

Date of document: 7 July 2009

Filed on behalf of: the Plaintiffs

Prepared by:

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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.

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- 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 2004 Timbercorp Olive Project (ARSN 108 744 378) (**2004 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 2004 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 2004 Olive Scheme Affidavit I did not provide detailed analysis of the projected month-by-month cashflow of the 2004 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 2004 Olive Scheme incurs are not matched to when those

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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 7.7 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

- 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.
- 7.2 As in the Solvency Spreadsheet, the Joint Venture partner's 10% share is deducted before arriving at the "Gross Grower Proceeds".
- 7.3 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 (as proceeds received)" at the time TSL receives those proceeds pursuant to clause 10.3 of the Grower Agreement. Now produced and shown to me marked **MAK-13** is a copy of clause 10 of the Grower Agreement and a supplementary Grower Agreement dated 1 October 2008 that amends 10.3. (Only part of clause 10 of the Grower Agreement (without the supplementary clause) is exhibited at MAK-5 of my 2004 Olive Scheme Affidavit).
- 7.4 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

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

- 7.5 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 2004 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 2004 Olive Scheme asset.

Grower Scheme Costs

- 7.6 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", "Temp Water", "Licence Fee" and "AOA Levy". These costs are explained in paragraph 6 and 9 of my 2004 Olive Scheme Affidavit. At paragraph 4.1(d) of exhibit PM-1 of the Miller Affidavit, Mr Miller questions how the licence fee is calculated. This fee is explained at paragraph 9.6(f) of my Olive Scheme Affidavit but I give further explanation at paragraph 8.4 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 2004 Olive Scheme Growers are required to pay by 31 October each year (Supplemental Grower Agreement, clause 10.3(b), exhibited as MAK-13).
- 7.7 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 October 2009 that the same pattern of receipts would be observed.

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- 7.8 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 2004 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

- 7.9 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". This line includes the "Sales and Related Costs", "Processing Fee" and "Storage Fee" discussed in 7.3 above. For the 2004 Olive Scheme, TSL is also entitled to deduct, at the time the proceeds are received, what Timbercorp management refer to as the "TIM Management Fee" (Grower Agreement, clause 10). This is therefore included in the line "Deductions from Crop Proceeds".
- 7.10 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 7.7 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 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 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 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. OML 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 to the extent the costs are incurred before they are recoverable from Growers.
- 8.4 Occupancy Cost - The Land for the 2004 Olive Scheme is the subject of a chain of occupancy agreements pursuant to which licence fees or rental is paid. This chain is described in paragraph 5.2(c) to (g) of my 2004 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. There is only one Head Lease and it is between TSL and a Timbercorp Group Company (the Landowner). The occupancy costs are therefore only included in the line "Occupancy Cost - Internal" and the line "Occupancy Cost - External" is zero. TSL is only obliged to "pass through" to the Landowner the amount of rent TSL receives from the Growers pursuant to the Sub-Lease. As such the Cashflow Analysis shows the "Occupancy Cost - Internal" arising only as monies are receipted from the Growers included in the line "Grower Scheme Costs".
- 8.5 Water and non-Water Capital Expenditure - Toby Smith, Operations Manager (Horticulture) of Timbercorp has informed me that permanent water and irrigation

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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 2004 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.

Net Operating Cashflow

- 8.6 The analysis of the estimated 2010 Harvest Result on a month-by-month basis identifies a shortfall from July to September 2009. It shows that during this period there will be an estimated "Cumulative Scheme Cashflow - Before CAPEX" of \$217,000 (**Shortfall**). The Shortfall cannot be funded by the Growers as they are not required to pay before 31 October 2009 and TSL does not have the capacity to meet the Shortfall. The 2004 Olive Scheme is therefore insolvent.
- 8.7 Furthermore, 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 September 2009 is estimated at \$224,000 (**Shortfall with CAPEX**).
- 8.8 In summary, the analysis suggests that the 2004 Olive Scheme is insolvent because:
- a) There is an estimated "Cumulative Scheme Cashflow - Before CAPEX" deficit of \$217,000 to the end of September 2009; and
 - b) TSL does not have the capacity to fund the capital expenditure of \$7,000 identified as necessary to the end of September 2009.
- 8.9 In other words the 2004 Olive Scheme cannot meet these expenses as they fall due for payment.
- 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 2004 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%;

- (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 2004 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 2004 Olive Scheme Affidavit, leads us to the conclusion that the 2004 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:

- (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 —

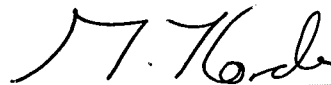
it will take time for the necessary amendments to be made and payments to be received. Working capital will be required in the interim or the crop will waste and therefore any replacement responsible entity will need immediate access to cash.

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.

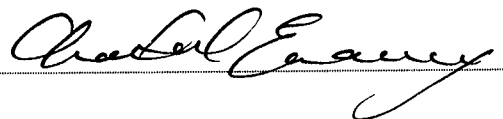
SWORN by the abovenamed deponent at)

Melbourne in the State of Victoria)

this 9 day of July)



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



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
2004 TIMBERCORP OLIVE PROJECT (ARSN 108 744 378)
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-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
Level 21, 333 Collins Street
Melbourne 3000
An Australian Legal Practitioner within the
meaning of the Legal Profession Act 2004

Exhibit "MAK-12"
Cashflow Analysis

2004 Olive Project

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

LIST E

No 7114 of 2009

IN THE MATTER OF TIMBERCORP SECURITIES LIMITED
(IN LIQUIDATION)

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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

2004 007
**Grovelot Management
Agreement**

Timbercorp Securities Limited

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

2004 Timbercorp Olive Project

NM TAYLOR
LAWYERS

Level 7
350 Collins Street
MELBOURNE VIC 3000
Telephone: 9600 3525
Facsimile: 9600 3527

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- (a) it has the right to grant access to the relevant Grovelots for the performance by Timbercorp Securities of its obligations, the Constitution and the agreements in respect of the 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 owner of the Land, any of the other Participant Growers in the Project or any person who derives title through or under the owner, or any of the Participant Growers in the Project.

8.6 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.

9. 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.

10. TIMBERCORP SECURITIES' FEES

10.1 Annual Fee and Charges (Payable by Early Participant Growers)

Where the Participant Grower is an Early Grower, the Participant Grower will pay Timbercorp Securities the following management fees and charges in respect of the Grove Services and all other services to be provided under this Agreement:

- (a) in respect of services to be provided in the period commencing on the Commencement Date and ending on 30 June 2004 an amount of \$3,227,27 per relevant Grovelot payable in advance on or before the Commencement Date; and
- (b) in consideration of the Grove Services and all other services to be provided under this Agreement in the period 1 July 2004 to 30 June 2005:
 - (i) an amount of \$1,090.91 per Grovelot payable on 31 October 2004; and
 - (ii) for each relevant Grovelot an amount equal to 2% of the Gross Proceeds of the sale of Crop and Product in each Financial Year of the Project payable out of and at the time the Proceeds are received by Timbercorp Securities as the Responsible Entity (less any deductions and adjustments permitted under this Agreement, the Constitution, the Sub-lease and the Project Documents);
- (c) in consideration of the Grove Services and all other services to be provided under this Agreement in the period 1 July 2005 to 30 June 2006:
 - (i) an amount of \$1,090.91 per Grovelot payable on 31 October 2005; and
 - (ii) for each relevant Grovelot an amount equal to 2% of the Gross Proceeds of the sale of Crop and Product in each Financial Year of the Project payable out of and at the time the Proceeds are received

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

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

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

Where the Participant Grower is a Post 30 June Grower, the Participant Grower will pay Timbercorp Securities the following management fees and charges in respect of the Grove Services and all other services to be provided under this Agreement:

- (a) in respect of services to be provided in the period commencing on the Commencement Date and ending on 30 June 2005 an amount of \$3,227.27 per relevant Grovelot payable in advance on or before the Commencement Date; and
- (b) in consideration of the Grove Services and all other services to be provided under this Agreement in the period 1 July 2005 to 30 June 2006:
- (i) \$1,090.91 per Grovelot payable on 31 October 2005; and
 - (ii) for each relevant Grovelot an amount equal to 4% of the Gross Proceeds of the sale of Crop and Product in each Financial Year of the Project payable out of and at the time the Proceeds are received by Timbercorp Securities as the Responsible Entity (less any deductions and adjustments permitted under this Agreement, the Constitution, the Sub-lease and the Project Documents); and
- (c) thereafter, in respect of services to be provided in each subsequent Financial Year during the Term, the fees specified in clauses 10.3.

10.3 Management Fees Payable by all Growers

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

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

10.4 Responsible Entity to make certain payments

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

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

10.5 Incentive Fee

- (a) Timbercorp Securities will be entitled to be paid as an incentive fee in a Financial Year by the Participant Grower out of, and immediately prior to, any distribution 25% of so much of the annual Net Proceeds received by the Participant Grower in a Financial Year as exceeds the Incentive Fee Threshold.
- (b) But, if in the immediately preceding Financial Year, the Net Proceeds received by the Participant Grower were less than the Incentive Fee Threshold the amount of the deficit must be deducted from the Net Proceeds when calculating the fee payable to Timbercorp Securities under this clause 10.5 in respect of the Financial Year to which reference is first made.

10.6 Discontinuance or suspension of CPI

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

10.7 Capacity

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

**Supplemental Grovelot
Management Agreement**

for

**2004 Timbercorp Olive Project
(ARSN 108 744 378)**

NM TAYLOR
LAWYERS

Level 7
350 Collins Street
MELBOURNE VIC 3000

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

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 Participant Growers ;
2. by the replacement of clause 10.3 in each of the Management Agreements with the following:

"10.3 Management fees and costs payable by all Participant Growers

- (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, Timbercorp Securities will estimate the costs of operating the relevant Grovelots, which will include an allocation of overhead costs incurred by Timbercorp Securities or its contractors that will not exceed \$70 per relevant Grovelot Indexed to CPI (adopting 30 June 2004 as the base year) as adjusted under paragraph 10.3(b) (iii);
- (b) Timbercorp Securities will:
 - (i) notify the Participant Grower of the estimated costs of operating the relevant Grovelots under paragraph 10.3(a) and the amount required to be paid by the Participant Grower on 31 October of the relevant year and the amount, if any, required to be paid by the Participant Grower subsequently, as determined by Timbercorp Securities in its absolute discretion and the Participant Grower:
 - (A) must pay the amounts at the times and in such manner notified by Timbercorp Securities ;and
 - (B) to the extent that Timbercorp Securities determines that amounts are to be paid out of Proceeds, the Participant Grower authorises and requests Timbercorp Securities to deduct such amounts out of and at the time Proceeds are received by Timbercorp Securities as the Responsible Entity in respect of the sale of Olive Oil.
 - (ii) notify the Participant Grower of its Participating Interest of the actual cost of Timbercorp Securities's operating the relevant Grovelots for the preceding Financial Year including overhead costs incurred by Timbercorp Securities or its contractors, which the Participant Grower must pay by 31 October of the year in which Timbercorp Securities 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 Timbercorp Securities under sub-paragraph (ii) by the difference between the actual costs and the costs estimated by Timbercorp Securities under paragraph 10.3(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 Participant Grower following the end of the preceding Financial Year.

-
- (c) Timbercorp Securities will be entitled to be paid in respect of all of the Participant Grower's relevant Grovelots an amount equal to 1% of the Participant Grower's Participating Interest of the Gross Proceeds from the sale of Crop and Product in that Financial Year payable out of, and at the time the Proceeds are received by Timbercorp Securities as the Responsible Entity (less any deductions and adjustments permitted under this Agreement, the Constitution, the Sub-lease and the Project Documents)."

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
2004 TIMBERCORP OLIVE PROJECT (ARSN 108 744 378)
First Plaintiffs

MARK ANTHONY KORDA and LEANNE KYLIE CHESSEY
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
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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
2004 OLIVE SCHEME: SUMMARY OF RENTAL PAYMENT OBLIGATIONS

Lease Agreement	Doc ID	When is rent payable?	Amount payable
Head Lease (Pinks Lease) between Olivecorp (Lessor) and TSL (Lessee)	O 2004 005C	As and when the TSL receives rent from the Growers under the Sub-lease Agreements and no later than 60 days after receiving the rent under those sub-leases (cl 3.1)	\$557,190.43 pa (coverage) However, where the amount of rent received from the Growers under the sub-leases is less than the Rent, the TSL must pay to Olivecorp that lesser amount. When paying rent, TSL must also pay GST on the Rent. (cl 3.2)
Sub-lease between TSL (Sublessor), Olivecorp (Land Owner) and Participant Growers (Sublessees) for 2004 Timbercorp Olive Project	O 2004 006	Growers must pay rent to TSL by 31 October in respect of rent for each financial year ending 30 June (cl 7.1 & 7.2)	\$981.82 per Grovelot (cl 7.1) indexed from 31 October 2009 against an aggregate CPI calculated by reference to the formula in clause 1.1 (cl 7.2 and 1.1)