



Deed of Compromise for the BB Olives Rights Proceeding

BOSI Security Services Limited

ACN 009 413 852 as trustee for Australia and New Zealand Banking Group Limited ACN 005 357 522 and BOS International (Australia) Limited (ACN 066 601 250) and Westpac Banking Corporation (ACN 007 457 141)

B.B. Olives Pty Ltd (in liquidation)

ACN 083 992 367

Almond Land Pty Ltd (in liquidation)

ACN 091 460 392

Timbercorp Limited (in liquidation)

ACN 055 185 067

Mark Anthony Korda

(in his capacities as liquidator of each of Almond Land Pty Ltd (in liquidation), B.B. Olives Pty Ltd (in liquidation), Timbercorp Limited (in liquidation) and Timbercorp Securities Limited (in liquidation))

Leanne Kylie Chesser

(in her capacities as liquidator of each of Almond Land Pty Ltd (in liquidation), Timbercorp Limited (in liquidation) and Timbercorp Securities Limited (in liquidation))

Mark Francis Xavier Menth

(in his capacity as liquidator of B.B. Olives Pty Ltd (in liquidation))

Michael Charles Vicary

(as the representative of the Growers in the 2006 Timbercorp Olive Project (ARSN 119 182 179))

Pamela Jan Dry

(as the representative of the Growers in the 2007 Timbercorp Olive Project (ARSN 123 155 715))

David Butterfield

(as the representative of the Growers in the 2008 Timbercorp Olive Project (ARSN 129 307 722))

Timbercorp Securities Limited (in liquidation)

ACN 092 311 469

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THIS DEED is made on 25 July 2012

BETWEEN:

- (1) **BOSI Security Services Limited** ACN 009 413 852 as trustee for **Australia and New Zealand Banking Group Limited** (ACN 005 357 522) and **BOS International (Australia) Limited** (ACN 066 601 250) and **Westpac Banking Corporation** (ACN 007 457 141) c/- Ashurst, Level 26, 181 William Street, Melbourne, Victoria, 3000 ("**BOSI**")
- (2) **B.B. Olives Pty Ltd (in liquidation)** ACN 083 992 367 c/- Arnold Bloch Leibler, Level 20, 333 Collins Street, Melbourne, Victoria, 3000 ("**BB Olives**")
- (3) **Almond Land Pty Ltd (in liquidation)** ACN 091 460 392 c/- Arnold Bloch Leibler, Level 20, 333 Collins Street, Melbourne, Victoria, 3000 ("**Almond Land**")
- (4) **Timbercorp Limited (in liquidation)** ACN 055 185 067 c/- Arnold Bloch Leibler, Level 20, 333 Collins Street, Melbourne, Victoria, 3000 ("**Timbercorp**")
- (5) **Mark Anthony Korda (in his capacities as liquidator of each of Almond Land Pty Ltd (in liquidation), B.B. Olives Pty Ltd (in liquidation) and Timbercorp Securities Limited (in liquidation))** c/- Arnold Bloch Leibler, Level 20, 333 Collins Street, Melbourne, Victoria, 3000 ("**Korda**")
- (6) **Leanne Kylie Chesser (in her capacities as liquidator of each of B.B. Olives Pty Ltd (in liquidation) and Timbercorp Securities Limited (in liquidation))** c/- Arnold Bloch Leibler, Level 20, 333 Collins Street, Melbourne, Victoria, 3000 ("**Chesser**")
- (7) **Mark Francis Xavier Mentha (in his capacity as liquidator of B.B. Olives Pty Ltd (in liquidation))** c/- Arnold Bloch Leibler, Level 20, 333 Collins Street, Melbourne, Victoria, 3000 ("**Mentha**")
- (8) **Michael Charles Vicary (as the representative of the Growers in the 2006 Timbercorp Olive Project (ARSN 119 182 179))** c/- Clarendon Lawyers, Level 17, Rialto North Tower, 525 Collins Street, Melbourne, Victoria, 3000 ("**Vicary**")
- (9) **Pamela Jan Dry (as the representative of the Growers in the 2007 Timbercorp Olive Project (ARSN 123 155 715))** c/- Clarendon Lawyers, Level 17, Rialto North Tower, 525 Collins Street, Melbourne, Victoria, 3000 ("**Dry**")
- (10) **David Butterfield (as the representative of the Growers in the 2008 Timbercorp Olive Project (ARSN 129 307 722))** c/- Clarendon Lawyers, Level 17, Rialto North Tower, 525 Collins Street, Melbourne, Victoria, 3000 ("**Butterfield**")
- (11) **Timbercorp Securities Limited (in liquidation)** ACN 092 311 469 c/- Arnold Bloch Leibler, Level 20, 333 Collins Street, Melbourne, Victoria, 3000 ("**TSL**")

RECITALS

- (A) Timbercorp and its subsidiary entities ("**Timbercorp Group**") conducted various agribusiness projects involving, among other things, the management, cultivation, harvesting, processing and sale of almonds, olives and citrus, including the Olive Projects.
- (B) Each entity in the Timbercorp Group, including BB Olives and Almond Land, is currently in liquidation.
- (C) TSL is the responsible entity for the Olive Projects.
- (D) The Participant Growers are investors in the Olive Projects which were conducted on the Olive Property.

- (E) BOSI provided financial accommodation to Timbercorp and obtained securities including mortgages and charges over certain assets used in the Olive Projects ("**Charged Assets**").
- (F) In the course of the respective liquidations of Timbercorp, BB Olives and Almond Land, and pursuant to Court approval, the assets used in the Olive Projects (including the Charged Assets) were sold ("**Olives Sale**"), and the Fund constituted.
- (G) A dispute exists between BOSI and the Participant Growers regarding the allocation amongst them of the Fund.
- (H) The Liquidators (in their respective capacities as liquidators of BB Olives) are, jointly and severally, the stakeholders of the Fund and await the orders of the Court regarding disbursement of the Fund.
- (I) TFL claims that a number of the Participant Growers are TFL Debtors.
- (J) TSL claims that a number of the Participant Growers are Timbercorp Debtors.
- (K) On 16 March 2010, BOSI commenced Supreme Court of Victoria Proceeding No. SCI 2010 1354, seeking, among other things, declarations as to its, and other relevant parties', rights, if any, to the Fund ("**BB Olives Rights Proceeding**").
- (L) By order made on 22 March 2010 in the BB Olives Rights Proceeding, pursuant to rule 16.01(2) of the Rules:
 - (1) Vicary was appointed as a representative of the Participant Growers in the 2006 Timbercorp Olive Project;
 - (2) Dry was appointed as a representative of the Participant Growers in the 2007 Timbercorp Olive Project; and
 - (3) Butterfield was appointed as a representative of the Participant Growers in the 2008 Timbercorp Olive Project
 (collectively, the "**Representative Growers**").
- (M) The Parties have agreed to compromise the BB Olives Rights Proceeding on the terms set out in this Deed.
- (N) The Representative Growers consider that it is for the benefit of the class of persons whom they respectively represent that the BB Olives Rights Proceeding be compromised on the term set out in this Deed.
- (O) BOSI supports the BB Olives Rights Proceeding being compromised on the terms set out in this Deed and, together with the Representative Growers, will seek the Court's approval of the Compromise.

THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Deed:

"Almond Land Appeal Deed of Compromise" means the deed of compromise dated on or about the date of this Deed to give effect to the compromise of the Almond Land Rights Appeal Proceeding.

"Almond Land Rights Appeal Proceeding" means Supreme Court of Victoria Proceeding No. APCI 2011 0103.

"Approval Application" means the application or applications to the Court for the orders referred to in clause 3.1(a).

"Business Day" means a day which is not a Saturday, Sunday or public holiday in Victoria.

"Claim" includes any claim or liability of any kind (including one which is prospective or contingent and the amount of which is not ascertained) and costs (whether or not the subject of a court order).

"Compromise" means the compromise set out in clause 2.

"Costs" includes legal fees and disbursements.

"Court" means the Supreme Court of Victoria.

"Court of Appeal" means the Supreme Court of Victoria Court of Appeal.

"Deed" means this document, including any schedule or annexure to it.

"Draft Orders" means the draft orders set out in schedule 2 to this Deed.

"Fenceport Deed of Compromise" means the deed of compromise dated on or about the date of this Deed to give effect to the compromise of the Fenceport Rights Proceeding.

"Fenceport Rights Proceeding" means Supreme Court of Victoria Proceeding No. S CI 2011 6777.

"First Notice to Participant Growers" has the meaning set out at clause 6.1(b).

"Fund" means the net sale proceeds of the Olives Sale (including, for the avoidance of doubt, all interest) held on trust by BB Olives, from time to time, pursuant to paragraph 8 of the orders made by the Honourable Justice Croft on 12 November 2009 in Supreme Court of Victoria Proceeding No. 9998 of 2009 and taking into account any other amount which may be deducted pursuant to any subsequent order of the Court.

"Liparoo & Yungera Deed of Compromise" means the deed of compromise dated on or about the date of this Deed to give effect to the compromise of the Liparoo & Yungera Rights Proceeding.

"Liparoo & Yungera Rights Proceeding" means Supreme Court of Victoria Proceeding No. S CI 2011 6604.

"Liquidators" means Korda, Chesser and Menth.

"Lot" means a Grovelot as that term is defined in the constituent documents of each Olive Project.

"Olive Property" means the land the subject of the BB Olives Rights Proceeding on which the Olive Projects were conducted.

"Olive Projects" means each of the olive projects listed in Schedule 1.

"Olives Extinguishment Date" means 11 January 2010, being the date on which the liquidators of TSL extinguished all of the rights of the Participant Growers in respect of the Olive Projects conducted on the Olive Property.

"Olives Settlement Amount" means \$1,185,000.

"Olives Settlement Entitlement" means, in respect of a Participant Grower, its entitlement, from time to time, to the Olives Settlement Amount (together with any applicable interest on that amount from the date on which the payment provided by clause 4(a) is made by the Liquidators (in their respective capacities as liquidators of BB Olives) to TSL) on the basis of a rateable distribution of that amount between the Participant Growers in the Olive Projects in accordance with the number of Lots they held in those projects as at the Olives Extinguishment Date.

"Participant Grower" means a Grower as that term is defined in the constituent documents of each Olive Project.

"Party" means a party to this Deed.

"Representative Growers' Costs Correspondence" means:

- (a) the letter from Clarendon Lawyers (solicitors for the Representative Growers) to Arnold Bloch Leibler dated 18 January 2012, including the Framework as referred to and defined in that letter; and
- (b) the letter from Arnold Bloch Leibler to Clarendon Lawyers dated 3 February 2012;

"Rules" means the *Supreme Court (General Civil Procedure) Rules 2005 (Vic)*.

"Second Notice to Participant Growers" has the meaning set out at clause 6.3(b).

"Solora Deed of Compromise" means the deed of compromise dated on or about the date of this Deed to give effect to the compromise of the Solora Rights Proceeding.

"Solora Rights Proceeding" means Supreme Court of Victoria Proceeding No. S CI 2011 6606.

"TFL" means Timbercorp Finance Pty Ltd (In Liquidation) ACN 054 581 190.

"TFL Debtor" means a Participant Grower who entered into a loan agreement with TFL:

- (i) pursuant to which TFL agreed to lend a specified amount or amounts to that Participant Grower to be used by that Participant Grower to pay liability owed to TSL relating to that Participant Grower's investments in the Olive Projects; and
- (ii) under which TFL claims that indebtedness to TFL remains outstanding.

"TFL Indebtedness" means, in respect of a TFL Debtor, its indebtedness to TFL from time to time according to the books and records of TFL.

"Timbercorp Debtor" means a Participant Grower who TSL claims is indebted to TSL.

"Timbercorp Indebtedness" means, in respect of a Timbercorp Debtor, its indebtedness, from time to time, to TSL according to the books and records of TSL.

1.2 Interpretation

(a) Reference to:

- (i) the singular includes the plural and the plural includes the singular;

- (ii) a Party includes the Party's successors, permitted substitutes and permitted assigns (and, where applicable, the Party's legal personal representatives); and
- (iii) a thing includes the whole and each part of it separately.
- (b) 'Including' and similar expressions are not words of limitation.
- (c) Headings and any table of contents or index are for convenience only and do not form part of this Deed or affect its interpretation.
- (d) A provision of this Deed must not be construed to the disadvantage of a Party merely because that Party was responsible for the preparation of the Deed or the inclusion of the provision in the Deed.

1.3 **Parties**

- (a) If a Party consists of more than 1 person, this Deed binds each of them separately and any 2 or more of them jointly.
- (b) An obligation in favour of more than 1 person is for the benefit of them separately and jointly.
- (c) A Party that is a trustee is bound both personally and in that Party's capacity as a trustee.
- (d) A Party holds the benefit of any release provided for in this Deed for themselves and, where applicable, for that Party's present and former, directors, officers, employees, contractors, agents and partners.

2. **COMPROMISE**

Subject to the condition precedent set out in clause 3 being satisfied, the Parties agree to compromise the BB Olive Rights Proceedings by:

- (a) the making of the payments in accordance with clause 4; and
- (b) the giving of releases in accordance with clause 5.

3. **CONDITION PRECEDENT**

3.1 **Court Orders**

It is a condition precedent to the Compromise that, on or before 31 December 2012:

- (a) the Court in the BB Olives Rights Proceeding:
 - (i) pursuant to rule 16.01(4) of the Rules, approves the Compromise and orders that the Compromise shall be binding on the absent persons who are represented respectively by the Representative Growers, in the form of, or substantially to the effect of, paragraph 1 of the Draft Orders; and
 - (ii) makes orders in the form of, or substantially to the effect of, paragraphs 2 and 3 of the Draft Orders.
- (b) the Court makes orders in the Solora Rights Proceeding in accordance with clause 3.1(a) of the Solora Deed of Compromise;

- (c) the Court makes orders in the Liparoo & Yungera Rights Proceeding in accordance with clause 3.1(a) of the Liparoo & Yungera Deed of Compromise;
- (d) the Court makes orders in the Fenceport Rights Proceeding in accordance with clause 3.1(a) of the Fenceport Deed of Compromise; and
- (e) the Court and/or the Court of Appeal makes orders in the Almond Land Rights Appeal Proceeding in accordance with clauses 3.1(a) and 3.1(b) of the Almond Deed of Compromise.

3.2 **Procuring Court Orders**

The parties will do all things reasonably necessary to procure the Court to make orders in the terms referred to in clause 3.1.

4. **PAYMENTS**

- (a) As soon as practicable after the condition precedent set out in clause 3.1 is satisfied, the Liquidators (in their respective capacities as liquidators of BB Olives) will pay from the Fund to TSL the Olives Settlement Amount by direct deposit into the following interest bearing bank account:

Account name: Mark Korda and Leanne Chesser as Liquidators of Timbercorp Securities Limited (In Liquidation) TSL – Olives (BB)

Bank: Macquarie

BSB: 183 334

Account number: 301881652

- (b) TSL will hold the Olives Settlement Amount on trust (as applicable) for the Participant Growers in the Olive Projects for distribution to, or on behalf of, those Participant Growers in accordance with their respective Olives Settlement Entitlements on the following basis.

- (i) In respect of each Participant Grower who is not a TFL Debtor immediately prior to the time of distribution to each such Participant Grower in accordance with this clause, TSL will pay its Olives Settlement Entitlement as soon as practicable to or at the direction of that Participant Grower (in each case, into a bank account nominated by each such Participant Grower).

- (ii) In respect of each Participant Grower who:

- (A) is a TFL Debtor immediately prior to the time of distribution to each such Participant Grower in accordance with this clause; and

- (B) directs and authorises TSL by notice in writing to pay its TFL Indebtedness to the extent possible out of its Olives Settlement Entitlement,

TSL will, as soon as practicable, pay to TFL that Participant Grower's TFL Indebtedness (to the extent possible) out of the Participant Grower's Olives Settlement Entitlement and remit the balance of that Participant Grower's Olives Settlement Entitlement (if any) to the Participant Grower.

- (iii) In respect of each Participant Grower who:

- (A) is a TFL Debtor immediately prior to the time of distribution to each such Participant Grower in accordance with this clause; and
- (B) has an Olives Settlement Entitlement for a sum greater than its TFL Indebtedness and directs and authorises TSL by notice in writing to pay only part of its TFL Indebtedness out of its Olives Settlement Entitlement,

TSL will, as soon as practicable, pay to TFL that part of that Participant Grower's TFL Indebtedness out of the Participant Grower's Olives Settlement Entitlement and retain the balance of that Participant Grower's Olives Settlement Entitlement on trust pending agreement in writing between TFL and the relevant Participant Grower, or court order, as to the manner in which it is to be disbursed.

(iv) in respect of each Participant Grower who:

- (A) is a TFL Debtor immediately prior to the time of distribution to each such Participant Grower in accordance with this clause; and
- (B) does not give a direction or authorisation to TSL in relation to payment of its TFL Indebtedness,

TSL will continue to hold that Participant Grower's Olives Settlement Entitlement on trust pending agreement in writing between TFL and the relevant Participant Grower, or court order, as to the manner in which it is to be disbursed.

- (c) On the same date as the payment under clause 4(a) is made to TSL, the Liquidators (in their respective capacities as liquidators of BB Olives) will pay to BOSI the balance of the Fund after the payment referred to in clause 4(a) has been made into the following bank account:

Account name: BOSI Security Services Limited
 Bank: Westpac
 BSB: 032-044
 Account number: 248303.

- (d) For the purposes of clause 4(b)(i):

(i) if a Participant Grower:

- (A) is a Timbercorp Debtor and not a TFL Debtor; and
- (B) so directs and authorises TSL by notice in writing prior to the date on which TSL would otherwise make a payment to the Participant Grower under clause 4(b)(i),

TSL will:

- (C) deduct from the payment due to that Participant Grower under clause 4(b)(i) such amount of that Participant Grower's Timbercorp Indebtedness as is specified in the notice and pay that deducted amount to TSL in full or part satisfaction (as the case may be) of that Participant Grower's Timbercorp Indebtedness; and

- (D) pay the balance (if any) of the payment due to the Participant Grower under clause 4(b)(i) out of the Participant Grower's Olives Settlement Entitlement to the Participant Grower's nominated bank account; and
 - (ii) for the avoidance of doubt, upon TSL making all applicable payments in respect of a Participant Grower in accordance with clause 4(d), TSL will have discharged its obligations to that Participant Grower under clause 4(b)(i) and thereupon will be entitled to the benefit of the release in clause 5.2 from that Participant Grower.
- (e) For the purposes of clause 4(b)(ii):
 - (i) if a Participant Grower:
 - (A) is a Timbercorp Debtor and a TFL Debtor; and
 - (B) so directs and authorises TSL by notice in writing prior to the date on which TSL would otherwise make a payment to the Participant Grower under clause 4(b)(ii),

TSL will:
 - (C) deduct from the payment due to that Participant Grower under clause 4(b)(ii) such amount of that Participant Grower's Timbercorp Indebtedness as is specified in the notice and pay that deducted amount to TSL in full or part satisfaction (as the case may be) of that Participant Grower's Timbercorp Indebtedness; and
 - (D) pay the balance (if any) of the payment due to the Participant Grower under clause 4(b)(ii) out of the Participant Grower's Olives Settlement Entitlement to the Participant Grower's nominated bank account; and
 - (ii) for the avoidance of doubt, upon TSL making all applicable payments in respect of a Participant Grower in accordance with clause 4(e), TSL will have discharged its obligations to that Participant Grower under clause 4(b)(ii) and thereupon will be entitled to the benefit of the release in clause 5.2 from that Participant Grower.
- (f) For the purposes of clauses 4(b)(iii) and (iv), if a Participant Grower is a Timbercorp Debtor and a TFL Debtor, the Participant Grower will not give any direction or authorisation to TSL to pay any part of that Participant Grower's Timbercorp Indebtedness out of its Olives Settlement Entitlement pending agreement in writing between TFL and the relevant Participant Grower, or relevant court order, as to the manner in which that entitlement is to be disbursed.
- (g) The giving of any authorisation or direction by a Participant Grower to TSL under clause 4(b):
 - (i) does not constitute an admission of liability by the Participant Grower to TFL in respect of the Participant Grower's TFL Indebtedness; and
 - (ii) is without prejudice to the Participant Grower's rights (if any) against TFL in relation to the Participant Grower's TFL Indebtedness.
- (h) Nothing in the receipt by TFL of any payment from TSL in accordance with clause 4(b) constitutes a waiver of any rights which TFL may have against a Participant

Grower in respect of that Participant Grower's remaining TFL Indebtedness. The benefit of this clause is held by TSL on trust for TFL.

- (i) TSL (in its personal capacity) will pay the Representative Growers' costs:
 - (i) of and incidental to the Approval Application; and
 - (ii) of and incidental to the directions hearing before the Honourable Justice Davies on 9 December 2011 in the BB Olives Rights Proceeding

in accordance with the terms agreed in the Representative Growers' Costs Correspondence. For the avoidance of doubt, payment of the Representative Growers' costs in accordance with this clause is not to be made out of the Fund or any of the funds received by TSL and held on trust for the Participant Growers in accordance with clauses 4(a) and (b).

5. RELEASE

5.1 Representative Growers and BOSI

Upon satisfaction of the condition precedent in clause 3.1, and the making of the payments in clauses 4(a), 4(b) and 4(c), the Representative Growers on behalf of the Participant Growers and BOSI release and discharge each other from all Claims in relation to:

- (a) their respective entitlements to the Fund, and
- (b) the allocation and disbursement of the Fund under the Compromise,

and this Deed may be pleaded by any Party as a full and complete defence to any such Claim.

5.2 TSL

Upon:

- (a) the releases in clause 5.1 taking effect; and
- (b) the making of a payment or, as applicable, all payments to, or at the direction of, or on the authorisation of, a Participant Grower under clauses 4(b), 4(d) and 4(e) by which the Participant Grower's Olives Settlement Entitlement is disbursed in full,

the Representative Grower for that Participant Grower releases TSL on behalf of that Participant Grower from all Claims in relation to:

- (i) that Participant Grower's entitlement to the Fund;
- (ii) the allocation and disbursement of the Fund under the Compromise in respect of that Participant Grower; and
- (iii) all of TSL's obligations to that Participant Grower under clauses 4(b), 4(d) and 4(e) (as the case may be),

and this Deed may be pleaded by TSL as a full and complete defence to any such Claim.

6. NOTICES TO PARTICIPANT GROWERS

6.1 First Notice to Participant Growers

- (a) As soon as practicable after this Deed is executed, the Representative Growers will seek the other Parties' comments on the terms of a first notice to Participant Growers, and to this end:
 - (i) the Representative Growers will prepare and circulate among the Parties a draft of the first notice; and
 - (ii) the other Parties will, as soon as practicable thereafter, provide any comments to the Representative Growers on the draft of the first notice.
- (b) The Parties will thereafter confer in good faith in relation to any necessary further comments on the draft first notice and the Representative Growers will finalise the form of the first notice (the finalised form being the **First Notice to Participant Growers**).
- (c) The First Notice to Participant Growers will, among other things:
 - (i) provide information about the BB Olives Rights Proceeding;
 - (ii) explain that the interests of the Participant Growers are represented in the BB Olives Rights Proceeding by the Representative Growers;
 - (iii) refer to the Compromise reached between the Parties and explain the key features of this Deed including the various payments contemplated under the Deed;
 - (iv) explain that the Compromise is considered by the Representative Growers as being in the best interests of the Participant Growers;
 - (v) alert the Participant Growers to consider any potential tax consequences of the Compromise;
 - (vi) explain that if the Court approves the Compromise the Participant Growers will be bound by the Compromise in respect of their individual entitlements (if any) out of the Fund;
 - (vii) explain the various roles being undertaken by TSL at the request of, and on the instruction of, the Representative Growers in connection with the Approval Application and under this Deed;
 - (viii) explain when the Participant Growers may expect to receive a payment under the Compromise from TSL;
 - (ix) explain the mechanism by which each Participant Grower is to provide their individual bank account details to TSL for the purposes of receipt of a payment under the Compromise;
 - (x) explain that some Participant Growers are TFL Debtors and Timbercorp Debtors and how the Compromise will apply to the individual circumstances of the Participant Growers (having regard, amongst other things, to the offer of settlement made by TFL to TFL Debtors (amongst others) by letter dated 8 February 2012);

- (xi) explain how each Participant Grower can access private information in relation to their individual circumstances in respect of the Compromise including the number of Lots they held in the Olive Projects as at the Olives Extinguishment Date (as the case may be) and, where applicable, their TFL Indebtedness and Timbercorp Indebtedness (as the case may be);
- (xii) explain, in respect of any payment due to the Participant Growers under the Compromise:
 - (A) the right of each Participant Grower to make a direction and authorisation to TSL in accordance with clauses 4(b), 4(d) and 4(e); and
 - (B) the consequences, where applicable, of making or not making such a direction or authorisation;
- (xiii) explain the consequences if the Court does not approve the Compromise;
- (xiv) explain to the Participant Growers what their options are in connection with the Approval Application;
- (xv) inform the Participant Growers that, without prejudice to any other course they may be advised to take, they may:
 - (A) address any comments or questions in relation to the Compromise, the Approval Application, or their individual circumstances;
 - (B) raise any objection to the Compromise,

to the Representative Growers through TSL using either a specified telephone hotline facility or by a specified email address, and that a reply will be provided to their comments or questions and, as appropriate, their comments and objections will be noted for the purposes of the hearing of the Approval Application;
- (xvi) refer the Participant Growers to a set of 'frequently asked questions' and related answers which they should review before considering whether it is necessary to ask any questions of the Representative Growers through TSL relating to the Compromise or in connection with the Approval Application; and
- (xvii) inform the Participant Growers that a further notice will be provided to them as soon as practicable after it becomes known whether or not the condition precedent to the Compromise has been satisfied.

6.2 **Provision of the First Notice to Participant Growers**

As soon as practicable after it has been finalised in accordance with clause 6.1(b), the Representative Growers will provide to TSL the First Notice to Participant Growers and, as soon as practicable thereafter:

- (a) the Representative Growers will cause the First Notice to Participant Growers to be uploaded to the pre-existing Timbercorp section of the Clarendon Lawyers website <http://www.clarendonlawyers.com.au/timbercorp.php>; and
- (b) TSL will (on instruction from, and on behalf of, the Representative Growers):
 - (i) cause the First Notice to Participant Growers to be uploaded to:

- (A) a new section within the Timbercorp section of the KordaMentha website [<http://www.kordamentha.com/creditor-information/australia/51>] which will address the Compromise;
 - (B) the pre-existing "Timbercorp Olive Schemes" section of the KordaMentha website [<http://www.kordamentha.com/creditor-information/australia/51/03>]; and
 - (C) a new section within the Timbercorp section of the Arnold Bloch Leibler website [<http://www.abl.com.au/timbercorp/timbercorp.htm>] which will address the Compromise;
- (ii) send to the Participant Growers, by post and by email to their last known postal and email addresses most recently communicated to TSL and recorded in its books and records, a short letter bringing to their attention that the First Notice to Participant Growers has been uploaded to the websites referred to in clauses 6.2(a) and 6.2(b) and specifying the relevant links to those websites; and
 - (iii) cause to be published an advertisement on a business day in 'The Australian' newspaper containing information similar to that to be set out in the letter referred to in clause 6.2(b)(ii).

6.3 **Second Notice to Participant Growers**

- (a) As soon as practicable after it becomes known whether the condition precedent in clause 3 has been satisfied, the Representative Growers will seek the other Parties' comments on the terms of a second notice, and to this end:
 - (i) the Representative Growers will prepare and circulate among the other Parties a draft of the second notice; and
 - (ii) the other Parties will, as soon as practicable thereafter, provide any comments to the Representative Growers on the draft of the second notice.
- (b) The Parties will confer in good faith in relation to any necessary further comments on the draft of the second notice and the Representative Growers will finalise the form of the second notice (the finalised form being the **Second Notice to Participant Growers**).
- (c) The Second Notice to Participant Growers will, among other things:
 - (i) explain whether the condition precedent to the Compromise set out in clause 3 has been satisfied; and
 - (ii) if the condition precedent to the Compromise set out in clause 3:
 - (A) has been satisfied, confirm when the Participant Growers may expect to receive a payment under the Compromise; and
 - (B) has not been satisfied, confirm the consequences.

6.4 **Provision of the Second Notice to Participant Growers**

As soon as practicable after it has been finalised in accordance with clause 6.3(b), the Representative Growers will provide to TSL the Second Notice to Participant Growers and, as soon as practicable thereafter;

- (a) the Representative Growers will cause the Second Notice to Participant Growers to be circulated in the same manner as is set out in respect of the First Notice to Participant Growers under clause 6.2(a); and
- (b) TSL will (on instruction from, and on behalf of, the Representative Growers) cause the Second Notice to Participant Growers to be circulated in the same manner as is set out in respect of the First Notice to Participant Growers under clause 6.2(b).

7. APPLICATION FOR COURT APPROVAL

- (a) Each of the Parties (as applicable) will use their best endeavours to do all things necessary, including steps contemplated by this Deed, to make the Approval Application and to enable the Court to hear the Approval Application at the earliest opportunity convenient to the Court, including, for the avoidance of doubt, seeking the orders set out in the Draft Orders (or orders substantially to the same effect).
- (b) On the hearing of the Approval Application, subject to the Court making the order in paragraph 1 of the Draft Orders (or orders substantially to the same effect), the Parties will consent to the Court making each of the other orders set out in paragraphs 2 and 3 of the Draft Orders (or orders substantially to the same effect).
- (c) Nothing in clause 7(b) will preclude the Representative Growers from informing the Court of any matter which they, or any of them, consider appropriate to disclose to the Court in connection with the Approval Application in their role as representative parties.

8. FAILURE TO SATISFY CONDITION PRECEDENT

If the condition precedent in clause 3.1 is not satisfied by 31 December 2012 then this Deed ceases to have any effect. In that event:

- (a) no Party will have any right or entitlement as a result of or by reason of the Parties having entered into this Deed or having conditionally agreed to the Compromise; and
- (b) this Deed, any documents prepared or circulated pursuant to this Deed, and any other documents prepared or circulated in anticipation of, or for the purpose of, the Approval Application may not be referred to or tendered in evidence in the BB Olives Rights Proceeding, Liparoo & Yungera Rights Proceeding, the Solora Rights Proceeding, the Fenceport Rights Proceeding or the Almond Land Rights Appeal Proceeding.

9. ROLE OF TSL

At the request of the Representative Growers, TSL will perform the following administrative roles in connection with the Compromise and the Approval Application:

- (a) to distribute the First Notice to Participant Growers in accordance with clause 6;
- (b) to establish and operate effectively an appropriate telephone hotline facility and email facility to:
 - (i) receive and, in accordance with instructions from the Representative Growers, address comments and questions from the Participant Growers in connection with the Compromise and the Approval Application; and
 - (ii) receive any objections to the Compromise made by the Participant Growers;

- (c) in respect of the Participant Growers who have raised comments, questions or made objections, to record with appropriate detail:
 - (i) the identity of those Participant Growers;
 - (ii) the comments and questions raised by those Participant Growers and the responses provided to those Participant Growers; and
 - (iii) any objections made by those Participant Growers and any response provided in relation to those objections;
- (d) to act in accordance with a protocol agreed with the Representative Growers regarding:
 - (i) the comments and questions which:
 - (A) may be answered by TSL without further reference to the Representative Growers;
 - (B) will be required to be provided by TSL to the Representative Growers for the preparation of an appropriate response;
 - (ii) the objections:
 - (A) to which TSL may respond without further reference to the Representative Growers;
 - (B) which will be required to be provided by TSL to the Representative Growers for the preparation of an appropriate response;
 - (iii) the confidentiality of communications between TSL, the Participant Growers and the Representative Growers in relation to comments, questions and any objections raised by any Participant Growers;
- (e) to provide to the Representative Growers, on a timely basis, a record, with appropriate detail, of:
 - (i) all comments, questions and answers given by TSL in accordance with the protocol which do not require preparation of a response by the Representative Growers;
 - (ii) all comments and questions requiring preparation of a response from the Representative Growers;
 - (iii) any objections by the Participant Growers to which TSL has provided a response in accordance with the agreed protocol; and
 - (iv) any objections requiring the preparation of a response by the Representative Growers;
- (f) to provide on a timely basis to relevant Participant Growers any responses to comments, questions or objections settled by the Representative Growers;
- (g) to record, with appropriate detail, in an affidavit to be filed on behalf of the Representative Growers in connection with the Approval Application:
 - (i) the tasks which TSL has undertaken at the request and on the instruction of the Representative Growers;

- (ii) the substance of all comments and questions raised to TSL by the Participant Growers and the responses provided by TSL to those Participant Growers; and
- (iii) the nature of any objections made to TSL by Participant Growers and the responses provided by TSL to those Participant Growers;
- (h) to provide the Second Notice to Participant Growers in accordance with clause 6;
- (i) to make the payments referred to in clause 4(b);
- (j) to act in accordance with any direction or authorisation given by Participant Growers in accordance with clause 4(b);
- (k) to perform such other administrative roles as agreed with the Representative Growers or the other parties in connection with the Compromise and the Approval Application; and
- (l) to provide appropriately qualified personnel to undertake the foregoing.

10. **NO WAIVER**

A failure to exercise or a delay in exercising any right, power or remedy under this Deed does not operate as a waiver. A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the Party granting that waiver unless made in writing.

11. **EXECUTION OF COUNTERPARTS**

This Deed may be executed in any number of counterparts. Each counterpart is an original but the counterparts together are one and the same instrument.

12. **ELECTRONIC DELIVERY OF DOCUMENT**

If a party delivers an executed counterpart of this document or any other document executed in connection with it ("**Relevant Document**") by facsimile or other electronic means:

- (a) the delivery will be deemed to be an effective delivery of an originally executed counterpart; and
- (b) the party will still be obliged to deliver an originally executed counterpart, but the failure to do so will not affect the validity or effectiveness of the Relevant Document.

13. **ENTIRE AGREEMENT**

This Deed contains the entire agreement between the Parties with respect to its subject matter.

14. **FURTHER ASSURANCES**

At the reasonable request of another Party, each Party will do anything reasonably necessary or desirable (including executing agreements and documents) to give full effect to this Deed and the transactions contemplated by it.

15. **STAMP DUTY**

All stamp duty (including fines, penalties and interest) payable on or in connection with the declaration of trust provided in clause 4(b) is payable by TSL.

16. **GOODS AND SERVICES TAX**

All payments to be made under this Deed are inclusive of GST, if any.

17. **EXECUTION BY ATTORNEY OR AGENT**

Any Party may execute this Deed by its attorney or agent. Each attorney or agent executing this Deed that, as at the date of executing this Deed, it has no notice of the revocation or suspension of its power of attorney or agency.

18. **GOVERNING LAW AND EXCLUSIVE JURISDICTION**

This Deed is governed by the law in force in Victoria. The Parties submit to the exclusive jurisdiction of the courts of Victoria or any competent Federal court exercising jurisdiction in Victoria and waive any right to claim that those courts are an inconvenient forum.

SCHEDULE 1

Olive Projects

1. 2006 Timbercorp Olive Project ARSN 119 182 179
2. 2007 Timbercorp Olive Project ARSN 123 155 715
3. 2008 Timbercorp Olive Project ARSN 129 307 722

SCHEDULE 2

Minute of Consent Order

Form 60C

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE

**COMMERCIAL AND EQUITY DIVISION
COMMERCIAL COURT**

LIST E

SCI 2010 1354

BETWEEN:

**BOSI SECURITY SERVICES LIMITED (ACN 009 413 852) as trustee for
AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED
(ACN 005 357 522) and BOS INTERNATIONAL (AUSTRALIA) LIMITED
(ACN 066 601 250) and WESTPAC BANKING CORPORATION (ACN 007 457 141)**

Plaintiff

and

**B.B. OLIVES PTY LTD (IN LIQUIDATION)
(ACN 083 992 367) & ORS (according to the attached Schedule)**

Defendant

DRAFT MINUTE OF CONSENT ORDER

JUDGE:

DATE MADE:

ORIGINATING PROCESS:

HOW OBTAINED:

ATTENDANCE:

OTHER MATTERS:

By a deed of compromise, a copy of which is annexed to this Order (***Deed of Compromise***), the parties have agreed to compromise the proceeding (the ***Compromise***) conditional upon, among other things, the Court making orders satisfying the condition precedent set out in clause 3 of the Deed of Compromise (including ordering that the Compromise shall be binding on the absent persons represented respectively by the Seventh, Eighth and Ninth Defendants pursuant to rule 16.01(4) of Chapter 1 of the *Supreme Court (General Civil Procedure) Rules 2005 (Vic)* (the **Rules**)).

THE COURT ORDERS THAT:

1. Pursuant to rule 16.01(4) of Chapter 1 of the Rules, the Court approves the Compromise and orders that it shall be binding on the absent persons who are represented respectively by the Seventh, Eighth and Ninth Defendants.

THE COURT ORDERS FURTHER BY CONSENT THAT:

2. The proceeding is dismissed.
3. There be no order as to costs.

DATE: **2012**

.....
Ashurst Australia
Solicitors for the plaintiff

.....
Arnold Bloch Leibler
Solicitors for the first, second, third,
fourth, fifth and sixth defendants

.....
Clarendon Lawyers
Solicitors for the seventh, eighth
and ninth defendants

SCHEDULE OF PARTIES

**BOSI SECURITY SERVICES LIMITED (ACN 009 413 852) as trustee for
AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED
(ACN 005 357 522) and BOS INTERNATIONAL (AUSTRALIA) LIMITED
(ACN 066 601 250) and WESTPAC BANKING CORPORATION (ACN 007 457 141)**

Plaintiff

and

**B.B. OLIVES PTY LTD (IN LIQUIDATION)
(ACN 083 992 367)**

First Defendant

and

ALMOND LAND PTY LTD (IN LIQUIDATION) (ACN 091 460 392)

Second Defendant

and

TIMBERCORP LIMITED (IN LIQUIDATION) (ACN 055 185 067)

Third Defendant

and

**MARK ANTHONY KORDA
(in his capacity as liquidator of Almond Land Pty Ltd (in liquidation))
(in his capacity as liquidator of B.B. Olives Pty Ltd (in liquidation))**

Fourth Defendant

and

**LEANNE KYLIE CHESSER
(in her capacity as liquidator of B.B. Olives Pty Ltd (in liquidation))**

Fifth Defendant

and

**MARK FRANCIS XAVIER MENTHA
(in his capacity as liquidator of B.B. Olives Pty Ltd (in liquidation))**

Sixth Defendant

and

**MICHAEL CHARLES VICARY
(as the representative of the Growers in the 2006 Timbercorp Olive Project (ARSN 119
182 179))**

Seventh Defendant

and

PAMELA JAN DRY

(as the representative of the Growers in the 2007 Timbercorp Olive Project (ARSN 123 155 715))

Eighth Defendant

and

DAVID BUTTERFIELD

(as the representative of the Growers in the 2008 Timbercorp Olive Project (ARSN 129 307 722))

Ninth Defendant

SIGNED, SEALED and DELIVERED for
BOSI Security Services Limited (ACN
009 413 852) as trustee for Australia
and New Zealand Banking Group
Limited (ACN 005 357 522) and BOS
International (Australia) Limited
(ACN 066 601 250) and Westpac
Banking Corporation (ACN 007 457
141) by its attorney in the presence of:


Signature of witness

ANTHONY VRSINO.
Name of witness


Signature of attorney

Jason Lock
Print Name

EXECUTED by **BB OLIVES PTY LTD (IN**
LIQUIDATION) by being signed sealed
and delivered in its name and on its
behalf by **LEANNE KYLIE CHESSER** as
attorney for **MARK ANTHONY KORDA** in
his capacity as liquidator under a power
of attorney dated 11 August 2011 in the
presence of:

Leanne Kylie Chesser

Signature of witness

Name of witness

SIGNED, SEALED and DELIVERED for
**BOSI Security Services Limited (ACN
009 413 852)** as trustee for Australia
and New Zealand Banking Group
Limited (ACN 005 357 522) and BOS
International (Australia) Limited
(ACN 066 601 250) and Westpac
Banking Corporation (ACN 007 457
141) by its attorney in the presence of:

Signature of attorney

Signature of witness


Print Name

Name of witness

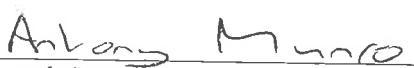
EXECUTED by **BB OLIVES PTY LTD (IN
LIQUIDATION)** by being signed sealed
and delivered in its name and on its
behalf by **LEANNE KYLIE CHESSER** as
attorney for **MARK ANTHONY KORDA** in
his capacity as liquidator under a power
of attorney dated 11 August 2011 in the
presence of:



Leanne Kylie Chesser



Signature of witness




Name of witness

EXECUTED by **ALMOND LAND PTY LTD (IN LIQUIDATION)** by being signed sealed and delivered by **LEANNE KYLIE CHESSER** in her capacity as liquidator in the presence of:



Leanne Kylie Chesser



Signature of witness



Name of witness

EXECUTED by **TIMBERCORP LIMITED (IN LIQUIDATION)** by being signed sealed and delivered by **LEANNE KYLIE CHESSER** in her capacity as liquidator in the presence of:



Leanne Kylie Chesser



Signature of witness



Name of witness

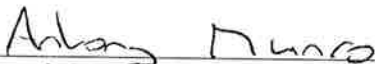
EXECUTED by **TIMBERCORP SECURITIES LTD (IN LIQUIDATION)** by being signed sealed and delivered by **LEANNE KYLIE CHESSER** in her capacity as liquidator in the presence of:



Leanne Kylie Chesser



Signature of witness



Name of witness

SIGNED, SEALED and DELIVERED by
LEANNE KYLIE CHESSER as attorney
for **MARK ANTHONY KORDA** in his
capacities as liquidator of each of Almond
Land Pty Ltd (in liquidation), BB Olives
Pty Ltd (in liquidation), Timbercorp
Limited (in liquidation) and Timbercorp
Securities Limited (in liquidation) under a
power of attorney dated 11 August 2011
in the presence of:



Leanne Kylie Chesser



Signature of witness



Name of witness

SIGNED, SEALED and DELIVERED by
LEANNE KYLIE CHESSER in her
capacities as liquidator of each of Almond
Land Pty Ltd (in liquidation), Timbercorp
Limited (in liquidation) and Timbercorp
Securities Limited (in liquidation) in the
presence of:



Leanne Kylie Chesser



Signature of witness



Name of witness

SIGNED, SEALED and DELIVERED by
LEANNE KYLIE CHESSER as attorney
for **MARK FRANCIS XAVIER MENTHA**
in his capacity as liquidator of BB Olives
Pty Ltd (in liquidation) under a power of
attorney dated 31 August 2011 in the
presence of:



Leanne Kylie Chesser




Signature of witness

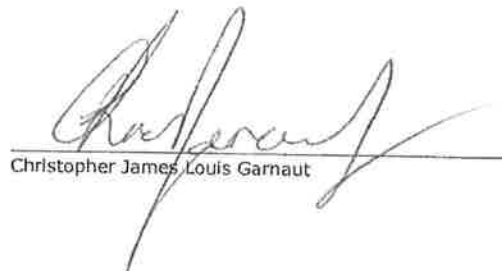


Name of witness

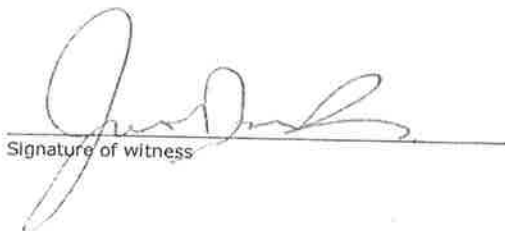
SIGNED, SEALED and DELIVERED by
CHRISTOPHER JAMES LOUIS
GARNAUT as attorney for **MICHAEL**
CHARLES VICARY in his capacity as
representative of the Growers in the 2006
Timbercorp Olive Project ARSN 119 182
179 under a power of attorney dated
7 November 2011 in the presence of:


Signature of witness

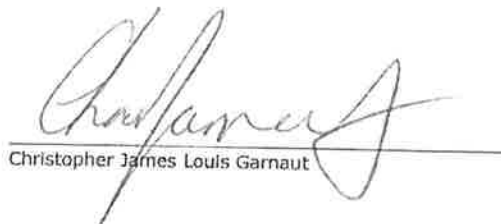
JULIET DZEMALOSKI
Name of witness


Christopher James Louis Garnaut

SIGNED, SEALED and DELIVERED by
CHRISTOPHER JAMES LOUIS
GARNAUT as attorney for **PAMELA JAN**
DRY in her capacity representative of the
Growers in the 2007 Timbercorp Olive
Project ARSN 123 155 715 under a power
of attorney dated 28 October 2011 in the
presence of:


Signature of witness

JULIET DZEMALOSKI
Name of witness


Christopher James Louis Garnaut

SIGNED, SEALED and DELIVERED by
CHRISTOPHER JAMES LOUIS
GARNAUT as attorney for **DAVID**
BUTTERFIELD in his capacity
representative of the Growers in the 2008
Timbercorp Olive Project ARSN 129 307
722 under a power of attorney dated
7 November 2011 in the presence of:



Signature of witness

JULIET DZEMALOSKI

Name of witness


Christopher James Louis Garnaut