

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

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

SUPPLEMENTARY AND REPLY AFFIDAVIT OF MARK ANTHONY KORDA

2006 TIMBERCORP OLIVE PROJECT (ARSN 119 182 179)

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 2006 Timbercorp Olive Project (ARSN 119 182 179) (**2006 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 2006 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 2006 Olive Scheme Affidavit I did not provide detailed analysis of the projected month-by-month cashflow of the 2006 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 2006 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 7.6 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

- 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 The next line is the deduction from the Gross Grower Proceeds for what Timbercorp management refer to as the "Sales & Related Costs". This is deducted from the "Gross Grower Proceeds" before TSL receives those proceeds, pursuant to clause 11.3(d) of the supplementary Grower Agreement dated 1 October 2008 (**Supplementary Grower Agreement**). Now produced and shown to me marked **MAK-13** is a copy of clause 11 of the Grower Agreement and the Supplementary Grower Agreement that amends clause 11.3. (Only part of clause 11 of the Grower Agreement (without the supplementary clause) is exhibited at MAK-5 of my 2006 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.

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- 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 2006 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 2006 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", "Temp Water", "Licence Fee" and "AOA Levy". These costs are explained in paragraphs 6 and 9 of my 2006 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 9.6(g) 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 2006 Olive Scheme Growers are required to pay by 31 October each year (Supplemental Grower Agreement, clause 11.3(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 October 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 2006 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

- 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". For the 2006 Olive Scheme, TSL is entitled to deduct, at the time TSL receives the proceeds, what Timbercorp management refer to as the "TIM Management Fee" (Supplemental Grower Agreement, clause 11, exhibited as MAK-13).
- 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 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.

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- 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 2006 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) and (d) of my 2006 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 are three leases, all between between TSL and a Timbercorp Group Company (the Landowner), collectively referred to as the Head Lease. 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 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 2006 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 \$793,000 (**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 2006 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 \$2,756,000 (**Shortfall with CAPEX**).
- 8.8 In summary, the analysis suggests that the 2006 Olive Scheme is insolvent because:
- a) There is an estimated "Cumulative Scheme Cashflow - Before CAPEX" deficit of \$793,000 to the end of September 2009; and
 - b) TSL does not have the capacity to fund the capital expenditure of \$1,962,000 identified as necessary to the end of September 2009.
- 8.9 In other words the 2006 Olive Scheme cannot meet these expenses as they fall due for payment.

Additional Analysis

- 8.10 The Timbercorp Group had planned on acquiring permanent water rights to the value detailed in the "Water – Capital Expenditure" line of the Cashflow Analysis. An alternative approach would be to defer the acquisition of permanent water rights and replace it with additional temporary water for the 2010 crop. The cost of acquiring additional temporary water is detailed in the Cashflow Analysis, in the penultimate line. The net impact on the 2010 Harvest Result of purchasing additional temporary water, rather than acquiring permanent water, would be to reduce the cash required over the 2010 Harvest Result by \$2,378,000. This is arrived at by subtracting the total "Water – Capital Expenditure" and adding instead the total "Alternative: Replace PWR water with Temp Water".

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9 **Miller Affidavit**

- 9.1 Mr Miller has identified an error at paragraph 9.3(b) of my 2006 Olive Scheme Affidavit where the forecast yield for 2010 is incorrectly identified as 307,305 litres. The forecast, based on the information in the Solvency Spreadsheet, is in fact 1,080,399 litres. The table should therefore say:

Crop Year	2003	2004	2005	2006	2007	2008	2009F	2010F*
Yield Total 2006					39,757	323,065	760,972	1,080,399
*Forecast								

- 9.2 The figures in the Solvency Analysis are however correct, the error is only at paragraph 9.3(b) of my 2006 Olive Scheme Affidavit.
- 9.3 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 2006 Olive Scheme Affidavit (**Report**).
- 9.4 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 2006 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

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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.

9.5 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 2006 Olive Scheme Affidavit, leads us to the conclusion that the 2006 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.

9.6 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.

9.7 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.

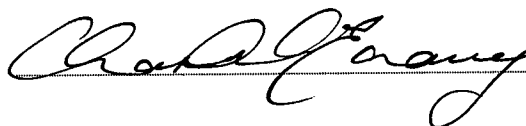
SWORN by the abovenamed deponent at)

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
2006 TIMBERCORP OLIVE PROJECT (ARSN 119 182 179)
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
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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

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
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MARK ANTHONY KORDA and LEANNE KYLIE CHESSER
Second and Third Plaintiffs

CERTIFICATE IDENTIFYING EXHIBIT

Date of document: **7** 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-13**" now produced and shown to **MARK ANTHONY KORDA**
at the time of swearing his affidavit on **7** 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-13"
Grower obligations under
Grovelot Management Agreement

0 2006 006

**Grovelot Management
Agreement**

Timbercorp Securities Limited

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

2006 Timbercorp Olive Project

occupation of, the Grove or any part of it by any Participant Growers in the Project.

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.

11. TIMBERCORP SECURITIES' FEES

11.1 Annual Fee and Charges Payable by Early Participant Growers

A Participant Grower who is an **Early Grower** will 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 2006, an amount of \$5,272.73 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 2006 to 30 June 2007:
 - (i) an amount of \$1,090.91 per Grovelot payable on 31 October 2006; and
 - (ii) for each Grovelot, an amount equal to 2.0% of the of the Participant Grower's Participating Interest of the Net Sales Proceeds from the sale of Product or Crop in each Financial Year of the Project payable out of and at the time the Proceeds are received by Timbercorp Securities as the Responsible Entity;
- (c) in consideration of the Grove Services and all other services to be provided under this Agreement in the period 1 July 2007 to 30 June 2008:
 - (i) an amount of \$1,090.91 per Grovelot payable on 31 October 2007; and
 - (ii) for each Grovelot, an amount equal to 2.0% of the of the Participant Grower's Participating Interest of the Net Sales Proceeds from the sale of Product or Crop in each Financial Year of the Project payable out of and at the time the Proceeds are received by Timbercorp Securities as the Responsible Entity; and
- (d) thereafter, in consideration of the Grove Services and all other services to be provided under this Agreement in each subsequent Financial Year during the Term, the fees and costs specified in clause 11.3.

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

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

- (a) in consideration of the Grove Services and all other services to be provided under this Agreement in the period from the Commencement Date to 30 June 2007, an amount of \$6,363.64 per Grovelot payable in advance on or before the Commencement Date; and

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- (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.

12. INSURANCE

12.1 Timbercorp Securities to Keep Insurance

Timbercorp Securities will be responsible for obtaining and keeping or procuring some other person to procure and keep policies of insurance, on behalf of the Participant Growers in the Project with a reputable insurer against damage to the Grove, which is caused by fire or other insurable risks, including public risk and occupier's liability provided that the cost of any such insurance is economically justified and it does not include crop insurance (unless specifically agreed between Timbercorp Securities and the Participant Grower from year to year).

12.2 Names of Policies

All policies of insurance obtained by Timbercorp Securities in accordance with clause 12.1 must be in the names of or note the interests of Timbercorp Securities, the Land Owner and all the Participant Growers.

12.3. No party may Prejudice Insurance Policies

No party will at any time during the Term permit or suffer to be done (and nothing in this Agreement will require Timbercorp Securities to permit or suffer to be done) any act, matter or thing upon the Groves whereby any insurances in respect of the Grove or any Participant Grower's Grovelots (or any part thereof) may be prejudiced or rendered void or voidable, or whereby the rate of premium on any insurance policy will be liable to be increased.

13. MANAGEMENT PLAN AND REPORTS

13.1 Management Plan

- (a) In performing its obligations under this Agreement, Timbercorp Securities must observe and act in accordance with, the Management Plan.
- (b) Despite the preceding paragraph, Timbercorp Securities is not required to follow or comply with the Management Plan to the extent that a written recommendation or direction from the Participant Grower under clause 13.2 requires Timbercorp Securities to do something which is not in accordance with the Management Plan.

**Supplemental Grovelot
Management Agreement**

for

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

NM TAYLOR
L A W Y E R S

Level 7
350 Collins Street
MELBOURNE VIC 3000

Telephone: 9600 3525
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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 11.3 in each of the Management Agreements with the following:

“11.3 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 2006 as the base year) as adjusted under paragraph 11.3(b) (iii); and
- (b) Timbercorp Securities will:
 - (i) notify the Participant Grower of the estimated costs of operating the relevant Grovelots under paragraph 11.3(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' 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 11.3(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.

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- (c) The Participant 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 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 Participant Grower must pay processing costs to Timbercorp Securities at such time nominated by Timbercorp Securities.
 - (d) For each Financial Year in which Product or Crop is sold on behalf of the Participant Grower, the Participant Grower will pay its prescribed proportion of Marketing and Sale Costs. These costs will be deducted by the distributor or other sales agent from the proceeds of sale before paying the proceeds to Timbercorp Securities or Olivecorp Management."

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MARK ANTHONY KORDA and LEANNE KYLIE CHESSER
Second and Third Plaintiffs

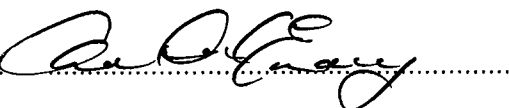
CERTIFICATE IDENTIFYING EXHIBIT

Date of document: 9 July 2009
Filed on behalf of: the Plaintiffs
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(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
2006 OLIVE SCHEME: SUMMARY OF RENTAL PAYMENT OBLIGATIONS

Lease Agreement	Doc ID	When is rent payable?	Amount payable
Lease - Grove 58 Kooloonong between B.B. Olives Pty Ltd (Olives) (Lessor) and TSL (Lessee)	O 2006 004A	As and when the lessee 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)	\$116,000 pa (coverpage) 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)
Lease - Grove 200 Anderson between Olives (Lessor) and TSL (Lessee)	O 2006 004B	As and when the lessee 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)	\$400,000 pa (coverpage) However, where the amount of rent received from the Growers under the sub-lease 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)
Lease - Grove 452 Kooloonong between Olives (Lessor) and TSL (Lessee)	O 2006 004C	As and when the lessee 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)	\$904,000 pa (coverpage) 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)

Lease Agreement	Doc ID	When is rent payable?	Amount payable
Sub-lease between TSL (Lessor), Olives (Land Owner) and Participant Growers (Lessees) for 2006 Timbercorp Olive Project	O 2006 005	Growers must pay rent to TSL by 31 October in respect of rent for each financial year (cl 7.1)	<p>\$624.55 per Grovelot for the financial year ending 30 June 2010</p> <p>\$799.10 per Grovelot for the financial year ending 30 June 2011 and each subsequent year (cl 7.1) indexed from 31 October 2011 against an aggregate CPI calculated by reference to the formula in clause 1.1 (cl 7.1 and 1.1)</p>