

IN THE MATTER OF GREAT SOUTHERN MANAGERS AUSTRALIA LIMITED (ACN 083 825 405) (IN LIQUIDATION)

**GREAT SOUTHERN MANAGERS AUSTRALIA LIMITED (ACN 083 825 405 ) (IN LIQUIDATION IN ITS CAPACITY AS RESPONSIBLE ENTITY OF THE MANAGED INVESTMENT SCHEMES LISTED IN SCHEDULE 1 OF THE PLAINTIFFS' APPLICATION)** First Plaintiff

**GREAT SOUTHERN OLIVES COMPANY LIMITED (ACN 121 381 208) (IN LIQUIDATION)** Second Plaintiff

**GREAT SOUTHERN OLIVE HOLDINGS PTY LIMITED (ACN 111 092 374) (IN LIQUIDATION)** Third Plaintiff

**ANDREW JOHN SAKER** Fourth Plaintiff

**MARTIN BRUCE JONES** Fifth Plaintiff

**DARREN GORDON WEAVER** Sixth Plaintiff

**JAMES HENRY STEWART** Seventh Plaintiff

**JAMES THACKRAY** First Defendant

**TONY MCGRATH** Second Defendant

**COLIN NICOL** Third Defendant

**THE GROWERS LISTED IN SCHEDULE 8 OF THE APPLICATION** Fourth Defendant

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**RESPONSE TO PLAINTIFFS' REQUEST FOR FURTHER AND BETTER PARTICULARS DATED 21 JANUARY 2011**

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Date of document: 18 March 2011

Filed on behalf of: Bendigo and Adelaide Bank Ltd, the 4065<sup>th</sup> Fourth Defendant

Date of filing: 18 March 2011

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The 4065<sup>th</sup> Fourth Defendant (the **Bank**) provides the following responses to the Plaintiffs' request for further and better particulars dated 21 January 2011 of the Bank's Defence dated 30 August 2010.

Capitalised terms in this response have the same definition as contained in the Plaintiffs' Amended Statement of Claim dated 21 February 2011 unless otherwise stated.

**Paragraph 16**

1. Relevantly, paragraph 16 consists of a bare non-admission. This request is not a proper request for particulars.

**Paragraph 17**

2. Relevantly, paragraph 17 consists of a bare non-admission. This request is not a proper request for particulars.

**Paragraph 47**

3. The Bank assumes the reference to 'Growers' in this request should be a reference to the Bank. In any event, paragraph 47 consists of a bare non-admission. This request is not a proper request for particulars.

**Paragraph 48**

4. Paragraph 48 has been amended. The allegations for which further and better particulars are sought in respect of paragraph 48 are no longer made by the Bank.

**Paragraph 49**

5. Paragraph 49 has been amended. The allegations for which further and better particulars are sought in respect of paragraph 49 are no longer made by the Bank.

**Paragraph 51**

6. Paragraph 51 has been amended. The allegation for which further and better particulars is sought in respect of paragraph 51 is no longer made by the Bank.

**Answer – Paragraph 54**

7. Paragraph 54 has been amended. The allegations for which further and better particulars are sought in respect of paragraph 54 are no longer made by the Bank.

### **Paragraph 58**

8. Paragraph 58 has been amended. The allegations for which further and better particulars are sought in respect of paragraph 58 are no longer made by the Bank.

### **Paragraph 59**

9. Paragraph 59 has been amended. The allegations for which further and better particulars are sought in respect of paragraph 59 are no longer made by the Bank.

### **Paragraph 79**

10. Sub-paragraph 79(b) has been amended. The allegation for which further and better particulars is sought in respect of sub-paragraph 79(b) is no longer made by the Bank.
11. The request for particulars of sub-paragraph 79(c) is not a proper request for particulars. The allegation in paragraph 79 of the Amended Statement of Claim is that there was no proper purpose for GSMAL to incur the Maintenance Expenditure. That allegation is denied. If the Plaintiffs wish to allege that, notwithstanding the existence of a proper corporate purpose, the Liquidators had an overriding obligation not to incur the Maintenance Expenditure, by reason of section 545 of the *Corporations Act 2001* or otherwise, then that allegation should be properly pleaded.

### **Paragraph 87**

12. Sub-paragraph 87(b) has been amended. The allegation for which further and better particulars is sought in respect of sub-paragraph 87(b) is no longer made by the Bank.

### **Paragraph 88**

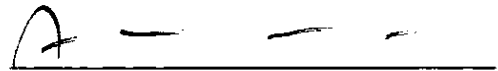
13. Sub-paragraph 88(b) has been amended. The allegation for which further and better particulars is sought in respect of sub-paragraph 88(b) is no longer made by the Bank.
14. Sub-paragraph 88(c) has been amended. The allegation for which further and better particulars is sought in respect of sub-paragraph 88(c) is no longer made by the Bank.

15. Sub-paragraph 88(d) has been amended. The allegation for which further and better particulars is sought in respect of sub-paragraph 88(d) is no longer made by the Bank.

**Paragraph 98**

16. This is not a proper request for particulars.
- (a) the Bank does not allege that the Head Leases are Scheme Property of the lessor and/or the lessee, the Head Leases are Scheme Property of the Growers;
- (b) the Bank does not allege that either GSOC and/or GSOH hold the Scheme Property on trust for the Growers, the Scheme Property is held on trust for the Growers by GSMAL.

Dated: 18 March 2011



Allens Arthur Robinson

Solicitors for the 4065<sup>th</sup> Fourth  
Defendant