

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE  
COMMERCIAL COURT  
CORPORATIONS LIST



IN THE MATTER OF GUNNS PLANTATIONS LIMITED (IN LIQUIDATION)  
(RECEIVERS & MANAGERS APPOINTED) (ACN 091 232 209) (IN ITS CAPACITY AS  
THE RESPONSIBLE ENTITY OF THE MANAGED INVESTMENT SCHEMES LISTED  
IN SCHEDULE 1)

DANIEL MATHEW BRYANT, IAN MENZIES CARSON AND CRAIG DAVID CROSBIE  
(IN THEIR CAPACITIES AS JOINT AND SEVERAL LIQUIDATORS OF GUNNS  
PLANTATIONS LIMITED (IN LIQUIDATION) (RECEIVERS & MANAGERS  
APPOINTED) (ACN 091 232 209))

First Plaintiffs

and

GUNNS PLANTATIONS LIMITED (IN LIQUIDATION) (RECEIVERS & MANAGERS  
APPOINTED) (ACN 091 232 209) (IN ITS CAPACITY AS THE RESPONSIBLE ENTITY  
OF THE MANAGED INVESTMENT SCHEMES LISTED IN SCHEDULE 1)

Second Plaintiff

### ORDER

**ASSOCIATE JUDGE:** The Honourable Associate Justice Gardiner

**DATE MADE:** 19 January 2018

**ORIGINATING PROCESS:** Originating process filed on 26 April 2013

**HOW OBTAINED:** On the return of the Plaintiffs' Interlocutory Process filed  
3 November 2016 (Interlocutory Process)

**ATTENDANCE:** Dr Oren Bigos, of Counsel, for the Plaintiffs.

Mr Adam Musgrave, a Grower, in person.

Mr Trevor Burdon, a Grower, in person.

**OTHER MATTERS:** A. This order is to be signed by an Associate Judge pursuant to  
Rule 60.02(1)(b) of the *Supreme Court (General Civil  
Procedure) Rules 2015* (Vic).

B. The Court had before it the following affidavits:

- i) affidavit of Craig David Crosbie, sworn 21 May  
2013 (the **First Crosbie Affidavit**);
- ii) affidavit of Daniel Matthew Bryant, affirmed  
1 November 2013 (the **Sixth Bryant Affidavit**);





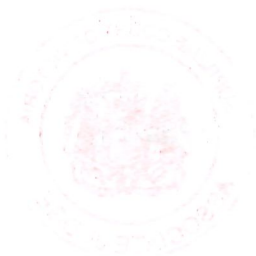
- iii) affidavit of Daniel Matthew Bryant, affirmed 20 December 2013 (the **Twelfth Bryant Affidavit**);
- iv) affidavit of Craig David Crosbie, sworn 2 November 2016 (the **Fifth Crosbie Affidavit**);
- v) affidavit of Meagan Louise Grose, sworn 20 February 2017; and
- vi) affidavit of Craig David Crosbie, sworn on 6 March 2017 (the **Sixth Crosbie Affidavit**).

B. The Court also had before it three folders of source materials which formed the basis of the summaries at exhibits CDC-5 to the Fifth Crosbie Affidavit and CDC-7 to the Sixth Crosbie Affidavit.

C. Some of the legal expenses the subject of paragraphs 1 and 4 of these Orders pre-date the Relevant Period, and are explained in paragraph 113 of the Fifth Crosbie Affidavit.

D. The Court is satisfied to a *prima facie* level that:

- i) the Plaintiffs have made sufficient disclosure to enable all interested persons to review the amounts claimed and object to them if they wish;
- ii) the claims are proportionate to the difficulty or importance of the work done or expense incurred;
- iii) the principles by which remuneration and expenses incurred during the period between 1 July 2014 until 31 May 2016 (the **Relevant Period**) have been related to the Great Southern Schemes and the Gunns Woodlot Schemes and have been allocated among the Schemes respectively as set out in the Fifth Crosbie Affidavit, are fair and reasonable; and
- iv) the principles by which remuneration and expenses that the Plaintiffs have and/or estimate will be incurred from 1 June 2016 until the Schemes end or the liquidation of the Second Plaintiff ends, whichever is later, are and/or will be related to the Great Southern Schemes and the Gunns Woodlot Schemes and will be allocated among the Schemes respectively as set out in the Fifth Crosbie Affidavit, are fair and reasonable.



- E. The Plaintiffs informed the Court that they will only charge to the Schemes the Future Costs that are actually incurred.

**THE COURT ORDERS AND DIRECTS THAT:**

*Great Southern Scheme Related Costs*

- 1 The First Plaintiffs (the **Liquidators**) are justified and otherwise acting properly and reasonably in claiming the costs, expenses and remuneration incurred in relation to the Schemes listed in Schedule 2 to these Orders (**Great Southern Schemes**) during the period between 1 July 2014 until 31 May 2016 (**Relevant Period**) as set out in the categories in Schedule 3A and the amounts in Schedule 4A (**Great Southern Scheme Related Costs**) as costs, expenses and remuneration reasonably incurred in caring for, protecting and preserving the assets and/or realisation of property of the Great Southern Schemes including the trees (the **Great Southern Scheme Property**), as contemplated by paragraph 5 of the orders made by the Honourable Justice Ferguson on 9 September 2013 (**9 September Orders**).
- 2 The Liquidators are justified in claiming an entitlement to:
  - (a) an indemnity for those Great Southern Scheme Related Costs payable out of the Great Southern Scheme Property, whether present or future;
  - (b) an equitable lien over the Great Southern Scheme Property, whether present or future, in accordance with the principles in *Re Universal Distributing Co Ltd (in liq)* (1933) 48 CLR 171 and/or the “salvage principle” (**Lien**) to secure that indemnity; and
  - (c) payment of those Great Southern Scheme Related Costs out of the Great Southern Scheme Property.
- 3 The Liquidators are justified in procuring the Second Plaintiff (**GPL**) to deduct, insofar as there are sufficient funds from the proceeds of sale of the Great Southern Scheme Property, the Great Southern Scheme Related Costs on a scheme-by-scheme basis.



*Gunns Woodlot Scheme Related Costs*

- 4 The Liquidators are justified and otherwise acting properly and reasonably in claiming the costs, expenses and remuneration incurred in relation to the Schemes listed in Schedule 1 to these Orders (**Gunns Woodlot Schemes**) during the Relevant Period as set out in the categories in Schedule 3B and the amounts in Schedule 4B (**Gunns Woodlot Scheme Related Costs**) as costs, expenses and remuneration reasonably incurred in caring for, protecting and preserving the assets and/or realisation of property of the Gunns Woodlot Schemes including the trees (**Gunns Woodlot Scheme Property**), as contemplated by paragraph 5 of the 9 September Orders.
- 5 The Liquidators are justified in claiming an entitlement to:
- (a) an indemnity for those Gunns Woodlot Scheme Related Costs payable out of the Gunns Woodlot Scheme Property, whether present or future;
  - (b) a Lien over the Great Southern Scheme Property, whether present or future, to secure that indemnity; and
  - (c) payment of those Gunns Woodlot Scheme Related Costs out of the Gunns Woodlot Scheme Property.
- 6 The Liquidators are justified in procuring GPL to deduct, insofar as there are sufficient funds from the proceeds of sale of the Gunns Woodlot Scheme Property, the Gunns Woodlot Scheme Related Costs on a scheme-by-scheme basis.

*Great Southern Scheme Prospective Future Costs*

- 7 The Liquidators are justified and otherwise acting properly and reasonably in claiming the costs, expenses and remuneration incurred since 1 June 2016 and that, it is anticipated, will continue to be incurred in relation to the Great Southern Schemes as set out in the categories in Schedule 3C and the amounts in Schedule 4C (the **Great Southern Scheme Prospective Future Costs**) until the Great Southern Schemes end or the liquidation of GPL ends, whichever is the later (the **Great Southern Future Period**), as costs, expenses and remuneration reasonably incurred in caring for, protecting and preserving and/or realisation of the Great Southern Scheme Property.



- 8 The Liquidators are justified in claiming an entitlement to:
- (a) an indemnity for the Great Southern Scheme Prospective Future Costs payable out of the Great Southern Scheme Property, whether present or future;
  - (b) a Lien over the Great Southern Scheme Property, whether present or future, to secure that indemnity; and
  - (c) payment of the Great Southern Scheme Prospective Future Costs out of the Great Southern Scheme Property.
- 9 The Liquidators are justified in procuring GPL to deduct, insofar as there are sufficient funds from the proceeds of sale of the Great Southern Scheme Property, the Great Southern Scheme Prospective Future Costs on a scheme-by-scheme basis.

*Gunns Woodlot Scheme Prospective Future Costs*

- 10 The Liquidators are justified and otherwise acting properly and reasonably in claiming the costs, expenses and remuneration incurred since 1 June 2016 and that, it is anticipated, will continue to be incurred in relation to the Gunns Woodlot Schemes as set out in the categories in Schedule 3D and the amounts in Schedule 4D (the **Gunns Woodlot Scheme Prospective Future Costs**) until the Gunns Woodlot Schemes end or the liquidation of GPL ends, whichever is the later (the **Gunns Woodlot Future Period**), as costs, expenses and remuneration reasonably incurred in caring for, protecting and preserving and/or realisation of the Gunns Woodlot Scheme Property.
- 11 The Liquidators are justified in claiming an entitlement to:
- (a) an indemnity for the Gunns Woodlot Scheme Prospective Future Costs payable out of the Gunns Woodlot Scheme Property, whether present or future;
  - (b) a Lien over the Great Southern Scheme Property, whether present or future, to secure that indemnity; and
  - (c) payment of the Gunns Woodlot Scheme Prospective Future Costs out of the Gunns Woodlot Scheme Property.



12 The Liquidators are justified in procuring GPL to deduct, insofar as there are sufficient funds from the proceeds of sale of the Gunns Woodlot Scheme Property, the Gunns Woodlot Scheme Prospective Future Costs on a scheme-by-scheme basis.

*Surplus Prospective Future Costs*

13 In the event that:

- (a) there are surplus funds after the liens referred to in paragraphs 2(b), 5(b), 8(b) and 11(b) of these Orders have been fully exercised; and
- (b) those surplus funds are less than the costs of distributing those surplus funds to Growers,

(the **Low Surplus Funds**), the Liquidators are justified and otherwise acting properly and reasonably by not distributing the Low Surplus Funds to Growers and treating the Low Surplus Funds as undistributed money under section 601NG of the *Corporations Act 2001* (Cth).

*Competing Claims*

14 The Liquidators are justified and otherwise acting properly and reasonably in claiming an administration fee of \$150 from each Grower with unresolved competing claims with their financier in relation to the proceeds, in the circumstances referred to in paragraphs 118 to 123 of the Fifth Crosbie Affidavit, as costs, expenses and remuneration reasonably incurred in caring for, protecting and preserving the assets and/or realisation of property of the Schemes.

*Other Matters*

15 Pursuant to s 50(1) of the *Evidence Act 2008* (Vic), the Liquidators may adduce the evidence of the contents of the source documents referred to in paragraph 173 of the Fifth Crosbie Affidavit, in the form of the summaries set out in the spreadsheets and tables exhibited to the Fifth Crosbie Affidavit and marked “CDC-5” and to the Sixth Crosbie Affidavit and marked “CDC-7”.



- 16 The Liquidators publish these orders on the websites of Arnold Bloch Leibler and of the Liquidators and email a copy of these orders to:
- (a) the Australian Securities and Investments Commission;
  - (b) the Receivers of GPL;
  - (c) the Committee of Inspection;
  - (d) the Grower Committee;
  - (e) Mr Adam Musgrave; and
  - (f) Mr Trevor Burdon.
- 17 The Liquidators be indemnified in respect of their costs of this application out of the scheme property of the Great Southern Schemes and the Gunns Woodlot Schemes and be entitled to a lien over the scheme property of the Great Southern Schemes and the Gunns Woodlot Schemes in respect of those costs.
- 18 The Plaintiffs and any person affected by these orders have liberty to apply on two days' notice.

**DATE AUTHENTICATED:** 19 January 2018

  
  
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**THE HON. ASSOCIATE JUSTICE GARDINER**

## SCHEDULE 1 - GUNNS WOODLOT SCHEMES

- 1 Gunns Plantations Woodlot Project 2000 ARSN 092 354 535
- 2 Gunns Plantations Woodlot Project 2001 ARSN 094 182 279
- 3 Gunns Plantations Woodlot Project 2002 ARSN 099 584 675
- 4 Gunns Plantations Woodlot Project 2003 ARSN 104 213 710
- 5 Gunns Plantations Woodlot Project 2004 ARSN 108 690 080
- 6 Gunns Plantations Woodlot Project 2005 ARSN 113 092 854
- 7 Gunns Plantations Ltd Woodlot Project 2006 ARSN 118 534 106
- 8 Gunns Plantations Ltd Woodlot Project 2008 ARSN 128 933 237
- 9 Gunns Plantations Ltd Woodlot Project 2009 ARSN 135 490 292





## SCHEDULE 2 - GREAT SOUTHERN SCHEMES

- 1 Great Southern Plantations 1998 ARSN 092780204
- 2 Great Southern Plantations 1999 ARSN 092452849
- 3 Great Southern Plantations 2000 ARSN 085 669 361
- 4 Great Southern Plantations 2001 ARSN 089 958 029
- 5 Great Southern Plantations 2002 ARSN 095 343 963
- 6 Great Southern Plantations 2003 ARSN 099 131 825
- 7 Great Southern Plantations 2004 ARSN 107 811 709
- 8 Great Southern Plantations 2005 ARSN 112744 877
- 9 Great Southern Plantations 2006 ARSN 112744 902



**SCHEDULE 3A - COST CATEGORIES FOR GREAT SOUTHERN SCHEMES FOR  
THE RELEVANT PERIOD**

<b>Cost Category</b>	<b>Exhibit</b>
<b>PPBA Remuneration</b>	
Method 1 Private Landowners	CDC-5
Method 1 General	CDC-5
Method 2 General	CDC-5
Method 4 New Forest	CDC-5
Method 5 Private Landowners	CDC-5
Method 6 General	CDC-5
<b>PPBA disbursements</b>	
Method 2 General	CDC-5
Method 4 Sale	CDC-5
<b>ABL Costs</b>	
Method 1 General	CDC-5
Method 2 General	CDC-5
Method 4 Sale	CDC-5
Method 5 Third Party	CDC-5
<b>Third Party Costs</b>	
Method 1 Service Agreement	CDC-5
Method 1 General maintenance	CDC-5
Method 1 Sale	CDC-5
Method 1 Harvesting costs	CDC-5
Method 2 Office Costs	CDC-5
Method 2 General maintenance costs	CDC-5



**SCHEDULE 3B - COST CATEGORIES FOR GUNNS WOODLOT SCHEMES FOR  
THE RELEVANT PERIOD**

<b>Cost Category</b>	<b>Exhibit</b>
<b>PPBA Remuneration</b>	
Method 1A Gunns	CDC-5
Method 1A Tumbarumba	CDC-5
Method 1A Private landowners	CDC-5
Method 1A General	CDC-5
Method 2A General	CDC-5
Method 4A Gunns	CDC-5
Method 4A Tumbarumba	CDC-5
Method 4A AFPT	CDC-5
Method 5A Private landowners	CDC-5
Method 6A General	CDC-5
<b>PPBA disbursements</b>	
Method 2A General	CDC-5
Method 4A Sale	CDC-5
<b>ABL Costs</b>	
Method 1A AFPT + FT	CDC-5
Method 1A Forestry Tasmania	CDC-5
Method 2A General	CDC-5
Method 4A Sale	CDC-5
Method 5A Third Party	CDC-5
<b>Third Party Costs</b>	
Method 1A Service Agreement	CDC-5
Method 1A Sale	CDC-5



<b>Cost Category</b>	<b>Exhibit</b>
Method 2A Office Costs	CDC-5
Method 2A General maintenance costs	CDC-5

**SCHEDULE 3C - FUTURE COST CATEGORIES FOR GREAT SOUTHERN SCHEMES**

<b>Cost Category</b>	<b>Exhibit</b>
<b>PPBA Remuneration</b>	
Method 2 Tax	CDC-4
Method 2 General	CDC-4
Method 1 Harvests	CDC-4
Method 2 ASIC liaison	CDC-4
Method 2 Fourth costs application affidavit	CDC-4
Method 2 Remuneration allocation & model maintenance	CDC-4
Method 1 Scheme winding up	CDC-4
Method 1 Landowner resolution	CDC-4
Method 6 Distribution	CDC-4
<b>PPBA disbursements</b>	
Method 2 General disbursements (including printing, photocopying, storage, travel and IT server maintenance)	CDC-4
Method 6 Distribution disbursements (postage of dividend notifications)	CDC-4
Method 1 Scheme wind up disbursements	CDC-4
<b>ABL Costs</b>	
Method 2 General Scheme (including tax resolution, fourth costs application, reviewing stakeholder communications and scheme wind up)	CDC-4
Method 1 Landowner resolution	CDC-4
<b>Third Party Costs</b>	



<b>Cost Category</b>	<b>Exhibit</b>
Method 1 Maintenance	CDC-4
Method 2 GPL office costs	CDC-4
Method 1 Harvest costs	CDC-4
Method 6 Third party distribution costs	CDC-4
Method 1 Scheme wind up financial reporting	CDC-4



**SCHEDULE 3D - FUTURE COST CATEGORIES FOR GUNNS WOODLOT  
SCHEMES**

<b>Cost Category</b>	<b>Exhibit</b>
<b>PPBA Remuneration</b>	
Method 2A Tax	CDC-4
Method 1A Forestry Tasmania resolution and court application	CDC-4
Method 2A General	CDC-4
Method 2A ASIC liaison	CDC-4
Method 2A Fourth costs application affidavit	CDC-4
Method 2A Remuneration allocation & model maintenance	CDC-4
Method 1A Scheme winding up	CDC-4
Method 1A Landowner resolution	CDC-4
Method 6A Distribution	CDC-4
<b>PPBA disbursements</b>	
Method 2A General disbursements (including printing, photocopying, storage, travel and IT server maintenance)	CDC-4
Method 6A Distribution disbursements (postage of dividend notifications)	CDC-4
Method 1A Scheme wind up disbursements	CDC-4
<b>ABL Costs</b>	
Method 2A General Scheme (including tax resolution, fourth costs application, reviewing stakeholder communications and scheme wind up)	CDC-4
Method 1A Landowner resolution	CDC-4
Method 1A Forestry Tasmania Costs	CDC-4



<b>Cost Category</b>	<b>Exhibit</b>
<b>Third Party Costs</b>	
Method 1A Maintenance	CDC-4
Method 2A GPL office costs	CDC-4
Method 6A Third party distribution costs	CDC-4
Method 1A Scheme wind up financial reporting	CDC-4



**SCHEDULE 4A - TOTAL CLAIM FOR GREAT SOUTHERN SCHEMES DURING  
THE RELEVANT PERIOD**

<b>Scheme</b>	<b>Costs (AUD\$)</b>
<b>Great Southern Schemes</b>	
Great Southern Plantations 1998 ARSN 092 780 204	14,184.58
Great Southern Plantations 1999 ARSN 092 452 849	19,552.51
Great Southern Plantations 2000 ARSN 085 669 361	211,417.19
Great Southern Plantations 2001 ARSN 089 958 029	79,069.88
Great Southern Plantations 2002 ARSN 095 343 963	234,481.42
Great Southern Plantations 2003 ARSN 099 131 825	766,574.44
Great Southern Plantations 2004 ARSN 107 811 709	928,585.87
Great Southern Plantations 2005 ARSN 112 744 877	713,179.69
Great Southern Plantations 2006 ARSN 112 744 902	648,443.51
<b>Total</b>	<b>3,615,459.08</b>





**SCHEDULE 4B - TOTAL CLAIM FOR GUNNS WOODLOT SCHEMES DURING  
THE RELEVANT PERIOD**

Scheme	Costs (AUD\$)
<b>Gunns Plantations Schemes</b>	
Gunns Plantations Woodlot Project 2002 ARSN 099 584 675 - Option 1	1,094,736.66
Gunns Plantations Woodlot Project 2002 ARSN 099 584 675 - Option 2	149,026.01
Gunns Plantations Woodlot Project 2003 ARSN 104 213 710 - Option 1	886,973.05
Gunns Plantations Woodlot Project 2003 ARSN 104 213 710 - Option 2	94,185.60
Gunns Plantations Woodlot Project 2004 ARSN 108 690 080 - Option 1	213,736.31
Gunns Plantations Woodlot Project 2004 ARSN 108 690 080 - Option 2	21,179.84
Gunns Plantations Woodlot Project 2005 ARSN 113 092 854 - Option 1	618,475.72
Gunns Plantations Woodlot Project 2005 ARSN 113 092 854 - Option 2	78,785.77
Gunns Plantations Limited Woodlot Project 2006 ARSN 118 534 106 - Option 1	822,594.51
Gunns Plantations Limited Woodlot Project 2006 ARSN 118 534 106 - Option 2	344,164.33
Gunns Plantations Limited Woodlot Project 2006 ARSN 118 534 106 - Option 3	400,065.26
Gunns Plantations Limited Woodlot Project 2008 ARSN 128 933 237 - Option 1	754,259.70
Gunns Plantations Limited Woodlot Project 2008 ARSN 128 933 237 - Option 2	107,205.95
Gunns Plantations Limited Woodlot Project 2008 ARSN 128 933 237 - Option 3	40,665.72



Gunns Plantations Ltd Woodlot Project 2009 ARSN 135 490 292 - Option 1	271,635.61
Gunns Plantations Ltd Woodlot Project 2009 ARSN 135 490 292 - Option 2	18,626.25
Gunns Plantations Ltd Woodlot Project 2009 ARSN 135 490 292 - Option 3	46,099.80
<b>Total</b>	<b>5,962,416.09</b>



**SCHEDULE 4C - TOTAL FUTURE COSTS CLAIM FOR GREAT SOUTHERN  
SCHEMES**

Scheme	Costs (AUD\$)
<b>Great Southern Schemes</b>	
Great Southern Plantations 1998 ARSN 092 780 204	92,979.05
Great Southern Plantations 1999 ARSN 092 452 849	102,234.61
Great Southern Plantations 2000 ARSN 085 669 361	319,370.10
Great Southern Plantations 2001 ARSN 089 958 029	98,166.85
Great Southern Plantations 2002 ARSN 095 343 963	170,272.65
Great Southern Plantations 2003 ARSN 099 131 825	414,226.33
Great Southern Plantations 2004 ARSN 107 811 709	604,749.41
Great Southern Plantations 2005 ARSN 112 744 877	667,266.61
Great Southern Plantations 2006 ARSN 112 744 902	552,554.19
<b>Total</b>	<b>3,021,819.80</b>



**SCHEDULE 4D - TOTAL FUTURE COSTS CLAIM FOR GUNNS WOODLOT  
SCHEMES**

Scheme	Costs (AUD\$)
<b>Gunns Plantations Schemes</b>	
Gunns Plantations Woodlot Project 2002 ARSN 099 584 675 - Option 1	354,950.06
Gunns Plantations Woodlot Project 2002 ARSN 099 584 675 - Option 2	89,775.47
Gunns Plantations Woodlot Project 2003 ARSN 104 213 710 - Option 1	479,073.53
Gunns Plantations Woodlot Project 2003 ARSN 104 213 710 - Option 2	78,167.81
Gunns Plantations Woodlot Project 2004 ARSN 108 690 080 - Option 1	123,088.09
Gunns Plantations Woodlot Project 2004 ARSN 108 690 080 - Option 2	20,097.03
Gunns Plantations Woodlot Project 2005 ARSN 113 092 854 - Option 1	328,318.44
Gunns Plantations Woodlot Project 2005 ARSN 113 092 854 - Option 2	49,808.87
Gunns Plantations Limited Woodlot Project 2006 ARSN 118 534 106 - Option 1	493,389.49
Gunns Plantations Limited Woodlot Project 2006 ARSN 118 534 106 - Option 2	232,837.96
Gunns Plantations Limited Woodlot Project 2006 ARSN 118 534 106 - Option 3	65,039.73
Gunns Plantations Limited Woodlot Project 2008 ARSN 128 933 237 - Option 1	374,765.30
Gunns Plantations Limited Woodlot Project 2008 ARSN 128 933 237 - Option 2	80,672.53
Gunns Plantations Limited Woodlot Project 2008 ARSN 128 933 237 - Option 3	5,899.17



Gunns Plantations Ltd Woodlot Project 2009 ARSN 135 490 292 - Option 1	168,653.54
Gunns Plantations Ltd Woodlot Project 2009 ARSN 135 490 292 - Option 2	14,834.29
Gunns Plantations Ltd Woodlot Project 2009 ARSN 135 490 292 - Option 3	16,089.79
<b>Total</b>	<b>2,975,461.12</b>



