

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

No. S CI 2014 03482

BETWEEN

TIMBERCORP FINANCE PTY LTD (IN LIQUIDATION) (ACN 054 581 190)

Plaintiff

and

PETER GRUYTERS

Defendant

AMENDED WRIT

**Amended pursuant to leave granted by the orders of the Honourable Justice Judd
made on 3 August 2016**

Date of document: ~~8 July 2014~~ 20 July 3
August 2016

Filed on behalf of: The Plaintiff

Prepared by:

Mills Oakley Lawyers

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Attention: Bridget Slocum

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TO THE DEFENDANT

TAKE NOTICE that this proceeding has been brought against you by the plaintiff for the claim set out in this writ.

IF YOU INTEND TO DEFEND the proceeding, or if you have a claim against the plaintiff which you wish to have taken into account at the trial, YOU MUST GIVE NOTICE of your intention by filing an appearance within the proper time for appearance stated below.

YOU OR YOUR SOLICITOR may file the appearance. An appearance is filed by –

- (a) filing a "Notice of Appearance" in the Prothonotary's office, Level 2, 436 Lonsdale Street, Melbourne, or, where the writ has been filed in the office of a Deputy Prothonotary, in the office of that Deputy Prothonotary; and

(b) on the day you file the Notice, serving a copy, sealed by the Court, at the plaintiff's address for service, which is set out at the end of this writ.

IF YOU FAIL to file an appearance within the proper time, the plaintiff may OBTAIN JUDGMENT AGAINST YOU on the claim without further notice.

THE PROPER TIME TO FILE AN APPEARANCE is as follows –

- (a) where you are served with the writ in Victoria, within 10 days after service;
- (b) where you are served with the writ out of Victoria and in another part of Australia, within 21 days after service;
- (c) where you are served with the writ in New Zealand or in Papua New Guinea, within 28 days after service;
- (d) where you are served with the writ in any other place, within 42 days after service.

IF the plaintiff claims a debt only and you pay that debt, namely \$189,758.39 and \$1,496.50 for legal costs to the plaintiff or the plaintiff's solicitor within the proper time for appearance, this proceeding will come to an end. Notwithstanding the payment you may have the costs taxed by the Court.

FILED:

PROTHONOTARY

THIS WRIT is to be served within one year from the date it is filed or within such further period as the Court orders.

AMENDED STATEMENT OF CLAIM

1. The Plaintiff is and was at all material times:
 - (a) a corporation duly incorporated and registered pursuant to the *Corporations Act* 2001 (Cth) (**Act**); and
 - (b) a company carrying on the business of providing finance, financial services and financial accommodation.
2. On or about 23 April 2009, the board of directors of the Plaintiff resolved to appoint administrators to the Plaintiff pursuant to s. 436A of the Act and Mark Anthony Korda and Craig Peter Shepard were so appointed.
3. On 29 June 2009, a meeting of creditors of the Plaintiff was convened pursuant to s. 439A of the Act. The creditors voting at the meeting resolved that the Plaintiff be wound up pursuant to s. 439C(c) of the Act and Mark Anthony Korda and Craig Peter Shepard became the liquidators.

2007 ALMOND EARLY PROJECT (2007 Almond Early Project)

Loan Agreement L0021392

4. On or about 31 May 2007 the Defendant applied to the Plaintiff for a loan (**L0021392 Loan Application**) in the amount of \$50,400 (**L0021392 Loan Amount**) to fund part of the cost of his Initial ~~Stage~~ investment in the 2007 Almond Early Project being a registered managed investment scheme operated by Timbercorp Securities Limited (in Liquidation) (**TSL**).

PARTICULARS

The L0021392 Loan Application is in writing and contained in:

- (i) a document titled “2007 Timbercorp Projects Finance Package Loan Application Form”; and

- (ii) a document titled “2007 Timbercorp Projects Finance Package Loan Explanation and Loan Terms” (**L0021392 Loan Explanation and Loan Terms**)

The L0021392 Loan Application was completed and executed by the Defendant.

Copies of the documents are in the possession of the solicitors for the Plaintiff and can be inspected by prior appointment during ordinary business hours.

5. By executing the L0021392 Loan Application, the Defendant acknowledged, confirmed and agreed *inter alia* that:
 - (a) he had read and understood the L0021392 Loan Explanation and Loan Terms provided with the L0021392 Loan Application;
 - (b) the Plaintiff made no recommendation in connection with any investment in the 2007 Almond Early Project;
 - (c) the Plaintiff recommended to the Defendant that he:
 - (i) obtain independent professional advice as to whether any investment in the 2007 Almond Early Project was an appropriate investment or was fit for any particular purpose that is required or is of a nature of quality to achieve any result that is desired; and
 - (ii) review the potential risks of any investment in the 2007 Almond Early Project and of borrowing money to acquire that investment with his own legal and financial advisers;
 - (d) his obligation to pay all interest on, and to repay, the L0021392 Loan Amount applied regardless of the success or failure of any investment in the 2007 Almond Early Project or of the rate of return of income or capital from that investment or of the consequences of that investment or any act, conduct,

dealing, omission, statement, representation or warranty by TSL or any other person; and

- (e) he could not claim or exercise any set-off, counterclaim or any similar right of defence in relation to any amounts that may be due and payable by him in connection with the 2007 Almond Early Project loan agreement.

(collectively, **L0021392 Loan Acknowledgments**)

PARTICULARS

The L0021392 Loan Acknowledgments are contained at page 7 of the L0021392 Loan Application under the heading “IMPORTANT ACKNOWLEDGEMENTS”.

- 6. By completing and submitting the L0021392 Loan Application, the Defendant offered to borrow the L0021392 Loan Amount from the Plaintiff on the terms specified therein on the basis that the terms contained in the L0021392 Loan Explanation and Loan Terms would regulate the loan agreement between him and the Plaintiff if his L0021392 Loan Application was accepted.
- 7. In pursuance of the L0021392 Loan Application the Plaintiff accepted the Defendant’s offer to borrow the L0021392 Loan Amount and agreed to lend to him the L0021392 Loan Amount (**Loan Agreement L0021392**).

PARTICULARS

The Plaintiff’s acceptance is partly in writing and partly to be implied.

Insofar as it is in writing, it is contained in the L0021392 Letter of Acceptance, enclosing the L0021392 Loan Details, referred to below in these particulars.

Insofar as it is to be implied, it is to be implied from the Plaintiff paying the L0021392 Loan Amount as referred to below in these particulars.

Loan Agreement L0021392 is partly in writing and partly to be implied.

The written part is comprised of:

- (i) L0021392 Loan Application;
- (ii) L0021392 Loan Explanation and Loan Terms; and
- (iii) Letter of acceptance from the Plaintiff to the Defendant dated 7 June 2007 (**L0021392 Letter of Acceptance**), enclosing a document titled “Loan Terms - Details” signed on behalf of the Defendant by his attorney on 7 June 2007 (**L0021392 Loan Details**).

Copies of the documents are in the possession of the Plaintiff’s solicitors and can be inspected by prior appointment during ordinary business hours.

Insofar as Loan Agreement L0021392 is to be implied, it is to be implied byfrom:

the Plaintiff ~~advancing paying~~ the L0021392 Loan Amount ~~on or~~ ~~about 30 June 2007 by paying it~~ to TSL (or as it directed) for the balance of the Defendant’s application money and loan application fee as described in the L0021392 Loan Application;

~~the Defendant, having received the L0021392 Letter of Acceptance enclosing the L0021392 Loan Details, commencing on 31 July 2007 to make loan repayments of \$673.04 to the Plaintiff as specified in the L0021392 Loan Details.~~

8. There were terms of Loan Agreement L0021392 as follows:

- (a) “*balance owing on your loan account*” meant, at any time, the difference between all amounts credited and all amounts debited to the Defendant under Loan Agreement L0021392 at that time and when this amount would be

calculated for the end of a day, it would include all debits and credits assigned to that day;

- (b) “*business day*” meant any day (other than a Saturday or a Sunday) banks were open for business in Victoria (**Business Day**);
- (c) “*costs*” included charges and expenses, and costs, charges and expenses in connection with legal and other advisers on a full indemnity basis;
- (d) “*higher interest rate*” meant a per annum interest rate of 13.2% (**L0021392 Higher Interest Rate**);
- (e) “*instalment*” meant a monthly principal and interest instalment of \$673.04 (**L0021392 Instalment**);
- (f) “*loan account*” meant an account the Plaintiff would establish in the Defendant’s name for recording all transactions in connection with Loan Agreement L0021392 (**L0021392 Loan Account**);
- (g) “*loan amount*” meant the L0021392 Loan Amount;
- (h) “*loan expiry date*” meant the date ending 120 months from 30 June 2007 (**L0021392 Loan Expiry Date**);
- (i) “*loan term*” meant 120 months from 30 June 2007 (**L0021392 Loan Term**);
- (j) “*lower interest rate*” meant a per annum rate of interest fixed at 10.25% for the L0021392 Loan Term (**L0021392 Lower Interest Rate**);
- (k) “*total amount owing*” (**L0021392 Total Amount Owing**) meant, at any time, the balance owing on the L0021392 Loan Account at that time, plus:
 - (i) all accrued interest charges, default interest charges and other amounts which the Defendant was obliged to pay under Loan Agreement L0021392 but which had not been debited to the L0021392 Loan Account at that time (including insurance); and

- (ii) all money which the Defendant would or may owe the Plaintiff in the future under Loan Agreement L0021392.

PARTICULARS

- (i) The terms referred to in sub-paragraphs 8(a) to 8(c) are express and contained in cl. 11 of the L0021392 Loan Explanation and Loan Terms.
- (ii) The terms referred to in sub-paragraphs 8(d) and 8(e) are express and contained in cl. 11 of the L0021392 Loan Explanation and Loan Terms and ~~the section headed “in the L0021392 Loan Terms—Details” in Loan Agreement L0021392.~~
- (iii) The term referred to in sub-paragraph 8(f) is express and contained in cl. 11 of the L0021392 Loan Explanation and Loan Terms.
- (iv) The terms referred to in sub-paragraphs 8(g) to 8(j) are express and contained in cl. 11 of the L0021392 Loan Explanation and Loan Terms and ~~in the L0021392 section headed “Loan Terms—Details” in Loan Agreement L0021392.~~
- (v) The term referred to in sub-paragraph 8(k) is express and contained in cl. 11 of the L0021392 Loan Explanation and Loan Terms.

9. There were further terms of Loan Agreement L0021392 as follows:

- (a) the Plaintiff agreed to lend the Defendant the L0021392 Loan Amount by paying it to TSL (or as TSL directed) as payment of the balance for the Defendant's lots and his loan application fee as described in the L0021392 Loan Explanation and Loan Terms;
- (b) interest charges for each day would be calculated at the daily percentage rate on the balance owing on the L0021392 Loan Account for the end of that day;
- (c) the daily percentage rate would be the L0021392 Higher Interest Rate for that day divided by 365, but if the Defendant paid interest on the due date and was

not in default at that time, the Plaintiff would accept interest charges calculated at the L0021392 Lower Interest Rate;

- (d) interest charges would accrue daily from and including the date the Plaintiff paid the L0021392 Loan Amount under the term referred to in sub-paragraph 9(a) above;
- (e) the Plaintiff could charge interest at the L0021392 Higher Interest Rate on any other amount which was not paid on time, which charges would accrue daily and the Defendant would pay them to the Plaintiff when asked;
- (f) the Plaintiff could debit any of these amounts to the L0021392 Loan Account without first notifying the Defendant;
- (g) the Defendant's obligation to pay on time would not be cancelled by the provisions of the terms in sub-paragraphs 9(b) to 9(f) above;
- (h) the Defendant would repay to the Plaintiff all amounts the Defendant borrowed from the Plaintiff and the Defendant would pay the Plaintiff interest charges;
- (i) the Defendant would pay the L0021392 Instalments of \$673.04 over the L0021392 Loan Term;
- (j) each L0021392 Instalment was due and payable on the last Business Day of each month, with the first L0021392 Instalment due on the last Business Day of the month in which the L0021392 Loan Term commenced;
- (k) the Defendant would pay the Plaintiff the L0021392 Total Amount Owing on the earlier of the date the final L0021392 Instalment was due, the L0021392 Loan Expiry Date or, if the Defendant was in default, on the date it became due for payment *inter alia* under the terms set out in sub-paragraphs 9(p) to 9(r) below;
- (l) the Defendant would pay the Plaintiff the Plaintiff's costs in enforcing Loan Agreement L0021392 after the Defendant was in default;

- (m) the Plaintiff could debit any of these amounts to the L0021392 Loan Account on or after the date the Plaintiff paid them or the date they become due or payable by the Defendant or the Plaintiff (whichever is earlier) without first notifying the Defendant;
- (n) the Defendant would indemnify the Plaintiff against liability, loss or costs the Plaintiff may suffer or incur:
 - (i) if the Defendant defaulted under Loan Agreement L0021392;
 - (ii) in connection with actions, proceedings, claims and demands in connection with Loan Agreement L0021392;
- (o) any amount the Defendant was obliged to pay the Plaintiff under Loan Agreement L0021392 in respect of which a time for payment was not stated, would be payable when the Plaintiff asked;
- (p) the Defendant would be in default if:
 - (i) the Defendant did not pay on time all amounts due under Loan Agreement L0021392;
 - (ii) the Defendant did something he agreed not to do, or did not do something he agreed to do under Loan Agreement L0021392;
- (q) if the Defendant was in default, the L0021392 Total Amount Owing would be payable on demand;
- (r) after a default occurred, the Plaintiff could sue the Defendant for the L0021392 Total Amount Owing.

PARTICULARS

- (i) The term referred to in sub-paragraph 9(a) is express and contained in cl. 1 of the L0021392 Loan Explanation and Loan Terms.

- (ii) The terms referred to in sub-paragraphs 9(b) to 9(g) are express and contained in cl. 2 of the L0021392 Loan Explanation and Loan Terms L0021392.
- (iii) The terms referred to in sub-paragraphs 9(h) to 9(k) are express and contained in cl. 3 of the L0021392 Loan Explanation and Loan Terms in Loan Agreement L0021392.
- (iv) The terms referred to in sub-paragraphs 9(l) to 9(o) are express and contained in cl. 4 of the L0021392 Loan Explanation and Loan Terms.
- (v) The terms referred to in sub-paragraphs 9(p) to 9(r) are express and contained in cl. 7 of the L0021392 Loan Explanation and Loan Terms.

10. The Plaintiff paid the L0021392 Loan Amount to TSL (or as it directed) as payment of the balance for the Defendant's lots and his loan application fee, by:

(a) the following:

- (i) a debit entry of \$2,137,377.50 (which included the L0021392 Loan Amount) on 8 June 2007 to an account in the general ledger of the Plaintiff named "Loan Control Account" and numbered 51-1221, by way of a journal voucher numbered 431159 entered in the Great Plains accounting software maintained by the Plaintiff and TSL;
- (ii) a credit entry of \$2,137,377.50 (which included the L0021392 Loan Amount) on 8 June 2007 to an account in the general ledger of the Plaintiff named "Loan – Timbercorp Securities Ltd" and numbered 51-1208, by way of the same journal voucher;
- (iii) a debit entry of \$2,137,377.50 (which included the L0021392 Loan Amount) on 8 June 2007 to an account in the general ledger of TSL named "Loan – Timbercorp Finance Pty Ltd" and numbered 12-1200, by way of the same journal voucher;

(iv) a credit entry of \$2,137,377.50 (which included the L0021392 Loan Amount) on 8 June 2007 to an account in the general ledger of TSL named "Suspense New Loans Advanced" and numbered 12-7234, by way of the same journal voucher;

(v) TSL recording in its "Timbercorp Information Management System", on 7 June 2007, the settlement of the Defendant's balance liabilities to TSL (following payment of his deposit) recorded in invoices 1683002 and 1683010 issued 7 June 2007; or

(b) On or about 30~~13~~ June 2007, the L0021392 Loan Amount was being paid to Trust Company of Australia Limited as custodian and agent for TSL; or

(c) both (a) and (b).

and thereby loaned it to the Defendant in accordance with the terms of the Loan Agreement L0021392

~~10.11.~~ Between 31 July 2007 and 2 June 2009 the Defendant paid L0021392 Instalments to the Plaintiff under Loan Agreement L0021392.

~~11.12.~~ On or about 1 July 2009, the Defendant defaulted under Loan Agreement L0021392 by failing to pay the L0021392 Instalment when due and payable.

PARTICULARS

The Defendant failed to pay the L0021392 Instalment due on the last Business Day of the month of June 2009.

~~12.13.~~ By reason of the foregoing paragraph:

- (a) the Defendant was at all times from 1 July 2009 in default under Loan Agreement L0021392; and
- (b) the L0021392 Total Amount Owing under Loan Agreement L0021392 was payable on demand.

~~13.14.~~ On 19 March 2010 the Plaintiff made a demand for the L0021392 Total Amount Owing under Loan Agreement L0021392 as at 2 March 2010 to be paid by the Defendant within 7 days of service of the demand (**L0021392 Demand**).

PARTICULARS

The L0021392 Demand is in writing, a copy of which is in the possession of the Plaintiff's solicitors and may be inspected by prior appointment.

~~14.15.~~ The Defendant failed and/or neglected and/or refused to pay the amount so demanded within 7 days or at all.

~~15.16.~~ By letter dated 2 May 2014 the Plaintiff wrote to the Defendant, *inter alia*, confirming that that he remained in default of his payment obligations under Loan Agreement L0021392, advising the L0021392 Total Amount Owing as at 31 March 2014, and notifying of the Plaintiff's intention to issue proceedings 14 days from the date of the letter (**L0021392 Notice of Intention to Sue**).

PARTICULARS

The L0021392 Notice of Intention to Sue is in writing, a copy of which is in the possession of the Plaintiff's solicitors and may be inspected by prior appointment.

~~16.17.~~ By reason of the matters aforesaid, the Defendant is and remains indebted to the Plaintiff for the L0021392 Total Amount Owing, as at 31 March 2014 being the sum of \$81,955.47 plus costs and interest calculated at the L0021392 Higher Interest Rate thereupon at 13.2% per annum being \$29.64 per day.

Loan Agreement L0023844

~~17.18.~~ On or about 29 October 2007 the Defendant applied to the Plaintiff for a loan (**L0023844 Loan Application**) in the amount of \$14,500 (**L0023844 Loan Amount**) to fund the payment of loan fees, management costs, rent and other amounts owing

by the Defendant to ~~the Plaintiff TSL~~ relating to his investment in the 2007 Almond Early Project (**L0023844 Loan and Project Fees**) being a registered managed investment scheme operated by TSL.

PARTICULARS

The L0023844 Loan Application is in writing and contained in:

- (i) a document titled “Timbercorp 2007 On-Going Finance Package Loan Application Form”; and
- (ii) a document titled “2007 Timbercorp Projects Finance Package Loan Explanation and Loan Terms” (**L0023844 Loan Explanation and Loan Terms**).

The L0023844 Loan Application was completed and executed by the Defendant.

Copies of the documents are in the possession of the solicitors for the Plaintiff and can be inspected by prior appointment during ordinary business hours.

~~18.19.~~ By executing the L0023844 Loan Application, the Defendant acknowledged, confirmed and agreed *inter alia* that:

- (a) he had read and understood the L0023844 Loan Explanation and Loan Terms provided with the L0023844 Loan Application;
- (b) the Plaintiff made no recommendation in connection with any investment in the 2007 Almond Early Project;
- (c) the Plaintiff recommended to the Defendant that he:
 - (i) obtain independent professional advice as to whether any investment in the 2007 Almond Early Project was an appropriate investment or was fit for any particular purpose that is required or is of a nature of quality to achieve any result that is desired; and

- (ii) review the potential risks of any investment in the 2007 Almond Early Project and of borrowing money to acquire that investment with his own legal and financial advisers;
- (d) his obligation to pay all interest on, and to repay, the L0023844 Loan Amount applied regardless of the success or failure of any investment in the 2007 Almond Early Project or of the rate of return of income or capital from that investment or of the consequences of that investment or any act, conduct, dealing, omission, statement, representation or warranty by TSL or any other person.
- (e) he could not claim or exercise any set-off, counterclaim or any similar right of defence in relation to any amounts that may be due and payable by him in connection with the 2007 Almond Early Project loan agreement.

(collectively, **L0023844 Loan Acknowledgments**)

PARTICULARS

The L0023844 Loan Acknowledgments are contained at page 8 of the L0023844 Loan Application under the heading “IMPORTANT ACKNOWLEDGEMENTS”.

19-20. By completing and submitting the L0023844 Loan Application, the Defendant offered to borrow the L0023844 Loan Amount from the Plaintiff on the terms specified therein on the basis that the terms contained in the L0023844 Loan Explanation and Loan Terms would regulate the loan agreement between him and the Plaintiff if his L0023844 Loan Application was accepted.

20-21. In pursuance of the L0023844 Loan Application the Plaintiff accepted the Defendant’s offer to borrow the L0023844 Loan Amount and agreed to lend to him the L0023844 Loan Amount (**Loan Agreement L0023844**).

PARTICULARS

The Plaintiff's acceptance is partly in writing and partly to be implied.

Insofar as it is in writing, it is contained in the L0023844 Letter of Acceptance, enclosing the L0023844 Loan Details, referred to below in these particulars.

Insofar as it is to be implied, it is to be implied from the Plaintiff paying the L0023844 Loan Amount as referred to below in these particulars.

Loan Agreement L0023844 is partly in writing and partly to be implied.

The written part is comprised of:

- (i) L0023844 Loan Application;
- (ii) L0023844 Loan Explanation and Loan Terms; and
- (iii) Letter of acceptance from the Plaintiff to the Defendant dated 2 November 2007 (**L0023844 Letter of Acceptance**), enclosing a document titled "Loan Terms - Details" signed on behalf of the Defendant by his attorney on 2 November 2007 (**L0023844 Loan Details**).

Copies of the documents are in the possession of the Plaintiff's solicitors and can be inspected by prior appointment during ordinary business hours.

Insofar as Loan Agreement L0023844 is to be implied, it is to be implied -byfrom :-

the Plaintiff ~~advancing-paying~~ the L0023844 Loan Amount ~~on or about 31 October 2007 by paying it to~~ TSL (or as it directed) on account of the L0023844 Loan and Project Fees; ~~and~~

~~the Defendant, having received the L0023844 Letter of Acceptance enclosing the L0023844 Loan Details, commencing on 30 November 2007 to make loan repayments of \$218.11 to the Plaintiff as specified in the L0023844 Loan Details.~~

~~21.~~22. There were terms of Loan Agreement L0023844 as follows:

- (a) *"balance owing on your loan account"* meant, at any time, the difference between all amounts credited and all amounts debited to the Defendant under Loan Agreement L0023844 at that time and when this amount would be calculated for the end of a day, it would include all debits and credits assigned to that day;
- (b) *"business day"* meant any day (other than a Saturday or a Sunday) banks were open for business in Victoria (**Business Day**);
- (c) *"costs"* included charges and expenses, and costs, charges and expenses in connection with legal and other advisers on a full indemnity basis;
- (d) *"higher interest rate"* meant a per annum interest rate of 13.2% (**L0023844 Higher Interest Rate**);
- (e) *"instalment"* meant a monthly principal and interest instalment of \$218.11 (**L0023844 Instalment**);
- (f) *"loan account"* meant an account the Plaintiff would establish in the Defendant's name for recording all transactions in connection with Loan Agreement L0023844 (**L0023844 Loan Account**);
- (g) *"loan amount"* meant the L0023844 Loan Amount;
- (h) *"loan expiry date"* meant the date ending 96 months from 31 October 2007 (**L0023844 Loan Expiry Date**);
- (i) *"loan term"* meant 96 months from 31 October 2007 (**L0023844 Loan Term**);

- (j) “*lower interest rate*” meant a per annum rate of interest fixed at 9.75% for the L0023844 Loan Term (**L0023844 Lower Interest Rate**);
- (k) “*total amount owing*” (**L0023844 Total Amount Owing**) meant, at any time, the balance owing on the L0023844 Loan Account at that time, plus:
 - (i) all accrued interest charges, default interest charges and other amounts which the Defendant was obliged to pay under Loan Agreement L0023844 but which had not been debited to the L0023844 Loan Account at that time (including insurance); and
 - (ii) all money which the Defendant would or may owe the Plaintiff in the future under Loan Agreement L0023844.

PARTICULARS

- (i) The terms referred to in sub-paragraphs 22(a) to 22(c) are express and contained in cl. 10 of the L0023844 Loan Explanation and Loan Terms.
- (ii) The terms referred to in sub-paragraphs 22(d) and 22(e) are express and contained in cl. 10 of the L0023844 Loan Explanation and Loan Terms and in the L0023844 ~~section headed “Loan Terms– Details” in Loan Agreement L0023844.~~
- (iii) The term referred to in sub-paragraph 22(f) is express and contained in cl. 10 of the L0023844 Loan Explanation and Loan Terms.
- (iv) The terms referred to in sub-paragraphs 22(g) to 22(j) are express and contained in cl. 10 of the L0023844 Loan Explanation and Loan Terms and in the L0023844 ~~section headed “Loan Terms– Details” in Loan Agreement L0023844.~~
- (v) The term referred to in sub-paragraph 22(k) is express and contained in cl. 10 of the L0023844 Loan Explanation and Loan Terms.

22-23. There were further terms of Loan Agreement L0023844 as follows:

- (a) the Plaintiff agreed to lend the Defendant the L0023844 Loan Amount by paying it to TSL (or as TSL directed) on account of the L0023844 Loan and Project Fees;
- (b) interest charges for each day would be calculated at the daily percentage rate on the balance owing on the L0023844 Loan Account for the end of that day;
- (c) the daily percentage rate would be the L0023844 Higher Interest Rate for that day divided by 365, but if the Defendant paid interest on the due date and was not in default at that time, the Plaintiff would accept interest charges calculated at the L0023844 Lower Interest Rate;
- (d) interest charges would accrue daily from and including the date the Plaintiff paid the L0023844 Loan Amount under the term referred to in sub-paragraph 23(a) above;
- (e) the Plaintiff could charge interest at the L0023844 Higher Interest Rate on any other amount which was not paid on time, which charges would accrue daily and the Defendant would pay them to the Plaintiff when asked;
- (f) the Plaintiff could debit any of these amounts to the L0023844 Loan Account without first notifying the Defendant;
- (g) the Defendant's obligation to pay on time would not be cancelled by the provisions of the terms in sub-paragraphs 23(b) to 23(f) above;
- (h) the Defendant would repay to the Plaintiff all amounts the Defendant borrowed from the Plaintiff and the Defendant would pay the Plaintiff interest charges;
- (i) the Defendant would pay the L0023844 Instalments of \$218.11 over the L0023844 Loan Term;
- (j) each L0023844 Instalment was due and payable on the last Business Day of each month, with the first L0023844 Instalment due on the last Business Day of the month in which the L0023844 Loan Term commenced;

- (k) the Defendant would pay the Plaintiff the L0023844 Total Amount Owing on the earlier of the date the final L0023844 Instalment was due, the L0023844 Loan Expiry Date or, if the Defendant was in default, on the date it became due for payment *inter alia* under the terms set out in sub-paragraphs 23(p) to 23(r) below;
- (l) the Defendant would pay the Plaintiff the Plaintiff's costs in enforcing Loan Agreement L0023844 after the Defendant was in default;
- (m) the Plaintiff could debit any of these amounts to the L0023844 Loan Account on or after the date the Plaintiff paid them or the date they become due or payable by the Defendant or the Plaintiff (whichever is earlier) without first notifying the Defendant;
- (n) the Defendant would indemnify the Plaintiff against liability, loss or costs the Plaintiff may suffer or incur:
 - (i) if the Defendant defaulted under Loan Agreement L0023844;
 - (ii) in connection with actions, proceedings, claims and demands in connection with Loan Agreement L0023844;
- (o) any amount the Defendant was obliged to pay the Plaintiff under Loan Agreement L0023844 in respect of which a time for payment was not stated, would be payable when the Plaintiff asked;
- (p) the Defendant would be in default if:
 - (i) the Defendant did not pay on time all amounts due under Loan Agreement L0023844;
 - (ii) the Defendant did something he agreed not to do, or did not do something he agreed to do under Loan Agreement L0023844;
- (q) if the Defendant was in default, the L0023844 Total Amount Owing would be payable on demand;

- (r) after a default occurred, the Plaintiff could sue the Defendant for the L0023844 Total Amount Owning.

PARTICULARS

- (i) The term referred to in sub-paragraph 23(a) is partly in writing and partly to be implied.
- (A) The written part is contained at page 5 of the L0023844 Loan Application which sets out the L0023844 Loan and Project Fees.
- (B) The term is to be implied by the following matters:
- (1) the express words contained in cl. 1 of the L0023844 Loan Explanation and Loan Terms which states that the Plaintiff lends the Defendant the L0023844 Loan Amount by paying it to TSL (or as TSL directs) as payment of the balance of the Defendant's invoice for his lots and the loan application fee as described in the L0023844 Loan Application;
- (2) the express words contained at page 5 of the L0023844 Loan Application as referred to in particular (A) above;
- (3) In circumstances where:
- (I) the Defendant did not apply for additional lots in the 2007 Almond Early Project at the time of the L0023844 Loan Application;
- (II) the Defendant was liable for the L0023844 Loan and Project Fees at the time of the L0023844 Loan Application; and
- (III) the Defendant applied for the L0023844 Loan Amount to fund payment of the L0023844 Loan and Project Fees.

the term should be implied to give the clauses referred to in

(B)(1) and (2) herein their proper construction and meaning.

- (ii) The terms referred to in sub-paragraphs 23(a) to 23(g) are express and contained in cl. 2 of the L0023844 Loan Explanation and Loan Terms L0023844.
- (iii) The terms referred to in sub-paragraphs 23(h) to 23(k) are express and contained in cl. 3 of the L0023844 Loan Explanation and Loan Terms in Loan Agreement L0023844.
- (iv) The terms referred to in sub-paragraphs 23(l) to 23(o) are express and contained in cl. 4 of the L0023844 Loan Explanation and Loan Terms.
- (v) The terms referred to in sub-paragraphs 23(p) to 23(r) are express and contained in cl. 7 of the L0023844 Loan Explanation and Loan Terms.

24. ~~On or about 31 October 2007~~ The Plaintiff paid the L0023844 Loan Amount ~~was paid~~ to TSL ~~(or at as its directed)~~ ~~ion in as~~ payment of the balance of the L0023844 Loan and Project Fees by:

(a) a debit entry of \$2,868,535.91 (which included the L0023844 Loan Amount) on 7 November 2007 to an account in the general ledger of the Plaintiff named "Loan Control Account" and numbered 51-1221, by way of a journal voucher numbered 463456 entered in the Great Plains accounting software maintained by the Plaintiff and TSL;

(b) a credit entry of \$2,868,535.91 (which included the L0023844 Loan Amount) on 7 November 2007 to an account in the general ledger of the Plaintiff named "Loan – Timbercorp Securities Ltd" and numbered 51-1208, by way of the same journal voucher;

(c) a debit entry of \$2,868,535.91 (which included the L0023844 Loan Amount) on 7 November 2007 to an account in the general ledger of TSL named "Loan

– Timbercorp Finance Pty Ltd” and numbered 12-1200, by way of the same journal voucher:

(d) a credit entry of \$2,868,535.91 (which included the L0023844 Loan Amount) on 7 November 2007 to an account in the general ledger of TSL named “Suspense New Loans Advanced” and numbered 12-7234, by way of the same journal voucher:

(e) TSL recording in its “Timbercorp Information Management System”, on 2 November 2007, the settlement of the Defendant’s balance liabilities to TSL (following payment of his deposit) recorded in invoices 1788306 and 1948785 issued 1 October 2007:

and thereby loaned it to the Defendant in accordance with the terms of Loan Agreement L0023844.

23-25. Between 30 November 2007 and 2 June 2009 the Defendant paid L0023844 Instalments to the Plaintiff under Loan Agreement L0023844.

24-26. On or about 1 July 2009, the Defendant defaulted under Loan Agreement L0023844 by failing to pay the L0023844 Instalment when due and payable.

PARTICULARS

The Defendant failed to pay the L0023844 Instalment due on the last Business Day of the month of June 2009.

25-27. By reason of the foregoing paragraph:

- (a) the Defendant was at all times from 1 July 2009 in default under Loan Agreement L0023844; and
- (b) the L0023844 Total Amount Owing under Loan Agreement L0023844 was payable on demand.

~~26-28.~~ On 19 March 2010 the Plaintiff made a demand for the L0023844 Total Amount Owing under Loan Agreement L0023844 as at 2 March 2010 to be paid by the Defendant within 7 days of service of the demand (**L0023844 Demand**).

PARTICULARS

The L0023844 Demand is in writing, a copy of which is in the possession of the Plaintiff's solicitors and may be inspected by prior appointment.

~~27-29.~~ The Defendant failed and/or neglected and/or refused to pay the amount so demanded within 7 days or at all.

~~28-30.~~ By letter dated 2 May 2014 the Plaintiff wrote to the Defendant, *inter alia*, confirming that that he remained in default of his payment obligations under Loan Agreement L0023844, advising the L0023844 Total Amount Owing as at 31 March 2014, and notifying of the Plaintiff's intention to issue proceedings 14 days from the date of the letter (**L0023844 Notice of Intention to Sue**).

PARTICULARS

The L0023844 Notice of Intention to Sue is in writing, a copy of which is in the possession of the Plaintiff's solicitors and may be inspected by prior appointment.

~~29-31.~~ By reason of the matters aforesaid, the Defendant is and remains indebted to the Plaintiff for the L0023844 Total Amount Owing, as at 31 March 2014 being the sum of \$23,209.78 plus costs and interest calculated at the L0023844 Higher Interest Rate thereupon at 13.2% per annum being \$8.39 per day.

Loan Agreement L0027351

~~30-32.~~ On or about 23 October 2008 the Defendant applied to the Plaintiff for a loan (**L0027351 Loan Application**) in the amount of \$14,500 (**L0027351 Loan Amount**) to fund the payment of loan fees, management costs, rent and other amounts owing

by the Defendant to ~~the Plaintiff~~TSL relating to his investment in the 2007 Almond Early Project (**L0027351 Loan and Project Fees**) being a registered managed investment scheme operated by Timbercorp Securities Limited (in Liquidation) (**TSL**).

PARTICULARS

The L0027351 Loan Application is in writing and contained in:

- (i) a document titled “Timbercorp 2008 On-Going Finance Package Loan Application Form”; and
- (ii) a document titled “2008 Timbercorp Projects Finance Package Loan Explanation and Loan Terms” (**L0027351 Loan Explanation and Loan Terms**).

The L0027351 Loan Application was completed and executed by the Defendant.

Copies of the documents are in the possession of the solicitors for the Plaintiff and can be inspected by prior appointment during ordinary business hours.

~~31-33.~~ By executing the L0027351 Loan Application, the Defendant acknowledged, confirmed and agreed *inter alia* that:

- (a) he had read and understood the L0027351 Loan Explanation and Loan Terms provided with the L0027351 Loan Application;
- (b) the Plaintiff made no recommendation in connection with any investment in the 2007 Almond Early Project;
- (c) the Plaintiff recommended to the Defendant that he:
 - (i) obtain independent professional advice as to whether any investment in the 2007 Almond Early Project was an appropriate investment or was fit

for any particular purpose that is required or is of a nature of quality to achieve any result that is desired; and

- (ii) review the potential risks of any investment in the 2007 Almond Early Project and of borrowing money to acquire that investment with his own legal and financial advisers;
- (d) his obligation to pay all interest on, and to repay, the L0027351 Loan Amount applied regardless of the success or failure of any investment in the 2007 Almond Early Project or of the rate of return of income or capital from that investment or of the consequences of that investment or any act, conduct, dealing, omission, statement, representation or warranty by TSL or any other person.
- (e) he could not claim or exercise any set-off, counterclaim or any similar right of defence in relation to any amounts that may be due and payable by him in connection with the 2007 Almond Early Project loan agreement.

(collectively, **L0027351 Loan Acknowledgments**)

PARTICULARS

The L0027351 Loan Acknowledgments are contained at page 8 of the L0027351 Loan Application under the heading “IMPORTANT ACKNOWLEDGEMENTS”.

32-34. By completing and submitting the L0027351 Loan Application, the Defendant offered to borrow the L0027351 Loan Amount from the Plaintiff on the terms specified therein on the basis that the terms contained in the L0027351 Loan Explanation and Loan Terms would regulate the loan agreement between him and the Plaintiff if his L0027351 Loan Application was accepted.

33-35. In pursuance of the L0027351 Loan Application the Plaintiff accepted the Defendant’s offer to borrow the L0027351 Loan Amount and agreed to lend to him the L0027351 Loan Amount (**Loan Agreement L0027351**).

PARTICULARS

The Plaintiff's acceptance is partly in writing and partly to be implied.

Insofar as it is in writing, it is contained in the L0027351 Letter of Acceptance, enclosing the L0027351 Loan Details, referred to below in these particulars.

Insofar as it is to be implied, it is to be implied from the Plaintiff paying the L0027351 Loan Amount as referred to below in these particulars.

Loan Agreement L0027351 is partly in writing and partly to be implied.

The written part is comprised of:

- (i) L0027351 Loan Application;
- (ii) L0027351 Loan Explanation and Loan Terms; and
- (iii) Letter of acceptance from the Plaintiff to the Defendant dated 28 October 2008 (**L0027351 Letter of Acceptance**), enclosing a document titled "Loan Terms - Details" signed on behalf of the Defendant by his attorney on 28 October 2008 (**L0027351 Loan Details**).

Copies of the documents are in the possession of the Plaintiff's solicitors and can be inspected by prior appointment during ordinary business hours.

Insofar as Loan Agreement L0027351 is to be implied, it is to be implied from by:

the Plaintiff ~~advancing paying~~ the L0027351 Loan Amount ~~on or~~ ~~about 31 October 2008 by paying it~~ to TSL (or as it directed) on account of the L0027351 Loan and Project Fees; ~~and~~

~~the Defendant, having received the L0027351 Letter of Acceptance enclosing the L0027351 Loan Details, commencing on 28 November~~

2008 to make loan repayments of \$218.11 to the Plaintiff as specified
in the L0027351 Loan Details.

~~34.~~36. There were terms of Loan Agreement L0027351 as follows:

- (a) “*balance owing on your loan account*” meant, at any time, the difference between all amounts credited and all amounts debited to the Defendant under Loan Agreement L0027351 at that time and when this amount would be calculated for the end of a day, it would include all debits and credits assigned to that day;
- (b) “*business day*” meant any day (other than a Saturday or a Sunday) banks were open for business in Victoria (**Business Day**);
- (c) “*costs*” included charges and expenses, and costs, charges and expenses in connection with legal and other advisers on a full indemnity basis;
- (d) “*higher interest rate*” meant a per annum interest rate of 13.2% (**L0027351 Higher Interest Rate**);
- (e) “*instalment*” meant a monthly principal and interest instalment of \$218.11 (**L0027351 Instalment**);
- (f) “*loan account*” meant an account the Plaintiff would establish in the Defendant’s name for recording all transactions in connection with Loan Agreement L0027351 (**L0027351 Loan Account**);
- (g) “*loan amount*” meant the L0027351 Loan Amount;
- (h) “*loan expiry date*” meant the date ending 96 months from 31 October 2008 (**L0027351 Loan Expiry Date**);
- (i) “*loan term*” meant 96 months from 31 October 2008 (**L0027351 Loan Term**);
- (j) “*lower interest rate*” meant a per annum rate of interest fixed at 9.75% for the L0027351 Loan Term (**L0027351 Lower Interest Rate**);

- (k) *“total amount owing”* (**L0027351 Total Amount Owning**) meant, at any time, the balance owing on the L0027351 Loan Account at that time, plus:
- (i) all accrued interest charges, default interest charges and other amounts which the Defendant was obliged to pay under Loan Agreement L0027351 but which had not been debited to the L0027351 Loan Account at that time (including insurance); and
 - (ii) all money which the Defendant would or may owe the Plaintiff in the future under Loan Agreement L0027351.

PARTICULARS

- (iii) The terms referred to in sub-paragraphs 36(a) to 36(c) are express and contained in cl. 10 of the L0027351 Loan Explanation and Loan Terms.
- (iv) The terms referred to in sub-paragraphs 36(d) and 36(e) are express and contained in cl. 10 of the L0027351 Loan Explanation and Loan Terms and in the L0027351 section headed “Loan Terms– Details” in Loan Agreement L0027351.
- (v) The term referred to in sub-paragraph 36(f) is express and contained in cl. 10 of the L0027351 Loan Explanation and Loan Terms.
- (vi) The terms referred to in sub-paragraphs 36(g) to 36(j) are express and contained in cl. 10 of the L0027351 Loan Explanation and Loan Terms and in the L0027351 section headed “Loan Terms– Details” in Loan Agreement L0027351.
- (vii) The term referred to in sub-paragraph 36(k) is express and contained in cl. 10 of the L0027351 Loan Explanation and Loan Terms.

35-37. There were further terms of Loan Agreement L0027351 as follows:

- (a) the Plaintiff agreed to lend the Defendant the L0027351 Loan Amount by paying it to TSL (or as TSL directed) on account of the L0027351 Loan and Project Fees;
- (b) interest charges for each day would be calculated at the daily percentage rate on the balance owing on the L0027351 Loan Account for the end of that day;
- (c) the daily percentage rate would be the L0027351 Higher Interest Rate for that day divided by 365, but if the Defendant paid interest on the due date and was not in default at that time, the Plaintiff would accept interest charges calculated at the L0027351 Lower Interest Rate;
- (d) interest charges would accrue daily from and including the date the Plaintiff paid the L0027351 Loan Amount under the term referred to in sub-paragraph 37(a) above;
- (e) the Plaintiff could charge interest at the L0027351 Higher Interest Rate on any other amount which was not paid on time, which charges would accrue daily and the Defendant would pay them to the Plaintiff when asked;
- (f) the Plaintiff could debit any of these amounts to the L0027351 Loan Account without first notifying the Defendant;
- (g) the Defendant's obligation to pay on time would not be cancelled by the provisions of the terms in sub-paragraphs 37(b) to 37(f) above;
- (h) the Defendant would repay to the Plaintiff all amounts the Defendant borrowed from the Plaintiff and the Defendant would pay the Plaintiff interest charges;
- (i) the Defendant would pay the L0027351 Instalments of \$218.11 over the L0027351 Loan Term;
- (j) each L0027351 Instalment was due and payable on the last Business Day of each month, with the first L0027351 Instalment due on the last Business Day of the month in which the L0027351 Loan Term commenced;

- (k) the Defendant would pay the Plaintiff the L0027351 Total Amount Owing on the earlier of the date the final L0027351 Instalment was due, the L0027351 Loan Expiry Date or, if the Defendant was in default, on the date it became due for payment *inter alia* under the terms set out in sub-paragraphs 37(p) to 37(r) below;
- (l) the Defendant would pay the Plaintiff the Plaintiff's costs in enforcing Loan Agreement L0027351 after the Defendant was in default;
- (m) the Plaintiff could debit any of these amounts to the L0027351 Loan Account on or after the date the Plaintiff paid them or the date they become due or payable by the Defendant or the Plaintiff (whichever is earlier) without first notifying the Defendant;
- (n) the Defendant would indemnify the Plaintiff against liability, loss or costs the Plaintiff may suffer or incur:
 - (i) if the Defendant defaulted under Loan Agreement L0027351;
 - (ii) in connection with actions, proceedings, claims and demands in connection with Loan Agreement L0027351;
- (o) any amount the Defendant was obliged to pay the Plaintiff under Loan Agreement L0027351 in respect of which a time for payment was not stated, would be payable when the Plaintiff asked;
- (p) the Defendant would be in default if:
 - (i) the Defendant did not pay on time all amounts due under Loan Agreement L0027351;
 - (ii) the Defendant did something he agreed not to do, or did not do something he agreed to do under Loan Agreement L0027351;
- (q) if the Defendant was in default, the L0027351 Total Amount Owing would be payable on demand;

- (r) after a default occurred, the Plaintiff could sue the Defendant for the L0027351 Total Amount Owning.

PARTICULARS

- (i) The term referred to in sub-paragraph 37(a) is partly in writing and partly to be implied.

(A) The written part is contained at page 5 of the L0027351 Loan Application which sets out the L0027351 Loan and Project Fees.

(B) The term is to be implied by the following matters:

(1) the express words contained in cl. 1 of the L0027351 Loan Explanation and Loan Terms which states that the Plaintiff lends the Defendant the L0027351 Loan Amount by paying it to TSL (or as TSL directs) as payment of the balance of the Defendant's invoice for his lots and the loan application fee as described in the L0027351 Loan Application;

(2) the express words contained at page 5 of the L0027351 Loan Application as referred to in particular (A) above;

(3) In circumstances where:

(I) the Defendant did not apply for additional lots in the 2007 Almond Early Project at the time of the L0027351 Loan Application;

(II) the Defendant was liable for the L0027351 Loan and Project Fees at the time of the L0027351 Loan Application; and

(III) the Defendant applied for the L0027351 Loan Amount to fund payment of the L0027351 Loan and Project Fees.

the term should be implied to give the clauses referred to in

(B)(1) and (2) herein their proper construction and meaning.

- (ii) The terms referred to in sub-paragraphs 37(a) to 37(g) are express and contained in cl. 2 of the L0027351 Loan Explanation and Loan Terms L0027351.
- (iii) The terms referred to in sub-paragraphs 37(h) to 37(k) are express and contained in cl. 3 of the L0027351 Loan Explanation and Loan Terms in Loan Agreement L0027351.
- (iv) The terms referred to in sub-paragraphs 37(l) to 37(o) are express and contained in cl. 4 of the L0027351 Loan Explanation and Loan Terms.
- (v) The terms referred to in sub-paragraphs 37(p) to 37(r) are express and contained in cl. 7 of the L0027351 Loan Explanation and Loan Terms.

38. ~~On or about 31 October 2008~~ The Plaintiff paid the L0027351 Loan Amount ~~was paid~~ to TSL ~~(or at as its directed)~~ ~~in as in~~ payment of the balance of the L0027351 Loan and Project Fees by:

(a) a debit entry of \$408,638.83 (which included the L0027351 Loan Amount) on 28 October 2008 to an account in the general ledger of the Plaintiff named "Loan Control Account" and numbered 51-1221, by way of a journal voucher numbered 528429 entered in the Great Plains accounting software maintained by the Plaintiff and TSL;

(b) a credit entry of \$408,638.83 (which included the L0027351 Loan Amount) on 28 October 2008 to an account in the general ledger of the Plaintiff named "Loan – Timbercorp Securities Ltd" and numbered 51-1208, by way of the same journal voucher;

(c) a debit entry of \$408,638.83 (which included the L0027351 Loan Amount) on 28 October 2008 to an account in the general ledger of TSL named "Loan –

Timbercorp Finance Pty Ltd” and numbered 12-1200, by way of the same journal voucher:

(d) a credit entry of \$408,638.83 (which included the L0027351 Loan Amount) on 28 October 2008 to an account in the general ledger of TSL named “Suspense New Loans Advanced” and numbered 12-7234, by way of the same journal voucher:

(e) TSL recording in its “Timbercorp Information Management System”, on 28 October 2008, the settlement of the Defendant’s balance liabilities to TSL (following payment of his deposit) recorded in invoices 2363729 and 2535037 issued 1 October 2008:

and thereby loaned it to the Defendant in accordance with the terms of Loan Agreement L0027351.

~~36-39.~~ Between 28 November 2008 and 2 June 2009 the Defendant paid L0027351 Instalments to the Plaintiff under Loan Agreement L0027351.

~~37-40.~~ On or about 1 July 2009, the Defendant defaulted under Loan Agreement L0027351 by failing to pay the L0027351 Instalment when due and payable.

PARTICULARS

The Defendant failed to pay the L0027351 Instalment due on the last Business Day of the month of June 2009.

~~38-41.~~ By reason of the foregoing paragraph:

- (a) the Defendant was at all times from 1 July 2009 in default under Loan Agreement L0027351; and
- (b) the L0027351 Total Amount Owing under Loan Agreement L0027351 was payable on demand.

~~39.42.~~ On 19 March 2010 the Plaintiff made a demand for the L0027351 Total Amount Owing under Loan Agreement L0027351 as at 2 March 2010 to be paid by the Defendant within 7 days of service of the demand (**L0027351 Demand**).

PARTICULARS

The L0027351 Demand is in writing, a copy of which is in the possession of the Plaintiff's solicitors and may be inspected by prior appointment.

~~40.43.~~ The Defendant failed and/or neglected and/or refused to pay the amount so demanded within 7 days or at all.

~~41.44.~~ By letter dated 2 May 2014 the Plaintiff wrote to the Defendant, *inter alia*, confirming that that he remained in default of his payment obligations under Loan Agreement L0027351, advising the L0027351 Total Amount Owing as at 31 March 2014, and notifying of the Plaintiff's intention to issue proceedings 14 days from the date of the letter (**L0027351 Notice of Intention to Sue**).

PARTICULARS

The L0027351 Notice of Intention to Sue is in writing, a copy of which is in the possession of the Plaintiff's solicitors and may be inspected by prior appointment.

~~42.45.~~ By reason of the matters aforesaid, the Defendant is and remains indebted to the Plaintiff for the L0027351 Total Amount Owing, as at 31 March 2014 being the sum of \$25,646.14 plus costs and interest calculated at the L0027351 Higher Interest Rate thereupon at 13.2% per annum being \$9.27 per day.

2008 OLIVE EARLY PROJECT (2008 Olive Early Project)

Loan Agreement L0026020

43.46. On or about 11 June 2008 the Defendant applied to the Plaintiff for a loan (**L0026020 Loan Application**) in the amount of \$25,650 (**L0026020 Loan Amount**) to fund part of the cost of his Initial Stage investment in the 2008 Olive Early Project being a registered managed investment scheme operated by TSL.

PARTICULARS

The L0026020 Loan Application is in writing and contained in:

- (i) a document titled “2008 Timbercorp Projects Finance Package Loan Application Form”; and
- (ii) a document titled “2007 Timbercorp Projects Finance Package Loan Explanation and Loan Terms” (**L0026020 Loan Explanation and Loan Terms**)

The L0026020 Loan Application was completed and executed by the Defendant.

Copies of the documents are in the possession of the solicitors for the Plaintiff and can be inspected by prior appointment during ordinary business hours.

44.47. By executing the L0026020 Loan Application, the Defendant acknowledged, confirmed and agreed *inter alia* that:

- (a) he had read and understood the L0026020 Loan Explanation and Loan Terms provided with the L0026020 Loan Application;
- (b) the Plaintiff made no recommendation in connection with any investment in the 2008 Olive Early Project;
- (c) the Plaintiff recommended to the Defendant that he:
 - (i) obtain independent professional advice as to whether any investment in the 2008 Olive Early Project was an appropriate investment or was fit for

any particular purpose that is required or is of a nature of quality to achieve any result that is desired; and

- (ii) review the potential risks of any investment in the 2008 Olive Early Project and of borrowing money to acquire that investment with his own legal and financial advisers;
- (d) his obligation to pay all interest on, and to repay, the L0026020 Loan Amount applied regardless of the success or failure of any investment in the 2008 Olive Early Project or of the rate of return of income or capital from that investment or of the consequences of that investment or any act, conduct, dealing, omission, statement, representation or warranty by TSL or any other person; and
- (e) he could not claim or exercise any set-off, counterclaim or any similar right of defence in relation to any amounts that may be due and payable by him in connection with the 2008 Olive Early Project loan agreement.

(collectively, **L0026020 Loan Acknowledgments**)

PARTICULARS

The L0026020 Loan Acknowledgments are contained at page 7 of the L0026020 Loan Application under the heading “IMPORTANT ACKNOWLEDGEMENTS”.

45-48. By completing and submitting the L0026020 Loan Application, the Defendant offered to borrow the L0026020 Loan Amount from the Plaintiff on the terms specified therein on the basis that the terms contained in the L0026020 Loan Explanation and Loan Terms would regulate the loan agreement between him and the Plaintiff if his L0026020 Loan Application was accepted.

46-49. In pursuance of the L0026020 Loan Application the Plaintiff accepted the Defendant’s offer to borrow the L0026020 Loan Amount and agreed to lend to him the L0026020 Loan Amount (**Loan Agreement L0026020**).

PARTICULARS

The Plaintiff's acceptance is partly in writing and partly to be implied.

Insofar as it is in writing, it is contained in the L0026020 Letter of Acceptance, enclosing the L0026020 Loan Details, referred to below in these particulars.

Insofar as it is to be implied, it is to be implied from the Plaintiff paying the L0026020 Loan Amount as referred to below in these particulars.

Loan Agreement L0026020 is partly in writing and partly to be implied.

The written part is comprised of:

- (i) L0026020 Loan Application;
- (ii) L0026020 Loan Explanation and Loan Terms; and
- (iii) Letter of acceptance from the Plaintiff to the Defendant dated 14 June 2008 (**L0026020 Letter of Acceptance**), enclosing a document titled "Loan Terms - Details" signed on behalf of the Defendant by his attorney on 14 June 2008 (**L0026020 Loan Details**).

Copies of the documents are in the possession of the Plaintiff's solicitors and can be inspected by prior appointment during ordinary business hours.

Insofar as Loan Agreement L0026020 is to be implied, it is to be implied from -by-

the Plaintiff ~~advancing-paying~~ the L0026020 Loan Amount ~~on or about 30 June 2008 by paying it~~ to TSL (or as it directed) for the balance of the Defendant's application money ~~and loan application fee~~ as described in the L0026020 Loan Application;

~~the Defendant, having received the L0026020 Letter of Acceptance enclosing the L0026020 Loan Details, commencing on 31 July 2008 to make loan repayments of \$346.11 to the Plaintiff as specified in the L0026020 Loan Details.~~

47-50. There were terms of Loan Agreement L0026020 as follows:

- (a) *"balance owing on your loan account"* meant, at any time, the difference between all amounts credited and all amounts debited to the Defendant under Loan Agreement L0026020 at that time and when this amount would be calculated for the end of a day, it would include all debits and credits assigned to that day;
- (b) *"business day"* meant any day (other than a Saturday or a Sunday) banks were open for business in Victoria (**Business Day**);
- (c) *"costs"* included charges and expenses, and costs, charges and expenses in connection with legal and other advisers on a full indemnity basis;
- (d) *"higher interest rate"* meant a per annum interest rate of 13.2% (**L0026020 Higher Interest Rate**);
- (e) *"instalment"* meant a monthly principal and interest instalment of \$346.11 (**L0026020 Instalment**);
- (f) *"loan account"* meant an account the Plaintiff would establish in the Defendant's name for recording all transactions in connection with Loan Agreement L0026020 (**L0026020 Loan Account**);
- (g) *"loan amount"* meant the L0026020 Loan Amount;
- (h) *"loan expiry date"* meant the date ending 120 months from 30 June 2008 (**L0026020 Loan Expiry Date**);
- (i) *"loan term"* meant 120 months from 30 June 2008 (**L0026020 Loan Term**);

- (j) “*lower interest rate*” meant a per annum rate of interest fixed at 10.5% for the L0026020 Loan Term (**L0026020 Lower Interest Rate**);
- (k) “*total amount owing*” (**L0026020 Total Amount Owing**) meant, at any time, the balance owing on the L0026020 Loan Account at that time, plus:
 - (i) all accrued interest charges, default interest charges and other amounts which the Defendant was obliged to pay under Loan Agreement L0026020 but which had not been debited to the L0026020 Loan Account at that time (including insurance); and
 - (ii) all money which the Defendant would or may owe the Plaintiff in the future under Loan Agreement L0026020.

PARTICULARS

- (iii) The terms referred to in sub-paragraphs 50(a) to 50(c) are express and contained in cl. 11 of the L0026020 Loan Explanation and Loan Terms.
- (iv) The terms referred to in sub-paragraphs 50(d) and 50(e) are express and contained in cl. 11 of the L0026020 Loan Explanation and Loan Terms and ~~in the L0026020 section headed “Loan Terms—Details” in Loan Agreement L0026020.~~
- (v) The term referred to in sub-paragraph 50(f) is express and contained in cl. 11 of the L0026020 Loan Explanation and Loan Terms.
- (vi) The terms referred to in sub-paragraphs 50(g) to 50(j) are express and contained in cl. 11 of the L0026020 Loan Explanation and Loan Terms and ~~in the L0026020 Loan Detailsthe section headed “Loan Terms—Details” in Loan Agreement L0026020.~~
- (vii) The term referred to in sub-paragraph 50(k) is express and contained in cl. 11 of the L0026020 Loan Explanation and Loan Terms.

48-51. There were further terms of Loan Agreement L0026020 as follows:

- (a) the Plaintiff agreed to lend the Defendant the L0026020 Loan Amount by paying it to TSL (or as TSL directed) as payment of the balance for the Defendant's lots and his loan application fee as described in the L0026020 Loan Explanation and Loan Terms;
- (b) interest charges for each day would be calculated at the daily percentage rate on the balance owing on the L0026020 Loan Account for the end of that day;
- (c) the daily percentage rate would be the L0026020 Higher Interest Rate for that day divided by 365, but if the Defendant paid interest on the due date and was not in default at that time, the Plaintiff would accept interest charges calculated at the L0026020 Lower Interest Rate;
- (d) interest charges would accrue daily from and including the date the Plaintiff paid the L0026020 Loan Amount under the term referred to in sub-paragraph 51(a) above;
- (e) the Plaintiff could charge interest at the L0026020 Higher Interest Rate on any other amount which was not paid on time, which charges would accrue daily and the Defendant would pay them to the Plaintiff when asked;
- (f) the Plaintiff could debit any of these amounts to the L0026020 Loan Account without first notifying the Defendant;
- (g) the Defendant's obligation to pay on time would not be cancelled by the provisions of the terms in sub-paragraphs 51(b) to 51(f) above;
- (h) the Defendant would repay to the Plaintiff all amounts the Defendant borrowed from the Plaintiff and the Defendant would pay the Plaintiff interest charges;
- (i) the Defendant would pay the L0026020 Instalments of \$346.11 over the L0026020 Loan Term;

- (j) each L0026020 Instalment was due and payable on the last Business Day of each month, with the first L0026020 Instalment due on the last Business Day of the month in which the L0026020 Loan Term commenced;
- (k) the Defendant would pay the Plaintiff the L0026020 Total Amount Owing on the earlier of the date the final L0026020 Instalment was due, the L0026020 Loan Expiry Date or, if the Defendant was in default, on the date it became due for payment *inter alia* under the terms set out in sub-paragraphs 51(p) to 51(r) below;
- (l) the Defendant would pay the Plaintiff the Plaintiff's costs in enforcing Loan Agreement L0026020 after the Defendant was in default;
- (m) the Plaintiff could debit any of these amounts to the L0026020 Loan Account on or after the date the Plaintiff paid them or the date they become due or payable by the Defendant or the Plaintiff (whichever is earlier) without first notifying the Defendant;
- (n) the Defendant would indemnify the Plaintiff against liability, loss or costs the Plaintiff may suffer or incur:
 - (i) if the Defendant defaulted under Loan Agreement L0026020;
 - (ii) in connection with actions, proceedings, claims and demands in connection with Loan Agreement L0026020;
- (o) any amount the Defendant was obliged to pay the Plaintiff under Loan Agreement L0026020 in respect of which a time for payment was not stated, would be payable when the Plaintiff asked;
- (p) the Defendant would be in default if:
 - (i) the Defendant did not pay on time all amounts due under Loan Agreement L0026020;

- (ii) the Defendant did something he agreed not to do, or did not do something he agreed to do under Loan Agreement L0026020;
- (q) if the Defendant was in default, the L0026020 Total Amount Owing would be payable on demand;
- (r) after a default occurred, the Plaintiff could sue the Defendant for the L0026020 Total Amount Owing.

PARTICULARS

- (i) The term referred to in sub-paragraph 51(a) is express and contained in cl. 1 of the L0026020 Loan Explanation and Loan Terms.
- (ii) The terms referred to in sub-paragraphs 51(b) to 51(g) are express and contained in cl. 2 of the L0026020 Loan Explanation and Loan Terms L0026020.
- (iii) The terms referred to in sub-paragraphs 51(h) to 51(k) are express and contained in cl. 3 of the L0026020 Loan Explanation and Loan Terms in Loan Agreement L0026020.
- (iv) The terms referred to in sub-paragraphs 51(l) to 51(o) are express and contained in cl. 4 of the L0026020 Loan Explanation and Loan Terms.
- (v) The terms referred to in sub-paragraphs 51(p) to 51(r) are express and contained in cl. 7 of the L0026020 Loan Explanation and Loan Terms.

52. The Plaintiff paid the L0026020 Loan Amount to TSL (or as it directed) as payment of the balance for the Defendant's lots by:

(a) the following:

- (i) a debit entry of \$1,118,840 (which included the L0026020 Loan Amount) on 18 June 2008 to an account in the general ledger of the Plaintiff named "Loan Control Account" and numbered 51-1221, by way of a

journal voucher numbered 505731 entered in the Great Plains accounting software maintained by the Plaintiff and TSL;

(ii) a credit entry of \$1,118,840 (which included the L0026020 Loan Amount) on 18 June 2008 to an account in the general ledger of the Plaintiff named "Loan – Timbercorp Securities Ltd" and numbered 51-1208, by way of the same journal voucher;

(iii) a debit entry of \$1,118,840 (which included the L0026020 Loan Amount) on 18 June 2008 to an account in the general ledger of TSL named "Loan – Timbercorp Finance Pty Ltd" and numbered 12-1200, by way of the same journal voucher;

(iv) a credit entry of \$1,118,840 (which included the L0026020 Loan Amount) on 18 June 2008 to an account in the general ledger of TSL named "Suspense New Loans Advanced" and numbered 12-7234, by way of the same journal voucher;

(v) TSL recording in its "Timbercorp Information Management System", on 14 June 2008, the settlement of the Defendant's balance liability to TSL (following payment of his deposit) recorded in invoice 2265734 issued 14 June 2008; or

(b) On or about 1930 June 2008 the L0026020 Loan Amount was being paid to Trust Company of Australia Limited as custodian and agent for TSL; or

(c) both (a) and (b).

-and thereby loaned it to the Defendant in accordance with the terms of the Loan Agreement L0026020.

49-53. Between 31 July 2008 and 2 June 2009 the Defendant paid L0026020 Instalments to the Plaintiff under Loan Agreement L0026020.

~~50-54.~~ On or about 1 July 2009, the Defendant defaulted under Loan Agreement L0026020 by failing to pay the L0026020 Instalment when due and payable.

PARTICULARS

The Defendant failed to pay the L0026020 Instalment due on the last Business Day of the month of June 2009.

~~51-55.~~ By reason of the foregoing paragraph:

- (a) the Defendant was at all times from 1 July 2009 in default under Loan Agreement L0026020; and
- (b) the L0026020 Total Amount Owing under Loan Agreement L0026020 was payable on demand.

~~52-56.~~ On 19 March 2010 the Plaintiff made a demand for the L0026020 Total Amount Owing under Loan Agreement L0026020 as at 2 March 2010 to be paid by the Defendant within 7 days of service of the demand (**L0026020 Demand**).

PARTICULARS

The L0026020 Demand is in writing, a copy of which is in the possession of the Plaintiff's solicitors and may be inspected by prior appointment.

~~53-57.~~ The Defendant failed and/or neglected and/or refused to pay the amount so demanded within 7 days or at all.

~~54-58.~~ By letter dated 2 May 2014 the Plaintiff wrote to the Defendant, *inter alia*, confirming that that he remained in default of his payment obligations under Loan Agreement L0026020, advising the L0026020 Total Amount Owing as at 31 March 2014, and notifying of the Plaintiff's intention to issue proceedings 14 days from the date of the letter (**L0026020 Notice of Intention to Sue**).

PARTICULARS

The L0026020 Notice of Intention to Sue is in writing, a copy of which is in the possession of the Plaintiff's solicitors and may be inspected by prior appointment.

~~55-59.~~ By reason of the matters aforesaid, the Defendant is and remains indebted to the Plaintiff for the L0026020 Total Amount Owing, as at 31 March 2014 being the sum of \$45,159.64 plus costs and interest calculated at the L0026020 Higher Interest Rate thereupon at 13.2% per annum being \$16.33 per day.

Loan Agreement L0027350

~~56-60.~~ On or about 23 October 2008 the Defendant applied to the Plaintiff for a loan (**L0027350 Loan Application**) in the amount of \$7,525 (**L0027350 Loan Amount**) to fund the payment of loan fees, management costs, rent and other amounts owing by the Defendant to ~~the Plaintiff~~ TSL relating to his investment in the 2008 Olive Early Project (**L0027350 Loan and Project Fees**) being a registered managed investment scheme operated by Timbercorp Securities Limited (in Liquidation) (**TSL**).

PARTICULARS

The L0027350 Loan Application is in writing and contained in:

- (i) a document titled "Timbercorp 2008 On-Going Finance Package Loan Application Form"; and
- (ii) a document titled "2008 Timbercorp Projects Finance Package Loan Explanation and Loan Terms" (**L0027350 Loan Explanation and Loan Terms**).

The L0027350 Loan Application was completed and executed by the Defendant.

Copies of the documents are in the possession of the solicitors for the Plaintiff and can be inspected by prior appointment during ordinary business hours.

~~57.61.~~ By executing the L0027350 Loan Application, the Defendant acknowledged, confirmed and agreed *inter alia* that:

- (a) he had read and understood the L0027350 Loan Explanation and Loan Terms provided with the L0027350 Loan Application;
- (b) the Plaintiff made no recommendation in connection with any investment in the 2008 Olive Early Project;
- (c) the Plaintiff recommended to the Defendant that he:
 - (i) obtain independent professional advice as to whether any investment in the 2008 Olive Early Project was an appropriate investment or was fit for any particular purpose that is required or is of a nature of quality to achieve any result that is desired; and
 - (ii) review the potential risks of any investment in the 2008 Olive Early Project and of borrowing money to acquire that investment with his own legal and financial advisers;
- (d) his obligation to pay all interest on, and to repay, the L0027350 Loan Amount applied regardless of the success or failure of any investment in the 2008 Olive Early Project or of the rate of return of income or capital from that investment or of the consequences of that investment or any act, conduct, dealing, omission, statement, representation or warranty by TSL or any other person.
- (e) he could not claim or exercise any set-off, counterclaim or any similar right of defence in relation to any amounts that may be due and payable by him in connection with the 2008 Olive Early Project loan agreement.

(collectively, **L0027350 Loan Acknowledgments**)

PARTICULARS

The L0027350 Loan Acknowledgments are contained at page 8 of the L0027350 Loan Application under the heading “IMPORTANT ACKNOWLEDGEMENTS”.

~~58.62.~~ By completing and submitting the L0027350 Loan Application, the Defendant offered to borrow the L0027350 Loan Amount from the Plaintiff on the terms specified therein on the basis that the terms contained in the L0027350 Loan Explanation and Loan Terms would regulate the loan agreement between him and the Plaintiff if his L0027350 Loan Application was accepted.

~~59.63.~~ In pursuance of the L0027350 Loan Application the Plaintiff accepted the Defendant’s offer to borrow the L0027350 Loan Amount and agreed to lend to him the L0027350 Loan Amount (**Loan Agreement L0027350**).

PARTICULARS

The Plaintiff’s acceptance is partly in writing and partly to be implied.

Insofar as it is in writing, it is contained in the L0027350 Letter of Acceptance, enclosing the L0027350 Loan Details, referred to below in these particulars.

Insofar as it is to be implied, it is to be implied from the Plaintiff paying the L0027350 Loan Amount as referred to below in these particulars.

Loan Agreement L0027350 is partly in writing and partly to be implied.

The written part is comprised of:

- (i) L0027350 Loan Application;
- (ii) L0027350 Loan Explanation and Loan Terms; and

- (iii) Letter of acceptance from the Plaintiff to the Defendant dated 28 October 2008 (**L0027350 Letter of Acceptance**), enclosing a document titled "Loan Terms - Details" signed on behalf of the Defendant by his attorney on 28 October 2008 (**L0027350 Loan Details**).

Copies of the documents are in the possession of the Plaintiff's solicitors and can be inspected by prior appointment during ordinary business hours.

Insofar as Loan Agreement L0027350 is to be implied, it is to be implied from by:

the Plaintiff ~~advancing paying~~ the L0027350 Loan ~~Amount on or about 31 October 2008 by paying it~~ to TSL (or as it directed) on account of the L0027350 Loan and Project Fees; and
~~the Defendant, having received the L0027350 Letter of Acceptance enclosing the L0027350 Loan Details, commencing on 28 November 2008 to make loan repayments of \$101.54 to the Plaintiff as specified in the L0027350 Loan Details.~~

~~60-64.~~ There were terms of Loan Agreement L0027350 as follows:

- (a) "*balance owing on your loan account*" meant, at any time, the difference between all amounts credited and all amounts debited to the Defendant under Loan Agreement L0027350 at that time and when this amount would be calculated for the end of a day, it would include all debits and credits assigned to that day;
- (b) "*business day*" meant any day (other than a Saturday or a Sunday) banks were open for business in Victoria (**Business Day**);
- (c) "*costs*" included charges and expenses, and costs, charges and expenses in connection with legal and other advisers on a full indemnity basis;

- (d) *“higher interest rate”* meant a per annum interest rate of 13.2% (**L0027350 Higher Interest Rate**);
- (e) *“instalment”* meant a monthly principal and interest instalment of \$101.54 (**L0027350 Instalment**);
- (f) *“loan account”* meant an account the Plaintiff would establish in the Defendant’s name for recording all transactions in connection with Loan Agreement L0027350 (**L0027350 Loan Account**);
- (g) *“loan amount”* meant the L0027350 Loan Amount;
- (h) *“loan expiry date”* meant the date ending 120 months from 31 October 2008 (**L0027350 Loan Expiry Date**);
- (i) *“loan term”* meant 120 months from 31 October 2008 (**L0027350 Loan Term**);
- (j) *“lower interest rate”* meant a per annum rate of interest fixed at 10.5% for the L0027350 Loan Term (**L0027350 Lower Interest Rate**);
- (k) *“total amount owing”* (**L0027350 Total Amount Owing**) meant, at any time, the balance owing on the L0027350 Loan Account at that time, plus:
 - (i) all accrued interest charges, default interest charges and other amounts which the Defendant was obliged to pay under Loan Agreement L0027350 but which had not been debited to the L0027350 Loan Account at that time (including insurance); and
 - (ii) all money which the Defendant would or may owe the Plaintiff in the future under Loan Agreement L0027350.

PARTICULARS

- (iii) The terms referred to in sub-paragraphs 64(a) to 64(c) are express and contained in cl. 10 of the L0027350 Loan Explanation and Loan Terms.
- (iv) The terms referred to in sub-paragraphs 64(d) and 64(e) are express and contained in cl. 10 of the L0027350 Loan Explanation and Loan

Terms and ~~in the L0027350 section headed "Loan Terms--Details" in Loan Agreement L0027350.~~

- (v) The term referred to in sub-paragraph 64(f) is express and contained in cl. 10 of the L0027350 Loan Explanation and Loan Terms.
- (vi) The terms referred to in sub-paragraphs 64(g) to 64(j) are express and contained in cl. 10 of the L0027350 Loan Explanation and Loan Terms and ~~in the L0027350 Loan Details the section headed "Loan Terms--Details" in Loan Agreement L0027350.~~
- (vii) The term referred to in sub-paragraph 64(k) is express and contained in cl. 10 of the L0027350 Loan Explanation and Loan Terms.

~~64.~~ 65. There were further terms of Loan Agreement L0027350 as follows:

- (a) the Plaintiff agreed to lend the Defendant the L0027350 Loan Amount by paying it to TSL (or as TSL directed) on account of the L0027350 Loan and Project Fees;
- (b) interest charges for each day would be calculated at the daily percentage rate on the balance owing on the L0027350 Loan Account for the end of that day;
- (c) the daily percentage rate would be the L0027350 Higher Interest Rate for that day divided by 365, but if the Defendant paid interest on the due date and was not in default at that time, the Plaintiff would accept interest charges calculated at the L0027350 Lower Interest Rate;
- (d) interest charges would accrue daily from and including the date the Plaintiff paid the L0027350 Loan Amount under the term referred to in sub-paragraph 65(a) above;
- (e) the Plaintiff could charge interest at the L0027350 Higher Interest Rate on any other amount which was not paid on time, which charges would accrue daily and the Defendant would pay them to the Plaintiff when asked;

- (f) the Plaintiff could debit any of these amounts to the L0027350 Loan Account without first notifying the Defendant;
- (g) the Defendant's obligation to pay on time would not be cancelled by the provisions of the terms in sub-paragraphs 65(b) to 65(f) above;
- (h) the Defendant would repay to the Plaintiff all amounts the Defendant borrowed from the Plaintiff and the Defendant would pay the Plaintiff interest charges;
- (i) the Defendant would pay the L0027350 Instalments of \$101.54 over the L0027350 Loan Term;
- (j) each L0027350 Instalment was due and payable on the last Business Day of each month, with the first L0027350 Instalment due on the last Business Day of the month in which the L0027350 Loan Term commenced;
- (k) the Defendant would pay the Plaintiff the L0027350 Total Amount Owing on the earlier of the date the final L0027350 Instalment was due, the L0027350 Loan Expiry Date or, if the Defendant was in default, on the date it became due for payment *inter alia* under the terms set out in sub-paragraphs 65(p) to 65(r) below;
- (l) the Defendant would pay the Plaintiff the Plaintiff's costs in enforcing Loan Agreement L0027350 after the Defendant was in default;
- (m) the Plaintiff could debit any of these amounts to the L0027350 Loan Account on or after the date the Plaintiff paid them or the date they become due or payable by the Defendant or the Plaintiff (whichever is earlier) without first notifying the Defendant;
- (n) the Defendant would indemnify the Plaintiff against liability, loss or costs the Plaintiff may suffer or incur:
 - (i) if the Defendant defaulted under Loan Agreement L0027350;

- (ii) in connection with actions, proceedings, claims and demands in connection with Loan Agreement L0027350;
- (o) any amount the Defendant was obliged to pay the Plaintiff under Loan Agreement L0027350 in respect of which a time for payment was not stated, would be payable when the Plaintiff asked;
- (p) the Defendant would be in default if:
 - (i) the Defendant did not pay on time all amounts due under Loan Agreement L0027350;
 - (ii) the Defendant did something he agreed not to do, or did not do something he agreed to do under Loan Agreement L0027350;
- (q) if the Defendant was in default, the L0027350 Total Amount Owing would be payable on demand;
- (r) after a default occurred, the Plaintiff could sue the Defendant for the L0027350 Total Amount Owing.

PARTICULARS

- (i) The term referred to in sub-paragraph 65(a) is partly in writing and partly to be implied.
 - (A) The written part is contained at page 5 of the L0027350 Loan Application which sets out the L0027350 Loan and Project Fees.
 - (B) The term is to be implied by the following matters:
 - (1) the express words contained in cl. 1 of the L0027350 Loan Explanation and Loan Terms which states that the Plaintiff lends the Defendant the L0027350 Loan Amount by paying it to TSL (or as TSL directs) as payment of the balance of the Defendant's invoice for his lots and the loan application fee as described in the L0027350 Loan Application;

- (2) the express words contained at page 5 of the L0027350 Loan Application as referred to in particular (A) above;
- (3) In circumstances where:
 - (I) the Defendant did not apply for additional lots in the 2008 Olive Early Project at the time of the L0027350 Loan Application;
 - (II) the Defendant was liable for the L0027350 Loan and Project Fees at the time of the L0027350 Loan Application; and
 - (III) the Defendant applied for the L0027350 Loan Amount to fund payment of the L0027350 Loan and Project Fees;

the term should be implied to give the clauses referred to in (B)(1) and (2) herein their proper construction and meaning.

- (ii) The terms referred to in sub-paragraphs 65(a) to 65(g) are express and contained in cl. 2 of the L0027350 Loan Explanation and Loan Terms L0027350.
- (iii) The terms referred to in sub-paragraphs 65(h) to 65(k) are express and contained in cl. 3 of the L0027350 Loan Explanation and Loan Terms in Loan Agreement L0027350.
- (iv) The terms referred to in sub-paragraphs 65(l) to 65(o) are express and contained in cl. 4 of the L0027350 Loan Explanation and Loan Terms.
- (v) The terms referred to in sub-paragraphs 65(p) to 65(r) are express and contained in cl. 7 of the L0027350 Loan Explanation and Loan Terms.

66. On or about 31 October 2008 The Plaintiff paid the L0027350 Loan Amount ~~was paid~~ to TSL ~~(or as its directed)~~ ion in as payment of ~~the the balance of the~~ L0027350 Loan and Project Fees by:

- (a) a debit entry of \$408,638.83 (which included the L0027350 Loan Amount) on 28 October 2008 to an account in the general ledger of the Plaintiff named "Loan Control Account" and numbered 51-1221, by way of a journal voucher numbered 528429 entered in the Great Plains accounting software maintained by the Plaintiff and TSL;
- (b) a credit entry of \$408,638.83 (which included the L0027350 Loan Amount) on 28 October 2008 to an account in the general ledger of the Plaintiff named "Loan – Timbercorp Securities Ltd" and numbered 51-1208, by way of the same journal voucher;
- (c) a debit entry of \$408,638.83 (which included the L0027350 Loan Amount) on 28 October 2008 to an account in the general ledger of TSL named "Loan – Timbercorp Finance Pty Ltd" and numbered 12-1200, by way of the same journal voucher;
- (d) a credit entry of \$408,638.83 (which included the L0027350 Loan Amount) on 28 October 2008 to an account in the general ledger of TSL named "Suspense New Loans Advanced" and numbered 12-7234, by way of the same journal voucher;
- (e) TSL recording in its "Timbercorp Information Management System", on 28 October 2008, the settlement of the Defendant's balance liability to TSL (following payment of his deposit) recorded in invoices 2382596 and 2535029 issued 1 October 2008;

and thereby loaned it to the Defendant in accordance with the terms of Loan Agreement L0027350.

~~62-67.~~ Between 28 November 2008 and 2 June 2009 the Defendant paid L0027350 Instalments to the Plaintiff under Loan Agreement L0027350.

~~63-68.~~ On or about 1 July 2009, the Defendant defaulted under Loan Agreement L0027350 by failing to pay the L0027350 Instalment when due and payable.

PARTICULARS

The Defendant failed to pay the L0027350 Instalment due on the last Business Day of the month of June 2009.

~~64-69.~~ By reason of the foregoing paragraph:

- (a) the Defendant was at all times from 1 July 2009 in default under Loan Agreement L0027350; and
- (b) the L0027350 Total Amount Owing under Loan Agreement L0027350 was payable on demand.

~~65-70.~~ On 19 March 2010 the Plaintiff made a demand for the L0027350 Total Amount Owing under Loan Agreement L0027350 as at 2 March 2010 to be paid by the Defendant within 7 days of service of the demand (**L0027350 Demand**).

PARTICULARS

The L0027350 Demand is in writing, a copy of which is in the possession of the Plaintiff's solicitors and may be inspected by prior appointment.

~~66-71.~~ The Defendant failed and/or neglected and/or refused to pay the amount so demanded within 7 days or at all.

~~67-72.~~ By letter dated 2 May 2014 the Plaintiff wrote to the Defendant, *inter alia*, confirming that that he remained in default of his payment obligations under Loan Agreement L0027350, advising the L0027350 Total Amount Owing as at 31 March 2014, and notifying of the Plaintiff's intention to issue proceedings 14 days from the date of the letter (**L0027350 Notice of Intention to Sue**).

PARTICULARS

The L0027350 Notice of Intention to Sue is in writing, a copy of which is in the possession of the Plaintiff's solicitors and may be inspected by prior appointment.

~~68.73.~~ By reason of the matters aforesaid, the Defendant is and remains indebted to the Plaintiff for the L0027350 Total Amount Owing, as at 31 March 2014 being the sum of \$13,787.36 plus costs and interest calculated at the L0027350 Higher Interest Rate thereupon at 13.2% per annum being \$4.99 per day.

AND THE PLAINTIFF CLAIMS:

Loan Agreement L0021392

- A. \$81,955.47
- B. Interest at the L0021392 Higher Rate of Interest as defined in Loan Agreement L0021392 being \$29.64 per day from 1 April 2014, alternatively pursuant to statute.

Loan Agreement L0023844

- C. \$23,209.78
- D. Interest at the L0023844 Higher Rate of Interest as defined in Loan Agreement L0023844 being \$8.39 per day from 1 April 2014, alternatively pursuant to statute.

Loan Agreement L0027351

- E. \$25,646.14
- F. Interest at the L0027351 Higher Rate of Interest as defined in Loan Agreement L0027351 being \$9.27 per day from 1 April 2014, alternatively pursuant to statute.

Loan Agreement L0026020

- G. \$45,159.64
- H. Interest at the L0026020 Higher Rate of Interest as defined in Loan Agreement L0026020 being \$16.33 per day from 1 April 2014, alternatively pursuant to statute.

Loan Agreement L0027350

- I. \$13,787.36
- J. Interest at the L0027350 Higher Rate of Interest as defined in Loan Agreement L0027350 being \$4.99 per day from 1 April 2014, alternatively pursuant to statute.
- K. Costs of the proceeding on a full indemnity basis pursuant to the terms of the Loan Agreements as defined.
- L. Such further or other orders as this Honourable Court deems fit.

Dated: ~~July 2014~~ 20 July

3 August 2016

MILLS OAKLEY LAWYERS

Solicitors for the Plaintiff

1. Place of trial – Melbourne.
2. Mode of trial – Judge alone.
3. This writ was filed for the Plaintiff by Mills Oakley ~~Lawyers~~, Level 6, 530 Collins Street, Melbourne 3000.
4. The address of the Plaintiff is C/- KordaMentha Level 24, 333 Collins Street, Melbourne 3000.
5. The address for service of the Plaintiff is Mills Oakley Lawyers, Level 6, 530 Collins Street, Melbourne 3000.
6. The address of the Defendant is 18 Leisureland Drive, Langwarrin, VIC, 3910.