

**IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMERCIAL & EQUITY DIVISION
COMMERCIAL COURT**

LIST A

No 9299 of 2009

**IN THE MATTER OF TIMBERCORP SECURITIES LIMITED
(IN LIQUIDATION)**

ACN 092 311 469

**TIMBERCORP SECURITIES LIMITED (IN LIQUIDATION) (ACN 092 311 469)
IN ITS CAPACITY AS RESPONSIBLE ENTITY OF EACH OF THE
MANAGED INVESTMENTS SCHEMES LISTED IN SCHEDULE 1
AND IN ITS CAPACITY AS MANAGER OF THE UNREGISTERED
MANAGED INVESTMENTS SCHEME LISTED IN
SCHEDULE 2 OF THE ORIGINATING PROCESS
First Plaintiff**

**MARK ANTHONY KORDA
Second Plaintiff**

**LEANNE KYLIE CHESSER
Third Plaintiff**

CERTIFICATE IDENTIFYING EXHIBIT

Date of document: 29 September 2009
Filed on behalf of: the Plaintiffs

Prepared by:
ARNOLD BLOCH LEIBLER
Lawyers and Advisers
Level 21
333 Collins Street
MELBOURNE 3000

Solicitor's Code: 54
DX 38455 Melbourne
Tel: 9229 9999
Fax: 9229 9900
Ref: 01-1499489
(Leon Zwier lzwier@abl.com.au)

This is the exhibit marked "**MAK-6**" now produced and shown to **MARK ANTHONY KORDA** at the time of swearing his affidavit on 29 September 2009.

Before me: 

Exhibit "MAK-6"

Results of Voting from Informal Meeting of Growers of the Forestry

Schemes on 7 August 2009

BRIDGETTE AILSA TOY-CHONIN
Arnold Bloch Leibler
Level 21, 333 Collins Street
Melbourne 3000
An Australian Legal Practitioner within the
meaning of the Legal Profession Act 2004

Forestry Meeting Results



Timbercorp Securities Limited (In Liquidation) Result of Forestry Growers' Consultation Meetings

11 August 2009

1997 Timbercorp Eucalypts Project (ARSN 112 309 234) – 4,472 Lots

	For	Against	Abstaining	Not Voting
Lots	1,541	84	6	3,141
Percentage	94.48%	5.15%	0.37%	n/a

1998 Timbercorp Eucalypts Project (ARSN 112 309 216) – 12,660 Lots

	For	Against	Abstaining	Not Voting
Lots	4,475	87	24	8,074
Percentage	97.58%	1.90%	0.52%	n/a

1999 Timbercorp Eucalypts Project (ARSN 085 827 872) – 27,487 Lots

	For	Against	Abstaining	Not Voting
Lots	10,047	255	88	17,097
Percentage	96.70%	2.45%	0.85%	n/a

1999 Timbercorp Eucalypts Double Rotation Project (Private Offer) – 478 Lots

	For	Against	Abstaining	Not Voting
Lots	282	nil	nil	196
Percentage	100.00%	n/a	n/s	n/a

2000 Timbercorp Eucalypts Project (ARSN 091 172 093) – 10,197 Lots

	For	Against	Abstaining	Not Voting
Lots	3,921	137	53	6,086
Percentage	95.38%	3.33%	1.29%	n/a

2001 Timbercorp Eucalypts Project (ARSN 094 392 000) – 4,086 Lots

	For	Against	Abstaining	Not Voting
Lots	1,539	31	6	2,510
Percentage	97.65%	1.97%	0.38%	n/a

2002 Timbercorp Eucalypts Project (ARSN 098 233 571) – 3,516 Lots

	For	Against	Abstaining	Not Voting
Lots	1,612	31	6	1,867
Percentage	97.76%	1.88%	0.36%	n/a

2003 Timbercorp Eucalypts Project (ARSN 103 183 446) – 5,927 Lots

	For	Against	Abstaining	Not Voting
Lots	1,533	57	45	4,292
Percentage	93.76%	3.49%	2.75%	n/a

2004 Timbercorp Eucalypts Project (ARSN 108 099 645) – 1,745 Lots

	For	Against	Abstaining	Not Voting
Lots	660	62	nil	1,023
Percentage	91.41%	8.59%	n/a	n/a

2004 Timbercorp Timberlot (Single Payment) Project (ARSN 108 336 830) – 12,099 Lots

	For	Against	Abstaining	Not Voting
Lots	4,063	150	61	7,825
Percentage	95.06%	3.51%	1.43%	n/a

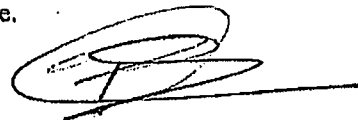
2005 Timbercorp Timberlot (Single Payment) Project (ARSN 111 683 491) – 32,095 Lots

	For	Against	Abstaining	Not Voting
Lots	9,588	260	162	22,085
Percentage	95.78%	2.60%	1.62%	n/a

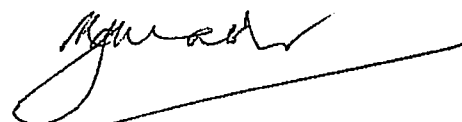
2007/2008 Timbercorp Timberlot (Single Payment) Project (ARSN 122 510 981) – 32,991 Lots

	For	Against	Abstaining	Not Voting
Lots	7,928	352	167	24,544
Percentage	93.86%	4.17%	1.98%	n/a

I, Paul Jones of KordaMentha, certify that the above results are accurate and reflect the votes cast either in person or by proxy at the Forestry Grower Consultation Meetings at 10:00am, 7 August 2009, or via the online voting system on the KordaMentha website.



I, Matt Walsh, independent Chairman of the Forestry Grower Consultation Meetings at 10:00am, 7 August 2009, have viewed the above results and I am satisfied that the results of the votes taken on a poll at the meetings is reflected in the resolution verdict described above.



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

LIST A

No 9299 of 2009

IN THE MATTER OF TIMBERCORP SECURITIES LIMITED
(IN LIQUIDATION)

ACN 092 311 469

TIMBERCORP SECURITIES LIMITED (IN LIQUIDATION) (ACN 092 311 469)
IN ITS CAPACITY AS RESPONSIBLE ENTITY OF EACH OF THE
MANAGED INVESTMENTS SCHEMES LISTED IN SCHEDULE 1
AND IN ITS CAPACITY AS MANAGER OF THE UNREGISTERED
MANAGED INVESTMENTS SCHEME LISTED IN
SCHEDULE 2 OF THE ORIGINATING PROCESS
First Plaintiff

MARK ANTHONY KORDA
Second Plaintiff

LEANNE KYLIE CHESSER
Third Plaintiff

CERTIFICATE IDENTIFYING EXHIBIT

Date of document: 29 September 2009
Filed on behalf of: the Plaintiffs

Prepared by:
ARNOLD BLOCH LEIBLER
Lawyers and Advisers
Level 21
333 Collins Street
MELBOURNE 3000

Solicitor's Code: 54
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Tel: 9229 9999
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Ref: 01-1499489
(Leon Zwier lzwier@abl.com.au)

This is the exhibit marked "**MAK-7**" now produced and shown to **MARK ANTHONY KORDA** at
the time of swearing his affidavit on 29 September 2009.

Before me: _____

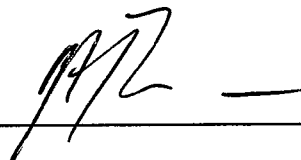


Exhibit "**MAK-7**"

**Originating Process and Supporting Affidavits (without exhibits) for
Federal Court Proceeding VID 595 of 2009**

BRIDGETTE AILSA TOY-CRONIN
Arnold Bloch Leibler
Level 21, 333 Collins Street
Melbourne 3000
An Australian Legal Practitioner within the
meaning of the Legal Profession Act 2004

IN THE FEDERAL COURT OF AUSTRALIA
VICTORIA DISTRICT REGISTRY
GENERAL DIVISION

No. VID 595 of 2009

IN THE MATTER OF TIMBERCORP SECURITIES LIMITED (IN LIQUIDATION)
ACN: 092 311 469

TIMBERCORP SECURITIES LIMITED (IN LIQUIDATION)
ACN 092 311 469
IN ITS CAPACITY AS RESPONSIBLE ENTITY OF EACH OF THE
MANAGED INVESTMENTS SCHEMES LISTED IN SCHEDULE 1
AND IN ITS CAPACITY AS MANAGER OF THE UNREGISTERED
MANAGED INVESTMENTS SCHEME LISTED IN SCHEDULE 2

First Plaintiff

MARK ANTHONY KORDA

Second Plaintiff

LEANNE KYLIE CHESSER

Third Plaintiff

ORIGINATING PROCESS

A. DETAILS OF APPLICATION

This application is made under section 511 of the *Corporations Act 2001* (Cth) (**Corporations Act**), section 63 of the *Trustee Act 1958* (Vic) (**Trustee Act**) and the inherent jurisdiction of the Court.

The Plaintiffs seek orders regarding questions that have arisen in the winding up of the First Plaintiff.

On the facts stated in the supporting affidavit of Mark Anthony Korda sworn on 13 August 2009 (**the Affidavit**), the Second and Third Plaintiffs (in their capacity as liquidators of the First Plaintiff acting in its capacity as a responsible entity and manager) seek in respect of the managed investments schemes listed in Schedules 1 and 2:

Filed on behalf of the Plaintiffs


ARNOLD BLOCH LEIBLER
Lawyers and Advisers
Level 21
333 Collins Street
Melbourne 3000

DX 38455 Melbourne
Tel: 9229 9999
Fax: 9229 9900
Ref: 01-1499489
(Leon Zwiery)



- 1 A direction pursuant to section 511 of the Corporations Act, section 63 of the Trustee Act and the inherent jurisdiction of the Court, that they have the power to sell the Forestry Assets (as defined in the Affidavit) in the circumstances described in the Affidavit.
- 2 Alternatively, a direction pursuant to section 511 of the Corporations Act, section 63 of the Trustee Act and the inherent jurisdiction of the Court, that the responsible entity amend the constitutions of the managed investment schemes listed in schedule 1 and 2, pursuant to section 601GC of the Corporations Act, to empower the First Plaintiff to sell the Forestry Assets (as defined in the Affidavit) in the circumstances described in the Affidavit on the basis that the amendment will not adversely affect members' rights.
- 3 Such further or other orders as the Court deems fit.

DATE: 13 August 2009


ARNOLD BLOCH LEIBLER
Solicitors for the Plaintiffs

This application will be heard by the Federal Court of Australia at 305 William Street, Melbourne at 9:30 am on 14 August 2009.

B. NOTICE TO DEFENDANTS

Not applicable.

C. APPLICATION FOR WINDING UP ON GROUND OF INSOLVENCY

Not applicable.

D. FILING

Date of filing: **13 AUG 2009**


An officer acting with the authority of the
DISTRICT REGISTRAR

This originating process is filed by Arnold Bloch Leibler of Level 21, 333 Collins Street, Melbourne, VIC, 3000, solicitors for the plaintiff.



E. SERVICE

The plaintiff's address for service is C/- Arnold Bloch Leibler, Level 21, 333 Collins Street, Melbourne, VIC, 3000.

The plaintiffs do not intend to serve a copy of this originating process on any other party but it is intended to post a copy on the websites of KordaMentha and Arnold Bloch Leibler.



SCHEDULE 1
REGISTERED MANAGED INVESTMENT SCHEMES

1. 1997 Timbercorp Eucalypts Project (ARSN 112 309 234);
2. 1998 Timbercorp Eucalypts Project (ARSN 112 309 216);
3. 1999 Timbercorp Eucalypts Project (ARSN 085 827 872);
4. 2000 Timbercorp Eucalypts Project (ARSN 091 172 093);
5. 2001 Timbercorp Eucalypts Project (ARSN 094 392 000);
6. 2002 Timbercorp Eucalypts Project (ARSN 098 233 571);
7. 2003 Timbercorp Eucalypts Project (ARSN 103 183 446);
8. 2004 Timbercorp Eucalypts Project (ARSN 108 099 645);
9. 2004 Timbercorp Timberlot (Single Payment) Project (ARSN 108 336 830);
10. 2005 Timbercorp Timberlot (Single Payment) Project (ARSN 111 683 491); and
11. 2007/2008 Timbercorp Timberlot (Single Payment) Project (ARSN 122 510 981).



SCHEDULE 2
UNREGISTERED MANAGED INVESTMENT SCHEMES

1. 1999 Timbercorp Eucalypts Double Rotation Project (Private Offer)(Unregistered).



IN THE FEDERAL COURT OF AUSTRALIA
VICTORIA DISTRICT REGISTRY
GENERAL DIVISION

No. VID of 2009

IN THE MATTER OF TIMBERCORP SECURITIES LIMITED (IN LIQUIDATION)
ACN: 092 311 469

TIMBERCORP SECURITIES LIMITED (IN LIQUIDATION)
ACN 092 311 469
and OTHERS

Plaintiffs

AFFIDAVIT OF MARK ANTHONY KORDA
IN SUPPORT OF APPLICATION REGARDING POWER TO SELL FORESTRY ASSETS

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Document number	Details
1	MAK-1 Notice of Meeting and Proxy Form
2	MAK-2 KordaMentha letters emailed to Forestry Growers dated 27 July 2009 and 4 August 2009
3	MAK-3 Bundle of newspaper articles reporting the meeting
4	MAK-4 PowerPoint Slides presented at meeting on 7 August 2009
5	MAK-5 Transcript of meeting held 7 August 2009, including the questions
6	MAK-6 KordaMentha Forestry Schemes Cash Flow Analysis dated 6 August 2009
7	MAK-7 Ernst & Young Report dated 6 August 2009
8	MAK-8 Timbercorp summaries of the harvesting schedule and yields
9	MAK-9 Report by URS Australia Pty Ltd dated 6 August 2009 entitled "Summary of Productivity Review Report
10	MAK-10 Results of the voting on the non-binding resolution on a scheme by scheme basis
11	MAK-11 Summary of the votes cast as a percentage of possible votes
12	MAK-12 CD Rom containing the Forestry Scheme Documents

Filed on behalf of the Plaintiffs

ARNOLD BLOCH LEIBLER
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Ref: 011499489
(Leon Zwier)

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13	MAK-13 Constitution, Management Agreement and Sublease for the 2001 Forestry Scheme
14	MAK-14 Advertisement that appeared in 31 July 2009 edition of the <i>Australian Financial Review</i>
15	Confidential Exhibit MAK-15 List of Interested Parties
16	Confidential Exhibit MAK-16 Copy of the Confidential Information Memorandum
17	MAK-17 Notice of proceeding
18	MAK-18 Notice as published in <i>The Australian</i>

On 13 August 2009, I, **MARK ANTHONY KORDA**, of Level 24, 333 Collins Street, Melbourne, in the State of Victoria, Chartered Accountant, SAY ON OATH that:

- 1 I am the liquidator of the First Plaintiff, Timbercorp Securities Limited (**TSL**), and of the Second Plaintiff, Timbercorp Limited (**TL**), with Leanne Kylie Chesser.
- 2 Except where I otherwise indicate, I make this affidavit from my own knowledge. Where I depose to matters from information or belief, I believe those matters to be true. I am authorised by Ms Chesser to make this affidavit on her behalf. References in this affidavit to "we", "us", "our" or "ourselves" are references to Ms Chesser and me.
- 3 This affidavit is made in support of an application for orders under section 511 of the *Corporations Act 2001* (Cth) (**Act**), section 63 of the *Trustee Act 1958* (Vic) (**Trustee Act**) and the inherent jurisdiction of the Court for a direction that we have the power to sell the Forestry Assets, as defined below in paragraph 49 or alternatively to amend the constitutions pursuant to section 601GC of the Corporations Act, to empower the TSL to sell the Forestry Assets on the basis that the amendment will not adversely affect members' rights.

General background

- 4 I am a chartered accountant and a partner of the firm KordaMentha. I am a Registered Liquidator and an Official Liquidator of the Court. I am a member of the Insolvency Practitioners Association of Australia and a member of the Institute of Chartered Accountants. Before founding KordaMentha in 2002, I had a 24-year career with the firm Arthur Andersen, during which I held the positions of Director of Corporate Finance, Managing Partner Asia Pacific Corporate Recovery Services Practice and Managing Partner Australia Accounting and Audit Practice. I was also a Member of the Australian Executive Committee and Board of Partners. I have been practising in the area of corporate insolvency and financial reconstructions for 20 years.

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Chesser

- 5 On 23 April 2009, we were appointed as voluntary administrators of TSL pursuant to section 436A of the Act. Various partners of KordaMentha Pty Ltd (ACN 100 169 391) and I were appointed as voluntary administrators of TL and 39 of its wholly owned subsidiaries (**Timbercorp Group**).
- 6 On 29 June 2009, the creditors of TSL and TL (and the Timbercorp Group) resolved to wind up the companies.

Timbercorp schemes

- 7 TSL is currently the responsible entity for 11 forestry managed investment schemes registered under Part 5C of the Act. TSL is also the manager of one unregistered managed investment scheme for forestry, known as the 1999 Timbercorp Eucalypts Double Rotation Project. I refer to the 12 schemes, listed in Schedule 1 of the originating process, collectively as the "**Forestry Schemes**".
- 8 The members of the Forestry Schemes are called "**Growers**" in the constitutions for the Forestry Schemes and I adopt that term here.
- 9 The purpose of the Forestry Schemes is the cultivation of Eucalyptus trees for commercial wood production. The Growers sublease allotments of land of approximately, known in the Forestry Schemes variously as "Woodlots" (1 hectare) or Timberlots" (1/3 of a hectare) (**Lots**).

Meeting of Forestry Scheme Growers

- 10 On 7 August 2009 we held an informal Meeting of Growers of the Forestry Schemes (**Meeting**). The Meeting was held in the Victory Room at Etihad Stadium. Matthew Walsh, Special Counsel of Gaden Lawyers, agreed to take the role of independent chairperson at the Meetings (**Chairman**).
- 11 In preparation for the Meeting my staff sent to Growers, and posted on the websites of KordaMentha and Arnold Bloch Leibler, a Notice of Meeting and Proxy Form. My staff also arranged for a link on the Timbercorp website, directing readers to the KordaMentha website. Now produced and shown to me and marked **MAK-1** is the Notice of Meeting and Proxy Form.
- 12 Prior to the formal notification of the Meeting we also sent two emails to Forestry Scheme Growers updating them on the position of the Forestry Scheme and alerting them to the Meeting on 7 August 2009. Now produced and marked **MAK-2** are two emailed letters dated 27 July 2009 and 4 August 2009. The Meeting was also reported widely in

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newspapers with national and state circulation. Now produced and marked **MAK-3** are a bundle of newspaper articles reporting the meeting.

13 The purpose of the Meeting was to:

- (a) provide Growers with an update on key issues facing the Forestry Schemes; and
- (b) put a non-binding resolution to the Growers to request their approval for the Liquidators to seek a power of sale.

14 We have commenced a sale or recapitalisation process for the forestry assets (as defined below at paragraph 49). To enable the sale or recapitalisation process we need assurance that we have a power to sell the forestry assets free from encumbrances.

15 At the Meeting a number of presentations were given to update the Growers on the Forestry Schemes. A series of PowerPoint slides accompanied each presentation (**PowerPoint Slides**). Now produced and shown to me marked **MAK-4** is a copy of the Powerpoint Slides.

16 The order of the Meeting was:

- (a) a presentation on behalf of the Liquidators, which I gave, updating key issues for the Forestry Schemes (PowerPoint Slides 3 - 11);
- (b) a statement on the independent accountant's report prepared by Ernst & Young regarding the Forestry Schemes (PowerPoint Slides 12 - 13);
- (c) a statement of the independent forestry expert's report prepared by URS Australia Limited (PowerPoint Slides 14 - 15);
- (d) an address from Timbercorp Growers Group given by Chris Garnaut (PowerPoint Slides 16 - 29);
- (e) the sale or recapitalisation strategy and update given by me (PowerPoint Slides 30 - 34).

17 Following the presentations the Growers were given the opportunity to ask questions of the presenters. A transcript has been made of the entire meeting including the questions. Now produced and shown to me marked **MAK-5** is a copy of that transcript.

Insolvency of the Forestry Schemes

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- 18 At the meeting I presented information regarding the solvency of the Forestry Schemes and statements summarising independent reviews of the solvency analysis. I also arranged for this information to be posted on KordaMentha's website.
- 19 My staff prepared a "Forestry Schemes Cash Flow Analysis" dated 6 August 2009 (**Cashflow Analysis**). Now produced and shown to me marked **MAK-6** is the Cashflow Analysis which includes as Appendix 1 a "Summary Extract from the Forestry Scheme model as at 31 July 2009" showing the required contributions for the remainder of the life of each Forestry Scheme.
- 20 The Responsible Entity for all of the Forestry Schemes together needs to contribute an estimated \$172.6 million for the remaining life of each Forestry Scheme. This funding comprises key costs such as establishment, maintenance, leasing and forestry operational overheads. TSL as the Responsible Entity is insolvent and is not in a position to provide this funding.
- 21 Many of the Forestry Schemes also require ongoing contributions from Growers. These Grower contributions vary depending on the type of scheme. The types of schemes are explained on page 1 of the Cashflow Analysis. In some Forestry Schemes the Growers pay the rent and maintenance at the outset of the scheme and therefore do not have continuing contributions. In other Forestry Schemes the Growers incur rent and maintenance amounts as offset against harvest proceeds at the time of distributions. Where Growers are required to contribute for the remainder of the life of the Forestry Scheme, these contributions are for establishment, maintenance and rent payments (excluding plantation insurance). In total, the Growers need to contribute an estimated \$168.5 million for the remaining life of the Forestry Schemes.
- 22 The combined future funding requirement for all the Forestry Schemes to the end of their lives is therefore estimated at \$341.1 million. Each Forestry Scheme is projected to eventually make a net return to Growers. However, the long term viability of the Forestry Schemes does not resolve the issue of the insolvency of the Forestry Schemes presently and in the near term. For example rent of \$7.2m became payable on 1 July 2009 for all the Forestry Schemes and TSL and the Timbercorp Group do not have the capacity to meet this cost.
- 23 Ernst and Young reviewed the Cashflow Analysis and provided a report. Now produced and shown to me marked **MAK-7** is the Ernst and Young report dated 6 August 2009. The Ernst and Young report stated "we have reviewed the logic and mathematical formulae in the calculations within the model, noting no matters have come to our attention which indicate that these are not materially correct". They also stated that the

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analysis in Appendix 1 of the Cashflow Analysis was "applied in a consistent manner throughout the model" and the summarised financial information extracted from the model and presented at the Meeting "is consistent with the model on which our procedures were performed".

- 24 The Cashflow Analysis is based in part on assumptions regarding yield and expected harvest completion dates. I arranged to have posted on KordaMentha's website Timbercorp management's projections for the expected weighted/average yields and expected harvesting completion dates for the Forestry Schemes. Now produced and shown to me marked **MAK-8** are the summaries of the harvesting schedule and yields. In general terms, Timbercorp management's estimates of harvest periods are longer and expected weighted average yields are lower than envisaged in the Product Disclosure Statement for each Forestry Scheme. URS Australia Pty Ltd reviewed Timbercorp's mapping processes methodologies, inventory processes and site productivity estimates for the Forestry Scheme plantations. Now produced and shown to me marked **MAK-9** is a report by URS Australia Pty Ltd dated 6 August 2009 entitled "Summary of Productivity Review Report" (**URS Report**). I have read the URS Report and I believe its conclusions are that Timbercorp's methodologies appear reasonable. However, URS conclude that while the productivity estimates are reasonable in respect of the more mature trees (using age 7.5 year data) they are higher than likely to be realised in respect of less mature trees (using age 4.5 year data and pre-plant estimates). As such if URS's conclusions are borne out the Cashflow Analysis may overstate the actual yield.

Voting at the Meeting

- 25 At the conclusion of question time in the Meeting, the Growers were asked to vote on the non-binding resolution. The non-binding proposal was:

That the Liquidators' of TSL request the Federal Court of Australia to grant the Liquidators a power of sale to enable the implementation of the sale/recapitalisation strategy.

- 26 Votes were accepted both at the Meeting and by an internet poll on the KordaMentha website. Voting on the internet poll remained open until 4:00 pm on Monday 10 August 2009.
- 27 The results of the voting were recorded on a scheme by scheme basis. Voting was 1 vote per Lot. More than 90% of the Growers who voted, voted in favour of the non-binding resolution. Now produced and shown to me marked **MAK-10** are the results of the voting on the non-binding resolution on a scheme by scheme basis.

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- 28 For each Forestry Scheme, an average of 30% of the possible votes were cast. Now produced and shown to me marked **MAK-11** is a summary of the votes cast as a percentage of possible votes.

Power of Sale in the Scheme Documents

- 29 Each of the Forestry Schemes is governed by a complex suite of documents. I am informed of the matters contained in this section of my affidavit by Jane Sheridan, Partner of Arnold Bloch Leibler.
- 30 For each of the Forestry Schemes, there are three documents which could support a power of sale for the Responsible Entity (or TSL in its own capacity) in respect of the trees the subject of the Forestry Schemes:
- (a) the Scheme Constitution;
 - (b) the Management Agreement between the Grower and TSL; and
 - (c) the Sub-lease between the Grower and TSL.
- 31 Now produced and shown to me marked **MAK-12** is a CD Rom containing these documents for each of the Forestry Schemes for which we seek a power of sale.
- 32 In some Forestry Schemes there is more than one Management Agreement or Sub-lease, but each Grower in each scheme is a party to only one of those Management Agreements or Sub-leases in respect of each Lot held by the Grower.
- 33 While there are differences between the Constitution, Management Agreement and Sub-leases for each of the Forestry Schemes, the following clauses (or clauses which are substantially similar) are common to all. The relevant extracts are from the documents for the 2001 Eucalypts Project. Now produced and shown to me marked **MAK-13** are the Constitution, Management Agreement and Sub-leases for the 2001 Forestry Scheme.

Constitution

- 34 Under each Constitution, the Responsible Entity has irrevocable power as the agent and attorney of the Grower (amongst other things) to:
- (a) bind the Grower as a party to a Wood Purchase Agreement that is permitted to be entered into under the Management Agreement or the Constitution (clause 9.1(a));

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- (b) enter into any contracts which have the effect of varying, replacing or cancelling a Wood Purchase Agreement (clause 9.1(b));
- (c) exercise all rights and powers of the Grower under any Agreement (clause 11(f));
- (d) generally to enter, make or engage in transactions, undertakings, activities and arrangements of every kind and nature which a natural person of full age and capacity could enter, make or engage in and which constitute or are part of or relate to or are incidental to the Plantation Services on behalf of the Grower (clause 11(h)); and
- (e) execute any deed, agreement, certificate or other document and to do all other things necessary or desirable in furtherance of certain powers granted to the Responsible Entity (including those referred to in paragraphs (c) and (d)) (clause 11(g)).

35 For these purposes, the definitions are (relevantly):

Agreement means the Sub-lease, Management Agreement and Wood Purchase Agreement,

Plantation Services means the services and duties which the Grower is required to perform or carry out under the Sub-lease (other than the obligation to pay rent) and which are to be carried out by the Responsible Entity under the Management Agreement.

Trees means the crop of trees farmed or to be farmed on the Lots, for commercial timber production.

Wood means any saleable wood derived from Trees grown pursuant to the Agreements on the Lots, whether in a processed or unprocessed form.

Wood Purchase Agreement means an agreement for the sale of Wood of the Grower from the relevant Lot entered into by the Responsible Entity as agent and attorney for the Grower in accordance with the Management Agreement.

36 For some Forestry Schemes, Wood Purchase Agreements were entered into at, or about, the commencement of the Scheme, that is, before the trees were planted. For other Schemes, no Wood Purchase Agreements have been entered into as yet.

Management Agreement

37 Under the Management Agreement, each Grower commissions and engages the Responsible Entity:

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(a) as an independent contractor (and not as an agent) to carry out the Plantation Services during the Term in accordance with the Management Plan; and

(b) as an agent to Harvest and sell the Wood on behalf of the Grower,

on the terms and conditions set out in the Management Agreement (clause 3).

38 The Grower specifically engages the Responsible Entity to sell as agent for the Grower the Wood grown or growing on the relevant Lots to any bona fide purchaser, whether in a processed or unprocessed state for as high a price as it can reasonably achieve for the Wood, taking into account certain factors (clause 7(a)). For these purposes, the Grower appoints the Responsible Entity to be the Grower's attorney and in the Grower's name and on the Grower's behalf to:

(a) enter into any agreement for the sale and/or processing and sale of the Grower's Wood at any time during the Term (provided that the Responsible Entity discloses that the Responsible Entity is a party to the agreement as agent and attorney for the Grower and that the Grower's liability is limited); and

(b) vary, replace or cancel any such agreement

(clause 7(b)).

39 The Management Agreement provides that Harvest must take place between specified dates or as otherwise agreed in writing between the Growers and the Responsible Entity (clause 8(a)).

40 The Responsible Entity agrees to give due consideration to any opinions received in writing from the Grower in relation to the activities of the Responsible Entity under the Management Agreement and to use its best endeavours to carry out every recommendation from the Grower, subject to certain conditions (clauses 11(b) and (c)).

41 For these purposes, the definitions are (relevantly):

Harvest means the cutting down, felling or logging of the Trees and the extraction and/or processing of the Trees so cut down, fallen or logged to a loading point either on or adjacent to the Plantation.

Trees means the crop of eucalyptus trees the subject of the Management Plan planted, tended and maintained or to be planted, tended and maintained, on the Lots.

JK
CBH

Wood means any saleable wood derived from Trees on the Lots whether in a processed or unprocessed state and whether in the form of trees, logs, timber, woodchips or otherwise. (In the Management Agreements for the 1997, 1998 and 1999 Forestry Schemes, there is no reference to woodchips in the relevant definition of Wood.)

Sub-lease

42 Under the Sub-lease, the sub-lessor agrees that the Trees are and will remain the property of the Grower until the end of the Term (clause 8.3). The Grower is expressly entitled to harvest the Trees and to remove and sell the products derived from the Trees and to retain all income from such sale (clause 8.2).

43 The Grower is granted an independent proprietary interest in the relevant Lots, to establish tend and manage the Trees and to harvest the Trees and remove and sell the products derived from the Trees (clause 13).

44 For these purposes, the definitions are (relevantly):

Wood means any saleable wood derived from Trees on the Lots whether in the form of trees, logs, timber or otherwise.

Trees means the crop of eucalyptus trees the subject of the Management Plan planted, tended and maintained or to be planted, tended and maintained, on the Lots.

Effect

45 The Responsible Entity has power to sell the Wood on behalf of Growers. We, as liquidators, of the Responsible Entity are seeking to confirm that this power extends to the power to sell the Trees now, in their current state of maturity, and is not limited to a power to enter into an agreement now to sell the Trees which only becomes effective when the trees reach the requisite state of maturity.

Sale Process

46 Since early July 2009, a number of parties have contacted KordaMentha to express their interest in the possible acquisition or recapitalisation of the various assets which are the subject of the Forestry Schemes. Richard Forbes, a partner of KordaMentha, has had responsibility for coordinating the expressions of interest. Mr Forbes has informed me of the matters which I depose to below.

MR
CER

- 47 On 31 July 2009, we published an advertisement in the *Australian Financial Review* in which we sought expressions of interest for the possible acquisition or re-capitalisation of the assets the subject of the Forestry Schemes. Now produced and shown to me marked **MAK-14** is the advertisement that appeared in the 31 July 2009 edition of the *Australian Financial Review*.
- 48 A number of interested parties have executed a Confidentiality Agreement (**the Interested Parties**) and subsequently been given a copy of a Confidential Information Memorandum (**Information Memorandum**), and been granted access to an on-line Data Room. Now produced and shown to me marked **Confidential Exhibit MAK-15** is an anonymous list of the Interested Parties which details the number of documents viewed, printed and downloaded from the Data Room as at 12 August 2009 by those who have accessed the Data Room. Now produced and shown to me marked **Confidential Exhibit MAK-16** is a copy of the Confidential Information Memorandum.
- 49 The assets that we are offering for sale are described in the Information Memorandum as follows:
- (a) 97,500 hectares of high-yielding premium quality *Eucalyptus globulus* distributed across various age classes, and located close to seaports;
 - (b) 38,800 hectares of freehold land owned by Timbercorp group companies in the "Green Triangle" region in Victoria and South Australia, and in south-west Western Australia which has a total book value of \$238 million. These regions are regarded as amongst the best in the world for the cultivation of *Eucalyptus globulus*, with high average annual rainfall and premium quality soils;
 - (c) 58,700 hectares of land leased by Timbercorp group companies in the Green Triangle region and in south-west Western Australia (however, the sale of the leasehold land rights is conditional upon the Liquidators determining to retain and assign those leases in connection with the liquidations or the sale process and obtaining the consent of the relevant landlord if necessary);
 - (d) a dedicated and highly skilled forestry management business, including seed-to-port management and harvesting capacity at maturity of up to 1.8 million GMT and EBITDA exceeding \$20 million per annum; and
 - (e) part ownership of the Albany Chip Terminal which has a load capacity of 1.3 million GMT per annum.

(together "**Forestry Assets**")

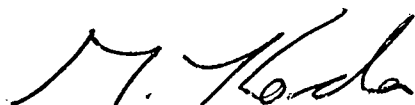


- 50 The Information Memorandum sets out a timetable for the sale/recapitalisation process and stipulates that the closing date for first and final binding offers is: 5:00pm AEST on Friday, 18 September 2009.
- 51 Any final binding offer must include a completed Purchase Price Allocation schedule which requires each bidder to ascribe a dollar value to the trees in each of the Forestry Schemes.
- 52 Overall, there has been a significant level of interest expressed by the Interested Parties. A number of the Interested Parties are considering making a bid to acquire all of the Forestry Assets, while others have expressed an interest in also offering a recapitalisation proposal for some of the Forestry Schemes.
- 53 As I explained at the Meeting, we intend to retain an independent accountant for the purpose of reviewing the reasonableness of any offers received from the Interested Parties, having regard to the components of the purchase price allocated to each of the Forestry Assets as set out in the Purchase Price Allocation schedule.

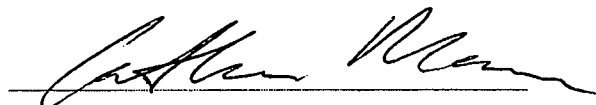
Notification of this proceeding

- 54 On 12 August 2009, KordaMentha notified the Committee of Inspection for the Timbercorp Group of Companies, and ASIC, that this proceeding was to be commenced and would be heard on 14 August 2009. Notice was also posted on the websites of KordaMentha and Arnold Bloch Leibler advising that this proceeding would be heard on 14 August 2009. Now produced and shown to me marked **MAK-17** is the notice (**Notice**).
- 55 On 13 August 2009, the Notice was published in *The Australian*. Now produced and shown to me marked **MAK-18** is the Notice as published in *The Australian*.

SWORN by the abovenamed deponent at)
Melbourne in the State of Victoria)
this 13th day of August 2009)



Before me:



CATHERINE HELEN MACRAE
Arnold Bloch Leibler
Level 21, 333 Collins Street
Melbourne 3000
An Australian Legal Practitioner within the
meaning of the Legal Profession Act 2004

**IN THE FEDERAL COURT OF AUSTRALIA
VICTORIA DISTRICT REGISTRY
GENERAL DIVISION**

No. VID of 2009

**IN THE MATTER OF TIMBERCORP SECURITIES LIMITED (IN LIQUIDATION)
ACN: 092 311 469**

**TIMBERCORP SECURITIES LIMITED (IN LIQUIDATION)
ACN 092 311 469
and OTHERS**

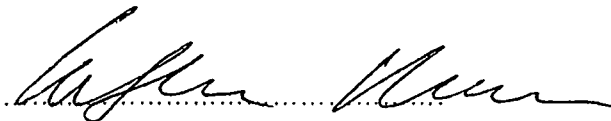
Plaintiffs

AFFIDAVIT - CERTIFICATE OF COMPLIANCE

(Order 14, rule 5A)

I, Catherine Helen Macrae, certify to the Court that the affidavit of **MARK ANTHONY KORDA** sworn on 13 August 2009 filed on behalf of the Plaintiffs complies with Order 14, rule 2 of the Federal Court Rules.

Date: 13 August 2009



Catherine Helen Macrae
A solicitor of Arnold Bloch Leibler
Solicitor for the Plaintiffs

Filed on behalf of the Plaintiffs

ARNOLD BLOCH LEIBLER
Lawyers and Advisers
Level 21
333 Collins Street
Melbourne 3000

DX 38455 Melbourne
Tel: 9229 9999
Fax: 9229 9900
Ref: 011499489
(Leon Zwier)

IN THE FEDERAL COURT OF AUSTRALIA
VICTORIA DISTRICT REGISTRY
GENERAL DIVISION

No. VID 595 of 2009

IN THE MATTER OF TIMBERCORP SECURITIES LIMITED (IN LIQUIDATION)
ACN: 092 311 469

TIMBERCORP SECURITIES LIMITED (IN LIQUIDATION)
ACN 092 311 469
IN ITS CAPACITY AS RESPONSIBLE ENTITY OF EACH OF THE
MANAGED INVESTMENTS SCHEMES LISTED IN SCHEDULE 1
AND IN ITS CAPACITY AS MANAGER OF THE UNREGISTERED
MANAGED INVESTMENTS SCHEME LISTED IN SCHEDULE 2

First Plaintiff

MARK ANTHONY KORDA

Second Plaintiff

LEANNE KYLIE CHESSER

Third Plaintiff

AMENDED ORIGINATING PROCESS

A. DETAILS OF APPLICATION

This application is made under section 511 of the *Corporations Act 2001* (Cth) (**Corporations Act**) and the inherent jurisdiction of the Court.

The Plaintiffs seek orders regarding questions that have arisen in the winding up of the First Plaintiff.

On the facts stated in the supporting affidavits of Mark Anthony Korda sworn on 13 August 2009 and 17 August 2009, the Second and Third Plaintiffs (in their capacity as liquidators of the First Plaintiff acting in its capacity as a responsible entity and manager) seek in respect of the managed investments schemes listed in Schedules 1 and 2:


Filed on behalf of the Plaintiffs

ARNOLD BLOCH LEIBLER
Lawyers and Advisers
Level 21
333 Collins Street
Melbourne 3000

DX 38455 Melbourne
Tel: 9229 9999
Fax: 9229 9900
Ref: 01-1499489
(Leon Zwier)

- 1 A direction pursuant to section 511 of the Corporations Act and the inherent jurisdiction of the Court, that the Second and Third Plaintiffs are justified in procuring the First Plaintiff as responsible entity to amend the constitutions of the managed investment schemes listed in schedule 1 and 2, pursuant to section 601GC(1)(b) of the Corporations Act by executing the proposed deeds contained in exhibit MAK-19 to the affidavit of Mark Anthony Korda sworn on 17 August 2009 on the basis that such amendments will not adversely affect members' rights.
- 2 Such further or other orders as the Court deems fit.

DATE: 17 August 2009


ARNOLD BLOCH LEIBLER
Solicitors for the Plaintiffs

This application will be heard by the Federal Court of Australia at 305 William Street, Melbourne at 9:30 am on 14 August 2009.

B. NOTICE TO DEFENDANTS

Not applicable.

C. APPLICATION FOR WINDING UP ON GROUND OF INSOLVENCY

Not applicable.

D. FILING

Date of filing:

.....
An officer acting with the authority of the
DISTRICT REGISTRAR

This originating process is filed by Arnold Bloch Leibler of Level 21, 333 Collins Street, Melbourne, VIC, 3000, solicitors for the plaintiff.

E. SERVICE

The plaintiff's address for service is C/- Arnold Bloch Leibler, Level 21, 333 Collins Street, Melbourne, VIC, 3000.

The plaintiffs do not intend to serve a copy of this originating process on any other party but it is intended to post a copy on the websites of KordaMentha and Arnold Bloch Leibler.

SCHEDULE 1
REGISTERED MANAGED INVESTMENT SCHEMES

1. 1997 Timbercorp Eucalypts Project (ARSN 112 309 234);
2. 1998 Timbercorp Eucalypts Project (ARSN 112 309 216);
3. 1999 Timbercorp Eucalypts Project (ARSN 085 827 872);
4. 2000 Timbercorp Eucalypts Project (ARSN 091 172 093);
5. 2001 Timbercorp Eucalypts Project (ARSN 094 392 000);
6. 2002 Timbercorp Eucalypts Project (ARSN 098 233 571);
7. 2003 Timbercorp Eucalypts Project (ARSN 103 183 446);
8. 2004 Timbercorp Eucalypts Project (ARSN 108 099 645);
9. 2004 Timbercorp Timberlot (Single Payment) Project (ARSN 108 336 830);
10. 2005 Timbercorp Timberlot (Single Payment) Project (ARSN 111 683 491); and
11. 2007/2008 Timbercorp Timberlot (Single Payment) Project (ARSN 122 510 981).

SCHEDULE 2
UNREGISTERED MANAGED INVESTMENT SCHEMES

1. 1999 Timbercorp Eucalypts Double Rotation Project (Private Offer)(Unregistered).

IN THE FEDERAL COURT OF AUSTRALIA
VICTORIA DISTRICT REGISTRY
GENERAL DIVISION

No. VID 595 of 2009

IN THE MATTER OF TIMBERCORP SECURITIES LIMITED (IN LIQUIDATION)
ACN: 092 311 469

TIMBERCORP SECURITIES LIMITED (IN LIQUIDATION)
ACN 092 311 469
and OTHERS

Plaintiffs

SECOND AFFIDAVIT OF MARK ANTHONY KORDA

On 17 August 2009, I, **MARK ANTHONY KORDA**, of Level 24, 333 Collins Street, Melbourne, in the State of Victoria, Chartered Accountant, SAY ON OATH that:

- 1 I refer to my affidavit sworn on 13 August 2009 in this proceeding (**my First Affidavit**). I adopt the same abbreviations and definitions in this affidavit.
- 2 Except where I otherwise indicate, I make this affidavit from my own knowledge. Where I depose to matters from information or belief, I believe those matters to be true. I am authorised by Ms Chesser to make this affidavit on her behalf.
- 3 This affidavit is made in support of the direction sought in the Amended Originating Process dated 17 August 2009.

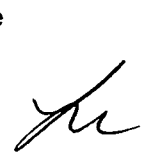
TSL does not have clear title to the trees

- 4 In my First Affidavit, I describe the sale/recapitalisation process which has been commenced by us for the Forestry Assets (as defined in paragraph 49). The Forestry Assets include 97,500 hectares of *Eucalyptus globulus* (**the Trees**). Approximately 60% of the Trees are growing on land leased by TSL, or by TL and then sub-leased to TSL,

Filed on behalf of the Plaintiffs

ARNOLD BLOCH LEIBLER
Lawyers and Advisers
Level 21
333 Collins Street
Melbourne 3000

DX 38455 Melbourne
Tel: 9229 9999
Fax: 9229 9900
Ref: 011499489
(Leon Zwier)



from landlords not owned by the Timbercorp Group of Companies. Approximately 40% of the Trees are growing on land owned by Timbercorp Group companies.

- 5 TSL has sub-leased that land owned by the non-Timbercorp-owned landlords to the respective Growers who are members of each of the Forestry Schemes.
- 6 I am informed by Ms Sheridan that the sub-leases by which the Growers lease the land from TSL (**the Sub-Leases**) contain broadly similar clauses which make the Trees the property of the relevant Grower, subject to certain provisos, and grant additional rights in relation to the Trees, such as the right to tend and manage the Trees, and to enter upon the land to harvest the Trees and remove and sell the products derived from the Trees. The Sub-Leases generally provide that those rights and interests constitute "an independent and severable grant of a proprietary interest".

Need for clear title to the Trees

- 7 In order for the sale/recapitalisation process to achieve the best outcome for the creditors of the Timbercorp Group, including Growers, we believe that potential bidders need to be satisfied that they are buying the Trees with clear title. If the potential bidders are not so satisfied, we expect that any bids for the Forestry Assets will be made at a large discount to the price which could be achieved if the Trees were offered with clear title.
- 8 At present, because of the Growers' interests in the Trees under the Sub-Leases and/or at common law, TSL arguably does not have legal title to the Trees. The Growers may own the Trees and also have a right to harvest them.
- 9 One way in which TSL could obtain clear title to the Trees is by terminating the Sub-Leases. The question is therefore whether TSL presently has a right or power to do so, either under the constitutions for each of the Forestry Schemes or under the Sub-Leases. There is no express power for TSL to do so under the Sub-Leases. However, I have been provided with legal advice that under the constitutions, TSL has a right or power to terminate the Grower Sub-Leases on behalf of Growers, or that it is at least arguable that TSL has such a right or power.
- 10 For example, clause 11(f) of the constitution for the 2001 Eucalyptus Project (contained in exhibit MAK-13 to my First Affidavit) provides:

- 11 *Each Grower agrees that the Responsible Entity has irrevocable power as the agent, representative and attorney of the Grower and whether in the name of the Grower or the Responsible Entity or both:-*

...



(f) *to exercise all rights and powers of the Grower under any Agreement* [Agreement is defined to include the Sub-Lease entered into by a Grower]

- 11 I have been advised that the meaning of the words "*all rights and powers ... under any Agreement*" is arguably not confined to rights and powers expressly conferred under any Agreement, but includes a right or power to terminate the Sub-Lease at common law, whether by surrender or otherwise. Further, express rights of termination are conferred upon Growers under the Sub-Leases if TSL commits a material breach of the Sub-Lease (clause 11.1(a)). The responsible entity's obligations under the Sub-Lease are contained in clause 7. They include an obligation upon TSL to pay all rates and taxes and comply with the provisions of the Head Lease.
- 12 I am further advised that if the Court regards there as being any doubt about it, TSL could amend the relevant constitutions so that such a right or power is expressly conferred on TSL under the constitutions for the managed investments schemes listed in schedules 1 and 2 to the Amended Originating Process (**the Constitutions**) provided TSL is satisfied that such an amendment would not adversely affect the rights of Growers.
- 13 I am informed by Ms Sheridan that clauses to the effect of 11(f) of the Constitution are contained in all of the constitutions for each of the other Forestry Schemes.

Amendment to the Constitutions for the Forestry Schemes

- 14 We believe that in the circumstances of the insolvency of the Timbercorp Group, the sale/recapitalisation process outlined in the Information Memorandum is the means by which the best price can be obtained for the Forestry Assets. In order for the maximum price to be obtained for the Forestry Assets, we believe that potential bidders must be satisfied they will have clear title to those assets. We believe that it is in the best interests of the Growers for TSL to have the means to deliver title to the Trees to any purchaser of the Forestry Assets.
- 15 Although we believe, based upon legal advice, that TSL most probably does have a right or power to terminate the -Sub-Leases under the Constitutions in the manner I have outlined above, in the circumstances I seek a direction that we are justified in causing an amendment to be made to the Constitutions to put the matter beyond doubt. If the Court made such a direction, we would only procure TSL to exercise such a power to terminate the Sub-Leases in the event that a satisfactory bid was made for the Forestry Assets and as a pre-condition to settlement of the contracts.



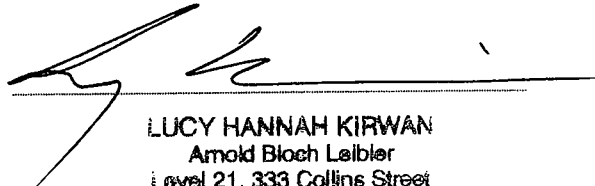
Form of the proposed amendments to the Constitutions

- 16 Exhibit MAK-12 to my First Affidavit is a CD-Rom containing the principal documents governing each of the Forestry Schemes, including the Constitutions and any relevant amending deeds.
- 17 Now produced and shown to me marked **MAK-19** is the form of the proposed Deed Poll to amend to each of the Constitutions to be executed by TSL.

SWORN by the abovenamed deponent at)
Melbourne in the State of Victoria)
this 17th day of August 2009)



Before me:



LUCY HANNAH KIRWAN
Arnold Bloch Leibler
Level 21, 333 Collins Street
Melbourne 3000
An Australian Legal Practitioner within the
meaning of the Legal Profession Act 2004

**IN THE FEDERAL COURT OF AUSTRALIA
VICTORIA DISTRICT REGISTRY
GENERAL DIVISION**

No. VID 595 of 2009

**IN THE MATTER OF TIMBERCORP SECURITIES LIMITED (IN LIQUIDATION)
ACN: 092 311 469**

**TIMBERCORP SECURITIES LIMITED (IN LIQUIDATION)
ACN 092 311 469
and OTHERS**

Plaintiffs

AFFIDAVIT - CERTIFICATE OF COMPLIANCE

(Order 14, rule 5A)

I, Lucy Hannah Kirwan, certify to the Court that the affidavit of **MARK ANTHONY KORDA** sworn on 17 August 2009 filed on behalf of the Plaintiffs complies with Order 14, rule 2 of the Federal Court Rules.

Date: 17 August 2009



Lucy Hannah Kirwan

A solicitor of Arnold Bloch Leibler
Solicitor for the Plaintiffs

Filed on behalf of the Plaintiffs

ARNOLD BLOCH LEIBLER
Lawyers and Advisers
Level 21
333 Collins Street
Melbourne 3000

DX 38455 Melbourne
Tel: 9229 9999
Fax: 9229 9900
Ref: 011499489
(Leon Zwier)

**IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMERCIAL & EQUITY DIVISION
COMMERCIAL COURT**

LIST A

No 9299 of 2009

**IN THE MATTER OF TIMBERCORP SECURITIES LIMITED
(IN LIQUIDATION)**

ACN 092 311 469

**TIMBERCORP SECURITIES LIMITED (IN LIQUIDATION) (ACN 092 311 469)
IN ITS CAPACITY AS RESPONSIBLE ENTITY OF EACH OF THE
MANAGED INVESTMENTS SCHEMES LISTED IN SCHEDULE 1
AND IN ITS CAPACITY AS MANAGER OF THE UNREGISTERED
MANAGED INVESTMENTS SCHEME LISTED IN
SCHEDULE 2 OF THE ORIGINATING PROCESS
First Plaintiff**

**MARK ANTHONY KORDA
Second Plaintiff**

**LEANNE KYLIE CHESSER
Third Plaintiff**

CERTIFICATE IDENTIFYING EXHIBIT

Date of document: 29 September 2009
Filed on behalf of: the Plaintiffs

Prepared by:
ARNOLD BLOCH LEIBLER
Lawyers and Advisers
Level 21
333 Collins Street
MELBOURNE 3000

Solicitor's Code: 54
DX 38455 Melbourne
Tel: 9229 9999
Fax: 9229 9900
Ref: 01-1499489
(Leon Zwier lzwier@abl.com.au)

This is the exhibit marked "**MAK-8**" now produced and shown to **MARK ANTHONY KORDA** at the time of swearing his affidavit on 29 September 2009.

Before me: _____

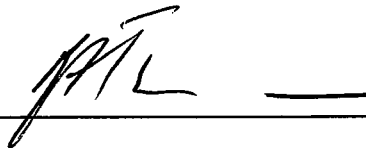


Exhibit "MAK-8"

Sub Lease for the 2001 Timbercorp Eucalypts Project

BRIDGETTE AILSA TOY-CRONIN (ARSN 094 392 000)
Arnold Bloch Leibler
Level 21, 333 Collins Street
Melbourne 3000
An Australian Legal Practitioner within the
meaning of the Legal Profession Act 2004

SUB-LEASE – VICTORIA

2001 TIMBERCORP EUCALYPTS PROJECT

BETWEEN

TIMBERCORP SECURITIES LIMITED

ACN. 092 31 469

(the "Responsible Entity")

- and -

EACH SEVERAL GROWER

(the "Grower")

CONTENTS

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7. RESPONSIBLE ENTITY'S OBLIGATIONS	6
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15. WARRANTIES	15
16. NOTICES	15
17. CAVEAT	15
18. GENERAL	16

DATE OF THIS SUB-LEASE:

30 June 2001.

BETWEEN:

**FIRST
PARTY**

TIMBERCORP SECURITIES LIMITED, ACN. 092 311 469 of 5th Floor, 95 Queen Street, Melbourne, Victoria (the "Responsible Entity"); and

**SECOND:
PARTY:**

Each several person who is named or otherwise described in Part 2 of the Schedule and his transferees and assigns (as permitted under the Project Deed) (each of whom is called a "Grower"; whichever relevant Grower is of concern in any particular circumstances is called "the relevant Grower"; and all of whom are called the "relevant Growers").

RECITALS:

- A.** The Responsible Entity holds leases or sub-leases over the pieces of land described in Part 1 of the Schedule (each such piece of land being called in this Sub-Lease a "Plantation").
- B.** The Responsible Entity has agreed to sub-let to each relevant Grower one or more separate Woodlots as set out in Part 2 of the Schedule, each Woodlot comprising part of one of the Plantations, for the purpose of planting, tending and harvesting a plantation of eucalyptus trees on the basis that the relevant Grower will pay rent and upon the further terms and conditions set out in this Sub-Lease.
- C.** Pursuant to the provisions of the Project Deed each relevant Grower (or its predecessor in title) has engaged the Responsible Entity to provide certain plantation services for the Grower.

OPERATIVE PROVISIONS:

1. DEFINITIONS

In this Sub-Lease unless the context otherwise requires:

"**Commencement Date**" means in respect of a relevant Grower, the date on which an application for Woodlots under the Prospectus is accepted by the Responsible Entity.

"**Debris**" means all those parts of Trees which are not Wood (including branches and treetops), but excluding stumps and roots, wire, rope and miscellaneous rubbish.

"**Force Majeure**" has the meaning set out in clause 10.2.

"**GST**" means GST within the meaning of A New Tax System (Goods and Services Tax) Act 1999 (as amended)

"**Head Lease**" means the agreement set out adjacent to the description of the Plantation in Part 1 of the Schedule and made between the Responsible Entity (as lessee or sub-lessee as the case may be) and the person listed as the proprietor (as lessor or sub-lessor as the case may be) whereby the Responsible Entity has been granted a lease or sub-lease over the Plantation.

"Management Agreement" means the agreement of even date for the carrying out of certain plantation services on the relevant Woodlots and on the relevant Plantation between each several Grower and the Responsible Entity.

"Management Plan" means the plan for the management of a Plantation (as varied by the Responsible Entity) which plans are annexed to the Management Agreement.

"month" means calendar month.

"Party" means a party to this Sub-Lease and includes the transferees, successors and permitted assigns of that party.

"Plantation" has the meaning set out in Recital A. The "relevant Plantation" is the Plantation which contains a relevant Woodlot.

"Proceeds" has the same meaning as in sub-clause 1.1 of the Project Deed.

"Project Deed" means the deed made between the Responsible Entity as responsible entity and each several Grower constituting managed investment scheme called the 2001 Timbercorp Eucalypts Project.

"Prospectus" means the 2001 Timbercorp Eucalypts Project Prospectus issued by the Responsible Entity.

"Schedule" means the schedule appearing at the back of this Sub-Lease.

"Term" means the term of this Sub-Lease as specified in Part 3 of the Schedule and any extension under clause 10.1.

"Trees" means the crop of eucalyptus trees the subject of the Management Plan planted and tended or to be planted and tended on the relevant Woodlots, or on the relevant Plantation, whichever is applicable.

"Wood" means any saleable wood derived from Trees grown pursuant to this Sub-Lease and the Management Agreement on the relevant Woodlots, or on the relevant Plantation, whichever is applicable, whether in the form of trees, logs, timber or otherwise.

"relevant Woodlots" means the Woodlot or Woodlots to which the relevant Grower is entitled under the provisions of this Sub-Lease as specified in Part 2 of the Schedule and more particularly delineated on the maps in Part 1 of the Schedule.

2. INTERPRETATION

In this Sub-Lease, unless the context otherwise requires:

- (a) The singular number includes the plural and vice versa and a word denoting one gender includes each of the other genders.
- (b) "person" includes a firm, corporation and any incorporated body.
- (c) Headings are for convenience only and do not affect the interpretation of this Sub-Lease.

- (d) A reference to an Act of Parliament will be read as a reference to that Act as amended, modified or replaced from time to time and includes any regulations, by-laws, orders, ordinances or rules made under that Act.
- (e) A reference to a Party to this Sub-Lease includes that Party's transferees, successors and permitted assigns.
- (f) If the relevant Grower comprises more than one person, this Sub-Lease binds all of them jointly and each of them severally. If any of the persons comprising the relevant Grower is a trustee, this Sub-Lease binds that person in its capacity as a trustee and personally.
- (g) Where the word "include" or "includes" is used, it is to be read as if the expression "(but is not limited to)" immediately followed such word and where the word "including" is used, it is to be read as if the expression "(but not limited to)" immediately followed such word.
- (h) Words and expressions used in this Sub-Lease have the same meaning as in the Project Deed unless the contrary requires.

3. GRANT OF SUB-LEASE

The Responsible Entity sub-leases to the relevant Grower the Woodlot or Woodlots described against the name of the relevant Grower in Part 2 of the Schedule for the Term for the purpose of growing, tending and harvesting a plantation or plantations of eucalyptus trees.

4. CONDITIONS

4.1 Consents and approvals

This Sub-Lease is subject to and conditional upon the obtaining of all local, State and Commonwealth government approvals, licences or permission required for the establishment of the Trees within twelve (12) months after the date of execution of this Sub-Lease. This condition is deemed to be a condition subsequent.

4.2 Other agreements

This Sub-Lease is subject to and conditional upon:

- (a) the relevant Grower entering into the relevant Management Agreement;
and
- (b) the Responsible Entity entering into the Head Lease,

in respect of the Trees on or prior to the Commencement Date.

4.3 Use all reasonable endeavours to ensure conditions satisfied

Each of the Responsible Entity and the relevant Grower will use all reasonable endeavours to ensure that the conditions specified in clause 4.1 are satisfied as soon as is reasonably practicable, and where required will keep each other fully informed as to progress towards satisfaction of the conditions.

4.4 Failure of conditions

If any of the conditions referred to in clauses 4.1 or 4.2 of this Sub-Lease or any like conditions referred to in the Head Lease are not obtained within the time limited in those clauses:

- (a) this Sub-Lease will be at an end; and
- (b) the Responsible Entity must immediately repay to the relevant Grower any instalments of Annual Rent or other moneys paid by the relevant Grower to the Responsible Entity under this Sub-Lease.

5. RENT

5.1 Annual Rent

The relevant Grower must duly and punctually pay to the Responsible Entity during the Term the rent specified in Part 4 of the Schedule as reviewed from time to time in accordance with clause 5.2 ("Annual Rent").

5.2 Rent reviews

The Annual Rent must be reviewed on 31 October 2001 and each 31 October thereafter during the Term (as extended or renewed) ("Review Dates"). The Annual Rent payable on and from each review Date is the greater of:

- (a) the Annual Rent payable immediately prior to the relevant Review Date; and
- (b) the amount calculated in accordance with the following formula:

$$NR = R \times \frac{NCPI}{CPI}$$

Where:

NR is the Annual Rent payable on and from the relevant Review Date.

R is the Annual Rent payable immediately prior to the relevant Review Date.

NCPI is the Consumer Price Index (All Groups) Weighted average of eight capital cities (or any substitute accepted by the government of the Commonwealth of Australia) as last published by the Australian Bureau of Statistics prior to the relevant Review Date.

CPI is the Consumer Price Index (All Groups) Weighted average of eight capital cities (or any substitute accepted by the government of the Commonwealth of Australia) as last published by the Australian Bureau of Statistics prior to the immediately preceding Review Date or, in the case of the first review, as last published by the Australian Bureau of Statistics prior to the date of execution of this Lease.

5.3 Discontinuation or suspension of CPI

If the Consumer Price Index (All Groups) Weighted average of eight capital cities is discontinued or suspended, the method of review set out in clause 5.2(b) will cease to apply and will be replaced with such alternative method as is mutually agreed between the Responsible Entity and the relevant Grower or, if they fail to agree, such alternative method as in the opinion of an expert appointed by the President for the time being of the Institute of Chartered Accountants (Victorian Division) at the request of either of them most closely reflects changes in the cost of living for the eight capital cities of Australia. The cost of any expert determination carried out under this clause must be borne equally between the Responsible Entity and the relevant Grower.

6. RELEVANT GROWER'S OBLIGATIONS

The relevant Grower agrees with the Responsible Entity that the relevant Grower will at the relevant Grower's expense during the Term:

6.1 Permitted use

Use the relevant Woodlots solely for the purpose of growing, tending and harvesting a plantation or plantations of eucalyptus trees.

6.2 Forestry practice

Comply with sound silvicultural and environmental practices adopted within the forestry industry.

6.3 Comply with laws

Comply with all laws and regulations relating to the use and occupancy of the relevant Woodlots.

6.4 Repairs

Promptly repair any damage caused by the relevant Grower or its employees, agents or contractors to any roads, tracks or fences on the relevant Woodlots or on any neighbouring land.

6.5 Interference with activities

Take all reasonable steps to avoid interfering with the activities carried out on any neighbouring land by the owner or occupier of that land.

6.6 Chemicals and dangerous substances

Not store or use any chemical, inflammable, noxious or dangerous substances in a manner which is likely to result in damage to vegetation, livestock, crops or water reserves on any neighbouring land.

6.7 Buildings

Not erect any buildings, structures or dwellings or use any caravans on the relevant Woodlots for accommodation purposes.

6.8 Permit Responsible Entity to enter

Permit the Responsible Entity to enter upon the relevant Woodlots from time to time with or without equipment for the purpose of performing the Responsible Entity's obligations under this Sub-Lease.

6.9 Comply with other agreements

Comply or procure compliance with the provisions of the agreement referred to in paragraph 4.2(a).

6.10 Give access to owners of adjoining Woodlots

Give such rights of way and free access to the owners or occupiers of any Woodlot adjoining the relevant Woodlots as are necessary for their proper use and enjoyment of their Woodlots, but such rights of access are limited to the unimpeded use of any existing access roads, pathways or fire-breaks on or about their Woodlot.

7. RESPONSIBLE ENTITY'S OBLIGATIONS**7.1 Construction of Boundary Fence prior to Commencement Date**

The Responsible Entity agrees with the relevant Grower that the Responsible Entity will at the Responsible Entity's expense prior to the Commencement Date (or such later date as the relevant Grower may agree) construct or cause to be constructed a fence along the external boundary of the relevant Plantation, or in such other location as the Responsible Entity deems fit, suitable to restrain livestock from straying onto the relevant Woodlots.

7.2 During the Term

The Responsible Entity agrees with the relevant Grower that the Responsible Entity will at the Responsible Entity's expense during the Term:

(a) Quiet enjoyment

Allow the relevant Grower to peaceably and quietly hold and enjoy the relevant Woodlots without any interruption by the Responsible Entity or any person claiming through or under the Responsible Entity.

(b) Maintain boundary fence

Maintain or cause to be maintained the fence constructed pursuant to clause 7.1 in good and substantial repair and condition.

(c) Rates and taxes

Duly and punctually pay or cause to be paid all rates, taxes and other charges levied by any government or other authority in respect of the relevant Woodlots.

(d) Comply with laws

Comply with all laws and regulations relating to the use and occupancy of any neighbouring land occupied by the Responsible Entity.

(e) Chemicals and dangerous substances

Not store or use any chemical, inflammable, noxious or dangerous substances in a manner which is likely to result in damage to vegetation, livestock, crops or water reserves on the relevant Woodlots.

(f) Comply with Head Lease

Comply with the provisions of the Head Lease.

(g) Control of fires

Take all necessary measures to ensure that any fires which may occur or be lit on any neighbouring land owned or occupied by the Responsible Entity are properly controlled and supervised.

(h) Not create any encumbrances

Not create any encumbrances over the relevant Plantation or the relevant Woodlots or any part thereof ranking in priority to the interests of the relevant Growers under this Sub-Lease other than the agreement referred to in paragraph 4.2(a).

8. RELEVANT GROWER'S RIGHTS

8.1 General

The Responsible Entity grants to the relevant Grower the rights set out in this part to be exercised by the relevant Grower during the Term.

8.2 Harvest

The relevant Grower is to harvest the Trees and to remove and sell the products derived from the Trees and to retain all income from such sale.

8.3 Trees are property of the relevant Grower

The parties acknowledge and agree that the Trees are and will remain the property of the relevant Grower until the end of the Term.

8.4 Access

The relevant Grower is entitled to full and free access for any purpose whatsoever to the relevant Woodlots along any road or track on any neighbouring land in respect of which the Responsible Entity has similar rights and which gives access to the relevant Woodlots from a public road.

8.5 Construct roads and tracks

The relevant Grower may with the prior written consent of the Responsible Entity, which consent must not be unreasonably withheld, construct and maintain such roads and tracks (including, if necessary, bridges and culverts) on the relevant Woodlots or on any neighbouring land in respect of which the Responsible Entity has similar rights, as are reasonably required by the relevant Grower to provide access to the relevant Woodlots from a public road for log haulage.

8.6 Use of sand and gravel

For the purposes of constructing and maintaining the roads and tracks referred to in clause 8.5 the relevant Grower may take and use sand, gravel and other material available from a place approved by the Responsible Entity on the relevant Woodlots or on any neighbouring land in respect of which the Responsible Entity has similar rights, in such quantities as the relevant Grower reasonably requires. If the relevant Grower exercises its rights under this clause, the relevant Grower must rehabilitate the surface of the land to an appearance as near as possible to the appearance of the surface of the surrounding land.

8.7 Security

The relevant Grower may at its own expense padlock any gates on roads or tracks entering the relevant Woodlots and take such other measures to exclude trespassers as the relevant Grower reasonably considers appropriate. Upon request, the relevant Grower must provide the Responsible Entity with a key to any padlocks, or if the relevant Grower has taken any other measures under this clause, such other means of entry, to the relevant Woodlots.

9. Responsible Entity's rights

9.1 General

The Grower hereby grants to the Responsible Entity the rights set out in this part to be exercised by the Responsible Entity during the Term.

9.2 Graze livestock

The Responsible Entity or its invitees may graze livestock on the relevant Woodlots and retain all income derived from them.

9.3 Bees

The Responsible Entity or its invitees may keep bees on the relevant Woodlots and retain all income derived from them.

9.4 Access

The Responsible Entity is entitled to full and free access for the purposes of carrying out its rights and obligations with or without vehicles to the relevant Woodlots along any road or track or any neighbouring land owned or occupied by the Responsible Entity which gives access to the relevant Woodlots from a public road.

9.5 Further access

The Responsible Entity is entitled to full and free access with or without vehicles to the relevant Woodlots for the purpose of accessing neighbouring land owned or occupied by the Responsible Entity.

9.6 Use of sand and gravel

The Responsible Entity may with the approval of the Grower take and use sand, gravel and other material from a place on the relevant Woodlots which does not derogate from the productivity of the Trees. The Grower may withhold the approval in the event that it believes that the removal of the sand, gravel and other material will derogate from the productivity of the Trees.

9.7 Signs

The Responsible Entity may at its own expense erect and maintain a sign on the relevant Woodlots detailing such matters as the Responsible Entity reasonably considers appropriate.

10. FORCE MAJEURE

10.1 Extension for late harvesting

If the relevant Grower is prevented from:

- (a) harvesting the Trees;
- (b) removing from the relevant Woodlots the products derived from the Trees;
or
- (c) processing the products derived from the Trees,

due to an event of Force Majeure, but continues to pay the Annual Rent, the Grower may by giving written notice to the Responsible Entity elect to extend the Term for a period of time equal to the duration of the event of Force Majeure.

10.2 Definition of Force Majeure

In this part "Force Majeure" means:

- (a) Act of God, fire, explosion, earthquake, landslide, flood, wash-out, lightning, storm or tempest;
- (b) strikes, lockouts, stoppages, restraints of labour or other industrial disturbances;
- (c) war, acts of public enemies, riot, civil commotion or sabotage;
- (d) breakdown of or accident to plant, machinery or equipment (excluding a breakdown caused by any failure of the person claiming Force Majeure to maintain plant, machinery or equipment in a proper manner);

- (e) restraints, embargoes or other unforeseeable actions by the government of Victoria or the government of the Commonwealth of Australia; or
- (f) any Act of Parliament, regulation, by-law, order, ordinance or rule.

11. EARLY TERMINATION AND REDUCTION OF THE RELEVANT WOODLOTS

11.1 Termination for default

- (a) The relevant Grower may terminate this Sub-Lease in respect of the relevant Woodlots with immediate effect if the Responsible Entity commits a material breach of this Sub-Lease and fails to remedy the breach or make reasonable compensation in money within thirty (30) days after the relevant Grower has served a written notice on the Responsible Entity requiring the Responsible Entity to remedy the breach.
- (b) The Responsible Entity may terminate this Sub-Lease in respect of the relevant woodlots with immediate effect if:
 - (i) the relevant Grower fails to pay any instalment of annual rent by the due date for payment and such amount is not paid in full within three months after the Responsible Entity has served a written notice on the relevant Grower requesting payment; or
 - (ii) the relevant Grower commits a material breach of this Sub-Lease and fails to remedy the breach or make reasonable compensation in money within thirty (30) days after the Responsible Entity has served a written notice on the relevant Grower requiring the relevant Grower to remedy the breach.

11.2 Loss of Trees

- (a) If, in respect of any of the relevant Woodlots:
 - (i) the whole or a substantial part of the Trees is damaged or destroyed whether by fire or any other cause whatsoever; or
 - (ii) an independent forestry consultant commissioned by the relevant Grower reasonably determines that the whole or a substantial part of the Trees is no longer commercially viable,

the relevant Grower may terminate this Sub-Lease in respect of the relevant Woodlots by giving not less than four (4) months' prior written notice of such termination to the Responsible Entity. Termination under this clause takes effect on and from the 30 June next following the expiration of the period of notice.
- (b) If so directed by the Responsible Entity in writing within two (2) months after receipt of the relevant Grower's notice of termination, the relevant Grower must, subject to clause 18.11, at the relevant Grower's expense forthwith remove from the relevant Woodlots all trees, logs, stumps and debris forming part of or derived from the Trees and re-seed pasture on the relevant Woodlots.

11.3 Reduction of the relevant Woodlots

(a) If in respect of any of the relevant Woodlots:

- (i) part of the Trees is damaged or destroyed whether by fire or any other cause whatsoever; or
- (ii) an independent forestry consultant commissioned by the relevant Grower reasonably determines that part of the Trees is no longer commercially viable,

the relevant Grower may terminate this Sub-Lease in respect of that portion of the relevant Woodlots on which the affected part of the Trees is or was, growing ("the surrendered area"), by giving not less than four months prior written notice of such termination to the Responsible Entity. Termination under this clause takes effect on and from the later of:

- (i) the 30 June next following the expiration of the period of notice; and
- (ii) the date on which the relevant Grower has met all of its obligations under clause 11.3(b).

(b) If so directed by the Responsible Entity in writing within two (2) months after receipt of the relevant Grower's notice of termination, the relevant Grower must, subject to clause 18.11, at the relevant Grower's expense forthwith remove from the surrendered area all trees, logs, stumps and debris forming part of or derived from the Trees and, provided it is reasonably practicable to do so, fence off the surrendered area from the remainder of the relevant Woodlots, re-seed pasture on the surrendered area and provide the Responsible Entity and the lessor or sub-lessor under the Head Lease with reasonable access to the surrendered area.

11.4 Effect of termination

- (a) Termination of this Sub-Lease under clauses 11.1 or 11.2 or reduction of the relevant Woodlots under clause 11.3 is without prejudice to any rights or obligations which may have accrued prior to the date of termination.
- (b) Termination of this Sub-Lease in respect of a relevant Woodlot or part of a relevant Woodlot under this part 11 does not affect the rights or obligations of the Parties in respect of any other relevant Woodlot or other part of the relevant Woodlot.

11.5 Limited right of termination

Except as expressly provided in this Part, neither the Responsible Entity nor the relevant Grower is entitled to terminate or rescind this Sub-Lease and the Responsible Entity is not entitled to re-enter the relevant Woodlots or forfeit this Lease, at any time prior to the expiration of the Term.

12. RIGHTS AND OBLIGATIONS ON EXPIRATION OR TERMINATION

12.1 Removal of stumps, roads and tracks

The Responsible Entity acknowledges and agrees with the relevant Grower that, except to the extent that clauses 11.2(b) and 11.3(b) apply, the relevant Grower will not be liable to remove or to pay for the removal of:

- (a) any stumps from the relevant Woodlots; or
- (b) any roads or tracks constructed on the relevant Woodlots or on any neighbouring land under clause 8.5,

at the expiration or earlier termination of this Sub-Lease.

12.2 Removal of products and equipment

During the three (3) month period following the expiration of this Sub-Lease, the relevant Grower may enter upon the relevant Woodlots and remove any products derived from the Trees and any plant, equipment, implements or other things brought onto the relevant Woodlots by or on behalf of the relevant Grower during the Term.

12.3 Products and equipment left by the relevant Grower

- (a) Any plant, equipment, implements or other things brought onto the relevant Woodlots by or on behalf of the relevant Grower, which are not removed by the relevant Grower within the three (3) month period referred to in clause 12.2; and
- (b) any part of the Trees not harvested by the relevant Grower during the Term (as extended or renewed),

will be the property of the Responsible Entity.

13. Ownership of the Trees

13.1 Ownership

The Responsible Entity acknowledges and agrees with the relevant Grower that for so long as this Sub-Lease has not been terminated for non-payment of Annual Rent under clause 11.1(b) and the relevant Grower continues to pay the Annual Rent the Trees will be and will remain the property of the relevant Grower for the period referred to in paragraph 13.3(b).

13.2 Additional Rights

The Responsible Entity hereby transfers and grants to the relevant Grower the following rights in addition to the other rights granted to the relevant Grower under this Sub-Lease:

- (a) to establish, tend and manage the Trees and to cultivate and plant seedling trees as part of the Trees;

- (b) to enter upon the relevant Woodlots with or without vehicles and, to the exclusion of the Responsible Entity and all other persons, to harvest the Trees and remove and sell the products derived from the Trees; and
- (c) to exercise and enjoy such of the rights and powers granted to the relevant Grower under this Lease as may be necessary to enable the relevant Grower to exercise the rights referred to in paragraphs (a) and (b) above.

13.3 Independent Proprietary Interest

- (a) The rights and interests granted to the relevant Grower under clauses 13.1 and 13.2 constitute an independent and severable grant of a proprietary interest in the relevant Woodlots by the Responsible Entity to the relevant Grower.
- (b) In the event that the Term or the leasehold interest of the relevant Grower under this Sub-Lease:
 - (i) ends; or
 - (ii) is terminated (other than by effluxion of time or by the operation of Parts 4 or 11); or
 - (iii) becomes void whether by reason of some act or default of the Responsible Entity or of the trustee in bankruptcy, receiver, receiver and manager, controller, administrator or liquidator of the Responsible Entity, or for any other reason whatsoever,

the rights and interests granted to the relevant Grower under clauses 13.1 and 13.2, unless expressly surrendered by the relevant Grower, continue in full force and effect and may be exercised and enjoyed by the relevant Grower until the date on which the Term would have ended by effluxion of time.

14. MINING AND PETROLEUM ACTIVITIES

14.1 Definitions

In this part, the following expressions have the following meanings:

"Mining Activities" means all activities that may be carried out pursuant to a Mining Tenement.

"Mining Tenement" means any right or title available under the Mineral Resources Development Act 1990 and includes a permit to enter on private land.

"Petroleum Activities" means all activities that may be carried out pursuant to a Petroleum Title.

"Petroleum Title" means any right or title available under the Petroleum Act 1958 and includes a permit to enter on private land.

14.2 Application for Mining Tenement or Petroleum Title

If any person applies for a Mining Tenement or a Petroleum Title over any part of the relevant Woodlots, then the following provisions will apply:

- (a) The Responsible Entity must promptly notify the relevant Grower.
- (b) Neither the Responsible Entity nor the Grower may consent to the application or do any act or thing that may assist the grant of the application.
- (c) The relevant Grower will be entitled to object to or resist the application or to restrict the scope of the rights to be obtained by virtue of the grant of the application, to the fullest extent permitted by law.
- (d) For the purpose of giving full effect to paragraph (c) above, the Responsible Entity must sign such documents as the relevant Grower may require, and the relevant Grower will be entitled to take such proceedings in the name of the Responsible Entity as the relevant Grower considers appropriate. The relevant Grower hereby indemnifies the Responsible Entity for any loss suffered by the Responsible Entity as a direct consequence of the relevant Grower exercising its rights under this paragraph (d).
- (e) The Responsible Entity hereby appoints the relevant Grower its lawful attorney to execute the documents and to do the things referred to in paragraph (d).

14.3 Grant of Mining Tenement or Petroleum Title

If a Mining Tenement or a Petroleum Title is granted over any part of the relevant Woodlots, then the following provisions will apply:

- (a) The Responsible Entity must keep the relevant Grower informed as to the Mining Activities or Petroleum Activities carried out upon the relevant Woodlots, and must forward copies of all communications with the persons carrying out or proposing to carry out such activities.
- (b) The Responsible Entity must not consent to any use of water, felling of trees, stripping of bark or cutting of timber on the relevant Woodlots.
- (c) If any compensation becomes payable by virtue of or in respect of Mining Activities or Petroleum Activities on the relevant Woodlots, then the Responsible Entity and the relevant Grower will be entitled to compensation according to their respective interests in the area affected by those activities. The Responsible Entity and the relevant Grower will each be responsible for negotiating and recovering such compensation.
- (d) If this Sub-Lease is terminated under clause 11.2 or area of the relevant Woodlots is reduced under clause 11.3 as a result of Mining Activities or Petroleum Activities being carried out on the relevant Woodlots, the provisions of clauses 11.2(b) and 11.3(b) will not apply in respect of such termination or reduction.

15. Warranties

The Responsible Entity represents and warrants that:

- 15.1 as at the date of execution of this Sub-Lease, the Head Lease is valid and subsisting;
- 15.2 the Responsible Entity is entitled under the Head Lease to grant this Sub-Lease to the relevant Grower; and
- 15.3 any consents which may be required to the granting of this Sub-Lease (other than those referred to in clause 4.1) have been obtained.

16. Notices

- 16.1 All notices, consents, approvals and other communications required or authorised to be given under this Sub-Lease ("Notices") must be in writing and may be personally delivered or sent by pre-paid post or facsimile to the addressee's address specified in this Sub-Lease or such other address as the addressee may have notified from time to time. A Notice shall be deemed to be received:

- (a) if personally delivered, upon receipt;
- (b) if sent by pre-paid post within Australia, on the third day after posting;
- (c) if sent by pre-paid post outside Australia, on the seventh day after posting; and
- (d) if sent by facsimile, upon production of a successful transmission report by the sender's facsimile machine.

17. Caveat

- 17.1 The relevant Grower may at its own expense lodge a caveat at the Land Titles Office in respect of its interest under this Sub-Lease.
- 17.2 The Responsible Entity agrees to provide to the relevant Grower all plans and other details reasonably necessary to enable the relevant Grower to lodge a caveat.
- 17.3 Upon the expiration or earlier termination of this Sub-Lease, the relevant Grower must promptly withdraw at its own expense any caveat lodged under this clause.
- 17.4 The relevant Grower irrevocably appoints the Responsible Entity its attorney to execute a withdrawal of any caveat required to be withdrawn by the Grower pursuant to clause 17.3 in the event of the relevant Grower failing promptly to do so.
- 17.5 The relevant Grower agrees to ratify anything done by the attorney in accordance with clause 17.4.

18. GENERAL**18.1 Further assurances**

Each Party agrees to sign such documents and do all such acts, matters and things as may be reasonably required by any other Party to give effect to this Sub-Lease.

18.2 Voiding insurances

Each Party agrees that it will not do or permit or suffer to be done any act, manner or thing which may prejudice or render void or voidable any insurances in respect of the relevant Woodlots or the Trees or result in the premiums for such insurances being increased.

18.3 Transfer of Land Act

To the extent permitted by law, all provisions implied by the Transfer of Land Act 1958 are expressly excluded from this Sub-Lease.

18.4 Property Law Act

The provisions of section 144(1) of the Property Law Act 1958 do not apply to this Sub-Lease.

18.5 Proper law

This Sub-Lease is governed by and construed in accordance with laws of the State of Victoria and where applicable of the Commonwealth of Australia and the parties agree to submit to the jurisdiction of the courts of that State.

18.6 Severability

If any provision of this Sub-Lease is or becomes void or unforeseeable, that provision will be severed from this Sub-Lease to the intent that the remaining provisions of this Sub-Lease will continue in full force and effect.

18.7 Parties may act through agents

All rights granted to a Party and all obligations imposed on a Party under this Sub-Lease may be enjoyed or performed (as the case may be) by that Party's employees, agents and contractors.

18.8 No Partnership

Nothing contained in this Sub-Lease may constitute a partnership between the Parties to this Sub-Lease. No Party may hold itself out as the partner of the other of them. This Sub-Lease is not for the benefit of any person not a party to this Sub-Lease and is not to be deemed to give any right or remedy to any such party whether referred to in this Sub-Lease or not.

18.9 Waivers

No waiver by any Party of any breach of this Sub-Lease is to be deemed a waiver of any preceding or succeeding breach of this Sub-Lease.

18.10 Assignment

- (a) The relevant Grower covenants that the Responsible Entity does have the full and free right to deal with any of its rights and interests under this Sub-Lease to such other parties and on such terms and conditions as the Responsible Entity sees fit, providing at all times that the Responsible Entity may not transfer, lease, mortgage, charge, assign, part with possession or otherwise dispose of its interest in the relevant Woodlots without first obtaining a deed of covenant by the proposed transferee, lessee, mortgagee, chargee, assignee, person who acquires possession or person who receives the disposal (the "Grantee") containing a covenant by the Grantee in favour of the relevant Grower that the Grantee will at all times during the Term observe and perform all or any of the covenants contained or implied in this Sub-Lease to be observed or performed by the Responsible Entity.
- (b) All costs associated with the preparation, completion and stamping of any deed of covenant required by the immediately preceding subclause must be paid by the Responsible Entity or Grantee, and the relevant Grower will not be required to contribute in any way to such costs.
- (c) The relevant Grower may only transfer, mortgage, assign or otherwise dispose of this SubLease or any of its rights or interests under this Sub-Lease in accordance with the provisions of the Project Deed and otherwise may not assign sub-let or part with possession of the relevant Woodlots or any part thereof or otherwise by any act or deed to procure or allow or suffer (either voluntarily or involuntarily) the relevant Woodlots or any part thereof to be assigned transferred or sub-let or the possession thereof parted with and for all or any part of the term AND IT IS HEREBY DECLARED that nothing contained or implied in sections 80 and 82 of the Property Law Act 1969 applies to this Sub-Lease and both sections are hereby expressly excluded.

18.11 Limitation of liability of relevant Grower

- (a) Despite any other provision of this Agreement (other than clause 18.13), in no circumstances is the relevant Grower obliged to contribute any money or incur any other liability under this Agreement in excess of the aggregate of annual rent, the amount of the fees set out in parts 1(i) to (iii) of the schedule to the Management Agreement and the Proceeds.
- (b) Once a transmission, transfer, mortgage, assignment or other disposal of the entire interest of the relevant Grower has been

perfected in accordance with the provisions of the Project Deed, then the relevant Grower no longer remains liable under this Sub-Lease.

18.12 Delegation

The relevant Grower may, for the better performance of its obligations under this Sub-Lease, employ any person as an agent and all rights granted and obligations imposed upon the relevant Grower (except the grant to the relevant Grower of the leasehold estate) may be enjoyed and performed by the relevant Grower's agent, contractors and their employees, but delegation of any of the relevant Grower's obligations under this Sub-Lease does not release it from liability under this Sub-Lease.

18.13 Goods and Services Tax

- (a) If any supply made by the Responsible Entity to the Grower under this Agreement is a taxable supply (according to GST law) so that the Responsible Entity is liable to pay GST, the parties agree that the consideration payable for that supply represents the value of the supply (that is, the GST exclusive amount) and not the price for that supply.
- (b) The price for any taxable supply made by the Responsible Entity under this Agreement is the GST inclusive amount which is determined by increasing the consideration payable by an amount equal to the GST exclusive amount multiplied by the GST rate in force from time to time
- (c) The Grower must, in respect of each taxable supply, pay the GST inclusive amount when due under this Agreement without deduction or set off and the Project Manager must issue a tax invoice to the Grower no later than 28 days after being requested to do so by the Grower.
- (d) The Grower must also pay to the Responsible Entity any other taxes imposed or assessed in respect of this Lease or any transaction contemplated by this Lease from time to time other than stamp duty and land tax.

14

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

LIST A

No 9299 of 2009

IN THE MATTER OF TIMBERCORP SECURITIES LIMITED
(IN LIQUIDATION)
ACN 092 311 469

TIMBERCORP SECURITIES LIMITED (IN LIQUIDATION) (ACN 092 311 469)
IN ITS CAPACITY AS RESPONSIBLE ENTITY OF EACH OF THE
MANAGED INVESTMENTS SCHEMES LISTED IN SCHEDULE 1
AND IN ITS CAPACITY AS MANAGER OF THE UNREGISTERED
MANAGED INVESTMENTS SCHEME LISTED IN
SCHEDULE 2 OF THE ORIGINATING PROCESS
First Plaintiff

MARK ANTHONY KORDA
Second Plaintiff

LEANNE KYLIE CHESSER
Third Plaintiff

CERTIFICATE IDENTIFYING EXHIBIT

Date of document: 29 September 2009
Filed on behalf of: the Plaintiffs

Prepared by:
ARNOLD BLOCH LEIBLER
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Ref: 01-1499489
(Leon Zwier lzwier@abl.com.au)

This is the exhibit marked "**MAK-9**" now produced and shown to **MARK ANTHONY KORDA** at
the time of swearing his affidavit on 29 September 2009.

Before me: _____

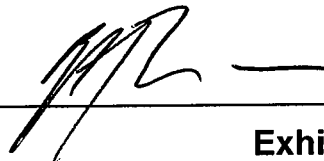


Exhibit "**MAK-9**"

Order of Finklestein J of 18 August 2009 in Federal Court Proceeding

VID 595 of 2009

BRIDGETTE AILSA TOY-CRONIN
Arnold Bloch Leibler
Level 21, 333 Collins Street
Melbourne 3000
An Australian Legal Practitioner within the
meaning of the Legal Profession Act 2004

MAK-9

IN THE FEDERAL COURT OF AUSTRALIA

DISTRICT REGISTRY

NOTICE OF FILING

This document was filed electronically in the Federal Court of Australia on 19 August, 2009

CASE DETAILS

Case Number: VID 595 OF 2009
Case Description: In the matter of Timbercorp Securities Limited (In Liquidation)
District Registry: Victoria
Document Type: Order



Warwick Soden

Dated: 19 August, 2009

Registrar

Note

This Notice forms part of the document and contains information that might otherwise appear elsewhere in the application. The Notice must be included in the document served on each party to the proceeding.

IN THE FEDERAL COURT OF AUSTRALIA
VICTORIA DISTRICT REGISTRY

No. 595



IN THE MATTER OF TIMBERCORP SECURITIES LIMITED (IN LIQUIDATION)
(ACN 092 311 469)

TIMBERCORP SECURITIES LIMITED (IN LIQUIDATION) (ACN 092 311 469)
IN ITS CAPACITY AS RESPONSIBLE ENTITY OF EACH OF THE
MANAGED INVESTMENTS SCHEMES LISTED IN SCHEDULE 1
AND IN ITS CAPACITY AS MANAGER OF THE UNREGISTERED
MANAGED INVESTMENTS SCHEME LISTED IN SCHEDULE 2
First Plaintiff

MARK ANTHONY KORDA
Second Plaintiff

LEANNE KYLIE CHESSE
Third Plaintiff

ORDER

(Order 36, rule 4)

JUDGE: The Honourable Justice Finkelstein

DATE OF ORDER: 18 August 2009

WHERE MADE: Melbourne

THE COURT ORDERS THAT:

- 1 The Second and Third Plaintiffs are justified in procuring the First Plaintiff as responsible entity to amend the constitutions of the managed investment schemes listed in Schedules 1 and 2 to this Order, pursuant to section 601GC(1)(b) of the *Corporations Act 2001* (Cth) by executing a deed in the form contained in Schedule 3 for each of the constitutions.

THE COURT ORDERS THAT:

- 2 Each Plaintiff be indemnified out of the scheme property of each scheme specified in Schedules 1 and 2 to this Order (**Forestry Schemes**) for its costs and expenses of, and incidental to the application, including the reasonable costs (including legal costs on an indemnity basis), expenses and remuneration of the Second and Third

Filed on behalf of the Plaintiffs

ARNOLD BLOCH LEIBLER
Lawyers and Advisers
Level 21
333 Collins Street
Melbourne 3000

DX 38455 Melbourne
Tel: 9229 9999
Fax: 9229 9900
Ref: 011499489
(Leon Zwier)



Plaintiffs incurred in causing the First Plaintiff to bring the application and such expenses and remuneration to be paid in priority to any other amounts paid out of scheme property of each of the Forestry Schemes.

- 3 Reserve for further consideration the question whether the Plaintiffs' costs should be borne by any particular beneficiary or class of beneficiary of the scheme property.
Reserve the costs of David Sydney Butterfield and the Timbercorp Growers Group

Date that entry is stamped:

Deputy District Registrar



SCHEDULE 1

REGISTERED MANAGED INVESTMENT SCHEMES

1. 1997 Timbercorp Eucalypts Project (ARSN 112 309 234);
2. 1998 Timbercorp Eucalypts Project (ARSN 112 309 216);
3. 1999 Timbercorp Eucalypts Project (ARSN 085 827 872);
4. 2000 Timbercorp Eucalypts Project (ARSN 091 172 093);
5. 2001 Timbercorp Eucalypts Project (ARSN 094 392 000);
6. 2002 Timbercorp Eucalypts Project (ARSN 098 233 571);
7. 2003 Timbercorp Eucalypts Project (ARSN 103 183 446);
8. 2004 Timbercorp Eucalypts Project (ARSN 108 099 645);
9. 2004 Timbercorp Timberlot (Single Payment) Project (ARSN 108 336 830);
10. 2005 Timbercorp Timberlot (Single Payment) Project (ARSN 111 683 491); and
11. 2007/2008 Timbercorp Timberlot (Single Payment) Project (ARSN 122 510 981).



SCHEDULE 2

UNREGISTERED MANAGED INVESTMENT SCHEMES

1. 1999 Timbercorp Eucalypts Double Rotation Project (Private Offer)(Unregistered).

SCHEDULE 3

Timbercorp Securities Limited (in liquidation)
ACN 092 31



Amendment Deed

[insert name of Project]

ARSN [insert]

THIS DEED POLL is made on

2009



PARTIES

TIMBERCORP SECURITIES LIMITED (IN LIQUIDATION)

ACN 092 311 469
of Level 8, 461 Bourke Street, Melbourne 3000
("TSL")

BACKGROUND

- A TSL was appointed the responsible entity of the [insert name of Project] (ARSN insert) pursuant to the Constitution.
- B TSL is desirous of disposing of its assets including various leases granted by third parties.
- C In order to give clear and free title to the assignee of any lease, any sub-leases of the leased land may need to be surrendered.
- D TSL considers it appropriate that it be granted the power to surrender each sub-lease on behalf of the Growers.
- E TSL and the liquidators of TSL applied to the Federal Court of Australia for a direction that the liquidators of TSL would be justified in executing or procuring TSL to execute a deed amending the Constitution, pursuant to section 601GC(1)(b) of the *Corporations Act*, in the form of this Deed.
- F On 18 August 2009, Justice Finkelstein of the Federal Court of Australia gave the direction sought.
- G In accordance with section 601GC of the *Corporations Act* and the directions of the Court, TSL has executed this deed to modify the Constitution in the manner set out in this deed.

AGREED TERMS



1 Definitions and interpretation

1.1 Definitions

In this deed, unless the context requires otherwise, terms that are defined in the Constitution have the same meaning and:

"Constitution" means the constitution dated [insert date] (as amended).

"Effective Date" means the date this deed is lodged with the Australian Securities and Investments Commission.

1.2 Interpretation

Clause 1.2 of the Constitution applies to the interpretation of this deed.

2 Amendment

The Constitution is amended with effect on and from the Effective Date by inserting after clause 11(f) the following clause:

"(fa) to assign, terminate, surrender or otherwise deal with any Sub-lease;"

2.1 Remains in effect

Except as specifically amended by this document, all terms and conditions of the Constitution remain in full force and effect.

2.2 Read as a single document

With effect on and from the Effective Date:

- (a) the parties are bound by the Constitution as amended by this deed; and
- (b) the Constitution is to be read as a single integrated document incorporating those amendments.

3 General

3.1 Paramountcy of document

If this deed conflicts with any other document, agreement or arrangement, this document prevails to the extent of the inconsistency.

3.2 Attorneys

Each person who executes this deed on behalf of a party under a power of attorney warrants that he or she has no notice of the revocation of that power or of any fact or



circumstance that might affect his or her authority to execute this document under that power.

3.3 Governing law and jurisdiction

This deed will be governed by and construed in accordance with the laws in force in the State of Victoria and each party submits to the non-exclusive jurisdiction of the courts of that State.

EXECUTED as a DEED

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

Signature of witness

Signature of liquidator

Name of witness (print)

Date that entry is stamped:

.....
An officer acting with the authority of the
DISTRICT REGISTRAR

Version 1