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

LIST D
S CI 2011 6777

BETWEEN

**FENCEPORT PROPRIETARY LIMITED (ACN 139 604 121)
& ORS (according to the attached Schedule)**

Plaintiffs

and

**CON MOSHOPOLOUS
& ORS (according to the attached Schedule)**

Defendants

CERTIFICATE IDENTIFYING EXHIBIT

Date of document: 18 September 2012
Filed on behalf of: Timbercorp Securities Ltd (in liquidation) (ACN 092 311 469) and
Olivecorp Management Limited (in liquidation) (ACN 089 542 343)

Prepared by:

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(Jane Sheridan - jsheridan@abl.com.au)

This is the exhibit marked "**MAK-1**" now produced and shown to **MARK ANTHONY KORDA**
at the time of swearing his affidavit on 18 September 2012.

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

Before me:

Exhibit "MAK-1"
Fenceport Rights Deed of Compromise

"MAK-1"

Fenceport Proprietary Limited
ACN 139 604 121

Olivecorp Land Pty Ltd (in liquidation)
ACN 090 141 512

Mark Anthony Korda
(in his capacity as liquidator of Olivecorp Land Pty Ltd (in liquidation))

Mark Francis Xavier Mentha
(in his capacity as liquidator of Olivecorp Land Pty Ltd (in liquidation))

Constantine Moshopolous
(in his capacity as a representative of the Growers in the 2000 Timbercorp Olive Project (Private Offer) (Unregistered))

Pauline Emma Hammer
(in her capacity as a representative of the Growers in the 2001 Timbercorp Olive Project (ARSN 094 383 082))

David Sydney Butterfield
(in his capacity as a representative of the Growers in the 2002 Timbercorp Olive Project (ARSN 098 233 455))

Graham Goldenberg
(in his capacity as a representative of the Growers in the 2003 Timbercorp Olive Project (ARSN 104 648 473))

Shun King Li
(in his capacity as a representative of the Growers in the 2004 Timbercorp Olive Project (ARSN 108 744 378))

Timbercorp Securities Limited (in liquidation)
ACN 092 311 469

Deed of Compromise for the Fenceport Rights Proceeding

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THIS DEED is made on 25 July 2012

PARTIES

FENCEPORT PROPRIETARY LIMITED

ACN 139 604 121

c/- KordaMentha, Level 24, 333 Collins Street, Melbourne, VIC 3000
("Fenceport")

OLIVECORP LAND PTY LTD (IN LIQUIDATION)

ACN 090 141 512

KordaMentha, Level 24, 333 Collins Street, Melbourne, VIC 3000
("OLPL")

MARK ANTHONY KORDA

(in his capacity as liquidator of Olivecorp Land Pty Ltd (in liquidation))
c/- KordaMentha, Level 24, 333 Collins Street, Melbourne, VIC 3000
("Korda")

MARK FRANCIS XAVIER MENTHA

(in his capacity as liquidator of Olivecorp Land Pty Ltd (in liquidation))
c/- KordaMentha, Level 24, 333 Collins Street, Melbourne, VIC 3000
("Mentha")

CONSTANTINE MOSHOPOLOUS

(in his capacity as a representative of the Growers in the 2000 Timbercorp Olive Project
(Private Offer) (Unregistered))
c/- Clarendon Lawyers, Level 17, Rialto North Tower, 525 Collins Street, Melbourne, VIC
3000
("Moshopolous")

PAULINE EMMA HAMMER

(in her capacity as a representative of the Growers in the 2001 Timbercorp Olive Project
(ARSN 094 383 082))
c/- Clarendon Lawyers, Level 17, Rialto North Tower, 525 Collins Street, Melbourne, VIC
3000
("Hammer")

DAVID SYDNEY BUTTERFIELD

(in his capacity as a representative of the Growers in the 2002 Timbercorp Olive Project
(ARSN 098 233 455))
c/- Clarendon Lawyers, Level 17, Rialto North Tower, 525 Collins Street, Melbourne, VIC
3000
("Butterfield")

GRAHAM GOLDENBERG

(in his capacity as a representative of the Growers in the 2003 Timbercorp Olive Project
(ARSN 104 648 473))
c/- Clarendon Lawyers, Level 17, Rialto North Tower, 525 Collins Street, Melbourne, VIC
3000
("Goldenberg")

SHUN KING LI

(in his capacity as a representative of the Growers in the 2004 Timbercorp Olive Project (ARSN 108 744 378))
c/- Clarendon Lawyers, Level 17, Rialto North Tower, 525 Collins Street, Melbourne, VIC 3000
("Li")

TIMBERCORP SECURITIES LIMITED (IN LIQUIDATION)

ACN 092 311 469
c/- Arnold Bloch Leibler, Level 21, 333 Collins Street, Melbourne VIC 3000
("TSL")

RECITALS

- A Timbercorp Limited (in liquidation) ("**Timbercorp**") and its subsidiary entities (together, the "**Timbercorp Group**") conducted various agribusiness projects involving the management, cultivation, harvesting, processing and sale of almonds, olives and citrus, including the Olive Projects.
- B Each entity in the Timbercorp Group is currently in liquidation.
- C OLPL is currently in liquidation.
- D The Growers are investors in the Olive Projects which were conducted on the Boort Land.
- E TSL is the responsible entity for the Olive Projects other than the 2000 Timbercorp Olive Project (Private Offer) (Unregistered) for which Olivecorp Management Limited (in liquidation) (ACN 089 542 343) ("**OML**") is the project manager.
- F Fenceport provided the Fenceport Advance to OLPL and Olivecorp Processing and obtained the Fenceport Security over the assets of OLPL, Olivecorp Processing and TSL used in the Olive Projects, including the Boort Land ("**Boort Assets**").
- G In the course of the liquidation of OLPL, and with Court approval, the Boort Assets were sold ("**Olive Sale**") and the Fund constituted.
- H A dispute exists between Fenceport, OLPL and the Growers regarding the allocation amongst them of the Fund.
- I The Liquidators are, jointly and severally, the stakeholders of the Fund and await the orders of the Court regarding disbursement of the Fund.
- J TFL claims that a number of the Growers are TFL Debtors.
- K TSL claims that a number of the Growers are Timbercorp Debtors.
- L On 13 December 2011, Fenceport commenced Supreme Court of Victoria Proceeding No. S CI 2011 6777, seeking, among other things, declarations as to its, and other relevant parties', rights, if any, to the Fund ("**Fenceport Rights Proceeding**").
- M The interests of OLPL in the Fenceport Rights Proceeding are represented by the liquidators of that company.
- N By order made on 16 December 2011 in the Fenceport Rights Proceeding, pursuant to rule 16.01(2) of the Rules:

- (a) Moshopolous was appointed as representative of the Growers in the 2000 Timbercorp Olive Project (Private Offer) (Unregistered);
- (b) Hammer was appointed as representative of the Growers in the 2001 Timbercorp Olive Project;
- (c) Butterfield was appointed as representative of the Growers in the 2002 Timbercorp Olive Project;
- (d) Goldenberg was appointed as representative of the Growers in the 2003 Timbercorp Olive Project; and
- (e) Li was appointed as representative of the Growers in the 2004 Timbercorp Olive Project,

(collectively, the "**Representative Growers**").

- O The Parties have agreed to compromise the Fenceport Rights Proceeding on the terms set out in this Deed.
- P The Representative Growers consider that it is for the benefit of the class of persons whom they respectively represent that the Fenceport Rights Proceeding be compromised on the terms set out in this Deed.
- Q Fenceport and OLPL each support the Fenceport 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.

AGREED TERMS

1 Definitions and interpretation

1.1 Definitions

In this document, unless the context requires otherwise:

"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);

"BB Olives 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 BB Olives Rights Proceeding;

"BB Olives Rights Proceeding" means Supreme Court of Victoria Proceeding No. S CI 2010 1354;

"Boort Extinguishment Date" means 11 January 2010 being the date on which:

- (a) the liquidators of TSL extinguished all of the rights of the Growers in respect of the 2001 Timbercorp Olive Project, the 2002 Timbercorp Olive Project, the 2003 Timbercorp Olive Project and the 2004 Timbercorp Olive Project conducted on the Boort Land; and

- (b) the liquidators of OML extinguished all of the rights of the Growers in respect of the 2000 Timbercorp Olive Project (Private Offer) (Unregistered) conducted on the Boort Land;

"Boort Land" means the land the subject of the Fenceport Rights Proceeding which was owned by OLPL and on which the Olive Projects were conducted;

"Boort Settlement Amount" means \$1,815,000.

"Boort Settlement Entitlement" means, in respect of a Grower, its entitlement, from time to time, to the Boort 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 to TSL) on the basis of a rateable distribution of that amount between the Growers in the Olive Projects in accordance with the number of Lots they held in those projects as at the Boort Extinguishment Date;

"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;

"Court" means the Supreme Court of Victoria;

"Costs" includes legal fees and disbursements;

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

"Draft Orders" means the draft orders set out in schedule 3 to this Deed;

"Fenceport Advance" means the \$26 million advanced by Fenceport to OLPL and Olivecorp Processing on or about 2 November 2009;

"Fenceport Secured Debt" means the sum of:

- (a) the total amount owed to Fenceport in respect of the Fenceport Advance secured by the Fenceport Security as at the date the payment referred to in clause 4(c)(i) is made to Fenceport, including interest accrued to that date; and
- (b) Fenceport's costs in preparation for, and of, the Fenceport Rights Proceeding including the Approval Application as at the date the payment referred to in clause 4(c)(i) is made to Fenceport;

"Fenceport Security" means the security set out in schedule 2 to this Deed;

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

"Fund" means the net sale proceeds of the Olive Sale (including, for the avoidance of doubt, inclusive of all interest) held on trust by the Liquidators, from time to time, pursuant to orders of Justice Croft made on 12 November 2009 and taking into account any other amount which may be deducted pursuant to any subsequent order of the Court;

"Growers" means each "Grower" as that term is defined in the constituent document of each Olive Project, including, for the avoidance of doubt, where applicable, the Grower's legal personal representatives;

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

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

"Liquidators" means Korda and Mentha;

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

"Olive Projects" means each of the olive projects listed in schedule 1 to this Deed;

"Olivecorp Processing" means Olivecorp Processing Facility Pty Ltd (In Liquidation) (ACN 098 581 081);

"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 Growers" has the meaning set out at clause 6.3(b);

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

"Solara 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 Grower who entered into a loan agreement with TFL;

- (a) pursuant to which TFL agreed to lend a specified amount or amounts to that Grower to be used by that Grower to pay liability owed to TSL relating to that Grower's investments in the Olive Projects; and
- (b) 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 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 Fenceport Rights Proceeding 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 Fenceport 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 BB Olives Rights Proceeding in accordance with clause 3.1(a) of the BB Olives Deed of Compromise;

- (d) the Court makes orders in the Liparoo and Yungera Rights Proceeding in accordance with clause 3.1(a) of the Liparoo and Yungera Deed of Compromise; and
- (e) the Court makes orders in the Almond Land Rights Appeal Proceeding in accordance with clause 3.1(a) of the Almond Land Appeal 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 will pay to TSL from the Fund, the Boort 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 (Boort)
Bank: Macquarie Bank Limited
BSB: 183334
Account number: 301881645

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

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

- (ii) In respect of each Grower who:

- (A) is a TFL Debtor immediately prior to the time of distribution to each such 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 Boort Settlement Entitlement,

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

- (iii) In respect of each Grower who:

- (A) is a TFL Debtor immediately prior to the time of distribution to each such Grower in accordance with this clause; and
- (B) has a Boort 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 Boort Settlement Entitlement,

TSL will, as soon as practicable, pay to TFL that part of that Grower's TFL Indebtedness out of the Grower's Boort Settlement Entitlement and retain

the balance of that Grower's Boort Settlement Entitlement on trust pending agreement in writing between TFL and the relevant Grower, or court order, as to the manner in which it is to be disbursed.

(iv) In respect of each Grower who:

- (A) is a TFL Debtor immediately prior to the time of distribution to each such 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 Grower's Boort Settlement Entitlement on trust pending agreement in writing between TFL and the relevant 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 will pay:

(i) to Fenceport (to the extent possible) from the balance of the Fund after payment of the amount referred to in clause 4(a), the Fenceport Secured Debt, into the following bank account:

Account name: Fenceport Pty Ltd
Bank: Macquarie Bank Limited
BSB: 183334
Account number: 301881686

(ii) to OLPL the balance, if any, of the Fund after payment of the amounts referred to in clauses 4(a) and 4(c)(i), into the following bank account:

Account name: Olivecorp Land Pty Ltd
Bank: ANZ
BSB: 013128
Account number: 835428785

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

(i) if a 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 Grower under clause 4(b)(i),

TSL will:

- (C) deduct from the payment due to that Grower under clause 4(b)(i) such amount of that 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 Grower's Timbercorp Indebtedness; and
- (D) pay the balance (if any) of the payment due to the Grower under clause 4(b)(i) out of the Grower's Boort Settlement Entitlement to the Grower's nominated bank account; and

(ii) for the avoidance of doubt, upon TSL making all applicable payments in respect of a Grower in accordance with clause 4(d), TSL will have discharged its obligations to that Grower under clause 4(b)(i) and thereupon will be entitled to the benefit of the release in clause 5.2 from that Grower.

(e) For the purposes of clause 4(b)(ii):

(i) if a 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 Grower under clause 4(b)(ii),
- TSL will:
- (C) deduct from the payment due to that Grower under clause 4(b)(ii) such amount of that 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 Grower's Timbercorp Indebtedness; and
 - (D) pay the balance (if any) of the payment due to the Grower under clause 4(b)(ii) out of the Grower's Boort Settlement Entitlement to the Grower's nominated bank account;
- (ii) for the avoidance of doubt, upon TSL making all applicable payments in respect of a Grower in accordance with clause 4(e), TSL will have discharged its obligations to that Grower under clause 4(b)(ii) and thereupon will be entitled to the benefit of the release in clause 5.2 from that Grower.
- (f) For the purposes of clauses 4(b)(iii) and 4(b)(iv), if a Grower is a Timbercorp Debtor and a TFL Debtor, the Grower will not give any direction or authorisation to TSL to pay any part of that Grower's Timbercorp Indebtedness out of its Boort Settlement Entitlement pending agreement in writing between TFL and the relevant 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 Grower to TSL under clause 4(b):
 - (i) does not constitute an admission of liability by the Grower to TFL in respect of the Grower's TFL Indebtedness; and
 - (ii) is without prejudice to the Grower's rights (if any) against TFL in relation to the 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 Grower in respect of that 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 16 December 2011 in the Fenceport 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 Growers in accordance with clauses 4(a) and 4(b).

5 Releases

5.1 Representative Growers, Fenceport, OLPL and the Liquidators

Upon satisfaction of the condition precedent in clause 3.1, and the making of the payments in clauses 4(a) and 4(c), the Representative Growers on behalf of the

Growers, Fenceport, OLPL and the Liquidators 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 Grower under clauses 4(b), 4(d) or 4(e) by which that Grower's Boort Settlement Entitlement is disbursed in full,

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

- (a) that Grower's entitlement to the Fund;
- (b) the allocation and disbursement of the Fund under the Compromise in respect of that Grower; and
- (c) TSL's obligations to that Grower under clauses 4(b), 4(d) or 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 Growers

6.1 First Notice to 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 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 Growers**").
- (c) The First Notice to Growers will, among other things:
 - (i) provide information about the Fenceport Rights Proceeding;
 - (ii) explain that the interests of the Growers are represented in the Fenceport 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 Growers;

- (v) alert the Growers to consider any potential tax consequences of the Compromise;
- (vi) explain that if the Court approves the Compromise the 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 Growers may expect to receive a payment under the Compromise from TSL;
- (ix) explain the mechanism by which each 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 Growers are TFL Debtors and Timbercorp Debtors and how the Compromise will apply to the individual circumstances of the 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 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 Boort Extinguishment Date and, where applicable, their TFL Indebtedness and Timbercorp Indebtedness (as the case may be);
- (xii) explain, in respect of any payment due to the Growers under the Compromise:
 - (A) the right of each 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 Growers what their options are in connection with the Approval Application;
- (xv) inform the 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; and
 - (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 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 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 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 Growers and, as soon as practicable thereafter:

- (a) the Representative Growers will cause the First Notice to 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 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/51/05>; 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 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 Growers has been uploaded to the websites referred to in clause 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 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 Growers"**).
- (c) The Second Notice to 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 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 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 Growers and, as soon as practicable thereafter:

- (a) the Representative Growers will cause the Second Notice to Growers to be circulated in the same manner as is set out in respect of the First Notice to 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 Growers to be circulated in the same manner as is set out in respect of the First Notice to 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 an order 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 Fenceport Rights Proceeding, the Liparoo and Yungera Rights Proceeding, the Solara Rights Proceeding, the BB Olives 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 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 Growers in connection with the Compromise and the Approval Application; and
 - (ii) receive any objections to the Compromise made by the Growers;
- (c) in respect of the Growers who have raised comments, questions or made objections, to record with appropriate detail:
 - (i) the identity of those Growers;
 - (ii) the comments and questions raised by those Growers and the responses provided to those Growers; and
 - (iii) any objections made by those 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 Growers and the Representative Growers in relation to comments, questions and any objections raised by any 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 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 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 Growers and the responses provided by TSL to those Growers; and
- (iii) the nature of any objections made to TSL by Growers and the responses provided by TSL to those Growers;
- (h) to provide the Second Notice to 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 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 2000 Timbercorp Olive Project (Private Offer) (Unregistered)
- 2 2001 Timbercorp Olive Project (ARSN 094 383 082)
- 3 2002 Timbercorp Olive Project (ARSN 098 233 455)
- 4 2003 Timbercorp Olive Project (ARSN 104 648 473)
- 5 2004 Timbercorp Olive Project (ARSN 108 744 378)

SCHEDULE 2

Fenceport Security

- 1 A fixed and floating charge given by OLPL in favour of Fenceport;
- 2 A fixed and floating charge given by Olivecorp Processing in favour of Fenceport;
- 3 A fixed charge given by OML in favour of Fenceport;
- 4 A fixed charge given by TSL in favour of Fenceport;
- 5 A mortgage of land given by OLPL in favour of Fenceport; and
- 6 A mortgage of land given by Olivecorp Processing in favour of Fenceport.

SCHEDULE 3

Draft Orders

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

List D

SCI 2011 6777

BETWEEN

FENCEPORT PROPRIETARY LIMITED (ACN 139 604 121) AND ORS ACCORDING TO THE SCHEDULE
ATTACHED

Plaintiffs

and

CONSTANTINE MOSHOPOLOUS (IN HIS CAPACITY AS REPRESENTATIVE OF THE GROWERS IN THE
2000 TIMBERCORP OLIVE PROJECT (PRIVATE OFFER) (UNREGISTERED) AND ORS ACCORDING TO
THE SCHEDULE ATTACHED

Defendants

DRAFT MINUTE OF 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 First, Second, Third, Fourth and Fifth Defendants pursuant to rule 16.01(4) of Chapter 1 of the *Supreme Court (General Civil Procedure) Rules 2005* (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 First, Second, Third, Fourth and Fifth Defendants.

THE COURT ORDERS FURTHER BY CONSENT THAT:

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

DATE: 2012

SCHEDULE OF PARTIES

FENCEPORT PROPRIETARY LIMITED (ACN 139 604 121)

First Plaintiff

and

OLIVECORP LAND PTY LTD (IN LIQUIDATION) (ACN 090 141 512)

Second Plaintiff

and

MARK ANTHONY KORDA
(in his capacity as liquidator of Olivecorp Land Pty Ltd (in liquidation))

Third Plaintiff

and

MARK FRANCIS XAVIER MENTHA
(in his capacity as liquidator of Olivecorp Land Pty Ltd (in liquidation))

Fourth Plaintiff

and

CONSTANTINE MOSHOPOLOUS
(in his capacity as a representative of the Growers in the 2000 Timbercorp Olive Project
(Private Offer) (Unregistered))

First Defendant

and

PAULINE EMMA HAMMER
(in her capacity as a representative of the Growers in the 2001 Timbercorp Olive Project
(ARSN 094 383 082))

Second Defendant

and

DAVID SYDNEY BUTTERFIELD
(in his capacity as a representative of the Growers in the 2002 Timbercorp Olive Project
(ARSN 098 233 455))

Third Defendant

and

GRAHAM GOLDENBERG

(in his capacity as a representative of the Growers in the 2003 Timbercorp Olive Project
(ARSN 104 648 473))

Fourth Defendant

and

SHUN KING LI

(in his capacity as a representative of the Growers in the 2004 Timbercorp Olive Project
(ARSN 108 744 378))

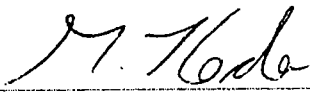
Fifth Defendant

EXECUTED as a DEED

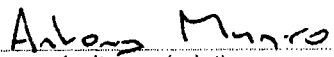
SIGNED SEALED and DELIVERED on)
behalf of **FENCEPORT PROPRIETARY**)
LIMITED by its sole director and secretary)
in the presence of:)



Signature of witness



Mark Anthony Korda



Name of witness (print)

EXECUTED by OLIVECORP LAND PTY)
LTD (IN LIQUIDATION) by being signed)
sealed and delivered in its name and on its)
behalf by **MARK ANTHONY KORDA** in his)
capacity as liquidator in the presence of:)



Signature of witness

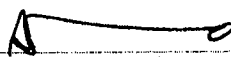


Mark Anthony Korda

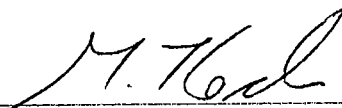


Name of witness (print)

SIGNED SEALED and DELIVERED by)
MARK ANTHONY KORDA in his capacity)
as liquidator of Olivecorp Land Pty Ltd (in)
liquidation) in the presence of:)



Signature of witness



Mark Anthony Korda

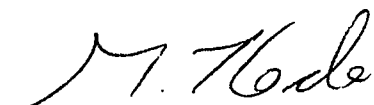


Name of witness (print)

SIGNED SEALED and DELIVERED by)
MARK ANTHONY KORDA as attorney for)
MARK FRANCIS XAVIER MENTHA in his)
capacity as liquidator of Olivecorp Land Pty)
Ltd (in liquidation) under a power of attorney)
dated 31 August 2011 in the presence of:)



Signature of witness



Mark Anthony Korda



Name of witness (print)

SIGNED SEALED and DELIVERED by)
CHRISTOPHER JAMES LOUIS GARNAUT)
as attorney for **CONSTANTINE**)
MOSHOPOLOUS in his capacity as)
representative of the Growers in the 2000)
Timbercorp Olive Project (Private Offer))
(Unregistered) under a power of attorney)
dated 31 January 2012 in the presence of:)

Signature of witness

Christopher James Louis Garnaut

Name of witness (print)

SIGNED SEALED and DELIVERED by)
CHRISTOPHER JAMES LOUIS GARNAUT)
as attorney for **PAULINE EMMA HAMMER**)
in her capacity as representative of the)
Growers in the 2001 Timbercorp Olive)
Project (ARSN 094 383 082) under a power)
of attorney dated 14 March 2012 in the)
presence of:)

Signature of witness

Christopher James Louis Garnaut

Name of witness (print)

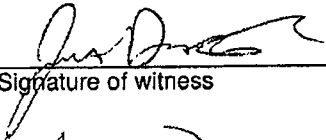
SIGNED SEALED and DELIVERED by)
MARK ANTHONY KORDA as attorney for)
MARK FRANCIS XAVIER MENTHA in his)
capacity as liquidator of Olivecorp Land Pty)
Ltd (in liquidation) under a power of attorney)
dated 31 August 2011 in the presence of:)

Signature of witness

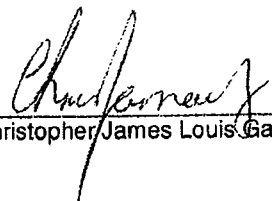
Mark Anthony Korda

Name of witness (print)

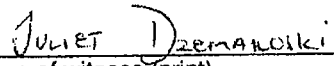
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CHRISTOPHER JAMES LOUIS GARNAUT)
as attorney for **CONSTANTINE**)
MOSHOPOLOUS in his capacity as)
representative of the Growers in the 2000)
Timbercorp Olive Project (Private Offer))
(Unregistered) under a power of attorney)
dated 31 January 2012 in the presence of:)



Signature of witness

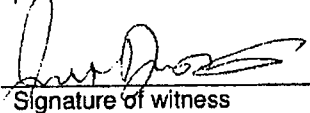


Christopher James Louis Garnaut

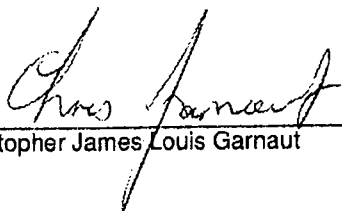


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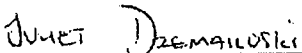
SIGNED SEALED and DELIVERED by)
CHRISTOPHER JAMES LOUIS GARNAUT)
as attorney for **PAULINE EMMA HAMMER**)
in her capacity as representative of the)
Growers in the 2001 Timbercorp Olive)
Project (ARSN 094 383 082) under a power)
of attorney dated 14 March 2012 in the)
presence of:)



Signature of witness

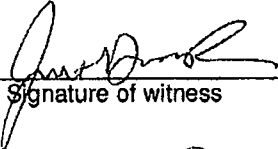


Christopher James Louis Garnaut



Name of witness (print)

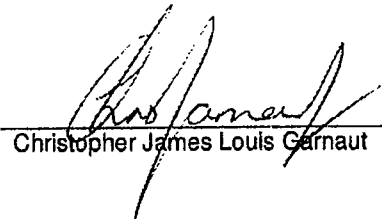
SIGNED SEALED and DELIVERED by)
CHRISTOPHER JAMES LOUIS GARNAUT)
as attorney for DAVID SYDNEY)
BUTTERFIELD in his capacity as)
representative of the Growers in the 2002)
Timbercorp Olive Project (ARSN 098 233)
455) under a power of attorney dated 9)
February 2012 in the presence of:)



Signature of witness

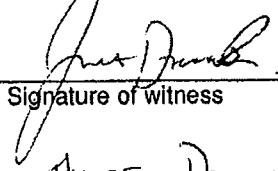
JULIET DZEMALOSKI

Name of witness (print)



Christopher James Louis Garnaut

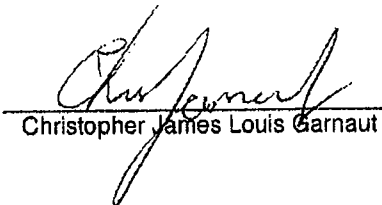
SIGNED SEALED and DELIVERED by)
CHRISTOPHER JAMES LOUIS GARNAUT)
as attorney for GRAHAM GOLDENBERG)
in his capacity as representative of the)
Growers in the 2003 Timbercorp Olive)
Project (ARSN 108 648 473) under a power)
of attorney dated 1 February 2012 in the)
presence of:)



Signature of witness

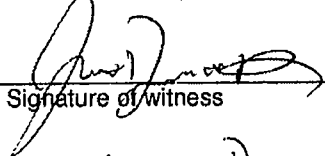
JULIET DZEMALOSKI

Name of witness (print)



Christopher James Louis Garnaut

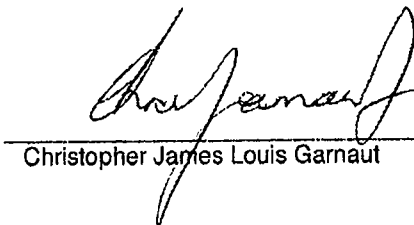
SIGNED SEALED and DELIVERED by)
CHRISTOPHER JAMES LOUIS GARNAUT)
as attorney for SHUN KING LI in his)
capacity as representative of the Growers in)
the 2004 Timbercorp Olive Project (ARSN)
108 744 378) under a power of attorney)
dated 9 February 2012 in the presence of:)



Signature of witness

JULIET DZEMALOSKI

Name of witness (print)

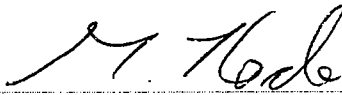


Christopher James Louis Garnaut

EXECUTED by **TIMBERCORP**)
SECURITIES LIMITED (IN LIQUIDATION))
by being signed sealed and delivered in its)
name and on its behalf by **MARK**)
ANTHONY KORDA in his capacity as)
liquidator in the presence of:)


Signature of witness


Name of witness (print)


Mark Anthony Korda