

**IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COURT OF APPEAL**

SACPI 2011 0103

BETWEEN:

GRAHAM GOLDENBERG & ORS (according to the Schedule)

Appellants

- and -

BOSI SECURITY SERVICES LIMITED (ACN 009 413 852) & ORS (according to the schedule attached)

Respondents

AFFIDAVIT OF ELI GOLDFINGER

Date of document:	19 September 2012
Filed on behalf of:	MRB Equities Pty Ltd, Redvi Pty Ltd and Ferrari Investments Holdings Pty Ltd
MGA Lawyers	Solicitors Code: 104101
Level 9,	Tel: 8631 5555
179 Queen Street	Fax: 8631 5599
MELBOURNE VIC 3000	Ref: MG5400/08

I, **ELI GOLDFINGER**, accountant, of Level 18, 499 St Kilda Road, Melbourne, Victoria, **MAKE OATH AND SAY** as follows:

The Relevant Entities

1. I am the principal of EGA Corporate Advisers Pty Ltd ("**EGA**"), accountants, and a director of Redvil Pty Ltd ("**Redvil**"). Redvil is one of the funders of the Appellants in this appeal.
2. The other funders of the Appellants in this appeal are:
 - (a) MRB Equities Pty Ltd ACN 102 694 708 ("**MRB**");
 - (b) Ferrari Investments Holdings Pty Ltd ACN 133 024 549 ("**Ferrari Investments**").




which, together with Redvil, are referred to as the "Funders" in this affidavit.

3. Michael Buxton is the primary person behind MRB Equities and Peter Ferrari is the primary person behind Ferrari Investments. Now produced and shown to me and marked "EG-1", "EG-2" and "EG-3" are company searches for Redvil, MRB and Ferrari Investments respectively.
4. I am authorized to swear this affidavit of behalf of Redvil. I have been authorized by Mr Buxton and Mr Ferrari to swear this affidavit on behalf of MRB and Ferrari Investments also.
5. Mr Buxton and Mr Ferrari – or interests associated with them – were growers in the one or more of the Timbercorp schemes. I was not.
6. Christopher Garnaut is the managing director of Garnaut Private Client Advisers Pty Ltd, an investment advisory company. A number of the clients of Garnaut Private Client Advisers were growers in the various Timbercorp schemes including interests associated with Mr Ferrari and Mr Buxton.
7. Mr Ferrari and interests associated with him are clients of EGA and Garnaut Private Client Advisers Pty Ltd. Mr Buxton, and interests associated with him, are clients of Garnaut Private Client Advisers Pty Ltd and, although Mr Buxton is not a client of EGA, I have known him for many years through business dealings. I am a client of Garnaut Private Client Advisers Pty Ltd.
8. I am aware that when the Timbercorp group first went into administration, Mr Garnaut had established the Timbercorp Grower's Group and operated, in effect, as a spokesperson for the growers.

The Trial of the Proceeding

9. Following the decision of Robson J on 8 October 2009, the relevant assets of the various Timbercorp companies were sold and the monies were held in trust in accordance with the orders which his Honour made.



10. I am advised by Mr Garnaut and believe that the costs incurred in running the case before Robson J were funded in part by the fourth and/or fifth respondents ("**the Liquidator**") and in part by financial advisors whose clients had invested in Timbercorp.
11. By originating motion dated 15 December 2009, the First Respondent commenced proceeding No SCI 2009 10699 (the proceeding which resulted in the judgment under appeal).
12. The appellants were members of the Timbercorp Grower's Group and they had been nominated by the Timbercorp Grower's Group to represent the interests of the growers of the relevant fund in which they had invested. The Timbercorp Growers Group instructed Clarendon's Lawyers. This is set out in more detail in the affidavit of Michael Joseph Fernon, sworn 17 December 2009 in proceeding SCI 2009 10699, a copy of which is now produced and shown to me (without exhibits) as "**EG-4**".
13. At that time, another group representing growers was in existence – the TGG Almond Committee Inc which instructed Maurice Blackburn. Both groups proposed their members be made representatives in the proceeding.
14. Pursuant to the orders of Justice Davies dated 22 December 2009 the appellants were added as defendants and appointed as representatives of growers in particular almond project. A copy of the orders of Justice Davies dated 22 December 2009 is now produced and shown to me and marked "**EG-5**".
15. The decision of Davies J in the trial of this matter was delivered on 15 June 2011. I understand that the costs of the growers in the interlocutory proceedings and the original trial of the matter before Davies J were paid from the fund held in trust pursuant to orders of this Court.

The Appeal



16. A notice of appeal dated 11 July 2011 was filed in respect of the decision of Davies J. I am informed by Mr Garnaut and believe that he arranged for the payment of the costs in having the appeal drafted and filed.
17. By summons and supporting affidavit filed 27 July 2011, the Appellants sought to have the fund reconstituted and a pre-emptive costs order made against that fund. The application was opposed by at least some of the Respondents and it the application was not pursued. The Appellants were required to pay the Respondents' costs of that application and those costs have been paid by the Funders.
18. Mr Garnaut approached me and told me that he was looking for people to fund the appeal on commercial terms. He told me and I believe that he was not prepared to fund the appeal himself beyond what he had already done. He further advised me that a number of commercial litigation funders had been approached to fund the costs of the appeal but they had declined to do. He said that the liquidator had refused to fund the appeal and there was little interest from the growers or from financial advisors who had already contributed to costs without seeing any return and they had endured this case for a number of years.
19. Mr Garnaut asked if I would be prepared with other clients of his to fund the appeal on the same sort of terms that a commercial litigation funder would be prepared to fund the appeal. We discussed the fact that we would have to pay the grower's costs of appeal and agree to pay the costs of the other parties to the appeal if the appeal failed. If the appeal succeeded (whether by way of judgment or settlement) then we would be entitled to repayment of the costs we had paid plus a premium. Either Mr Garnaut told me at this time or I was told shortly after that this that the premium was usually about 35% of any judgment sum or settlement proceeds.
20. Mr Garnaut told me that although there were discussions about settlement in progress that they were preliminary and he did not know if they would amount to anything. He also said that there was significant risk in the



appeal and if the growers lost then we would have to pay the costs of the other side as well as the growers' costs of the appeal.

21. Mr Garnaut explained that if he could not get anyone to fund the appeal then, in all likelihood, the appeal could not proceed and the growers would get no return at all. I note that Mr Fernon (a director of Clarendons Lawyers) deposed to this fact in an affidavit sworn 27 July 2011 and filed in this proceeding, a copy of which is now produced and shown to me (without exhibits) as "EG-6".
22. I considered the relevant risks and the return and said that I would be interested in funding the appeal on the terms discussed. Mr Garnaut told me that the other funders would be Mr Ferrari and Mr Buxton. I subsequently discussed the matter with Mr Ferrari who, as noted, is a client of mine. We discussed the matter and the relevant risks and the returns that might be made. Mr Ferrari had a slightly different approach to me in that, as noted, he was a grower in various Timbercorp schemes and so he had an interest in ensuring there was a return to growers. He also viewed it as a potential method of making back some of the losses he had incurred on Timbercorp.
23. All of my discussions about the funding arrangement and the drafting of the funding agreement were with Mr Fernon. He told me that the premium contemplated would be 35% if there was a settlement particularly in respect of the Almond Land and 17.5% of any global settlement subject to a ceiling of \$5 million. He said that this reflected what commercial litigation funders would have funded the appeal if they had been prepared to fund it at all. Mr Fernon told me that if the Funders sought to make a claim under the Funding Agreement, the likelihood was that it would have to be approved by the Court and the Court would not approve it if it was not reasonable.



The Funding Agreement

24. On 22 October 2011, the Funders and the Appellants (ie the representative growers) entered into a management and funding

The block contains two handwritten signatures. The signature on the left is a long, flowing cursive script, likely belonging to one of the funders. The signature on the right is shorter and more compact, likely belonging to one of the appellants or a representative grower.

agreement ("**Funding Agreement**") for the management and funding of this appeal on their behalf. Now produced and shown to me and marked "**EG-7**" is a copy of the Agreement.

25. According to the Funding Agreement, the Funders have the obligation to project manage the appeal (clause 3) and to pay the costs of the appeal including any adverse costs order (clause 4). The Agreement also provides (at clause 5) that any Resolution Sum (which meant any settlement amount or any amount for which judgment was given) would be paid into a trust account and that the Funders would be entitled to be paid a fee from that Resolution Sum which would include the costs they paid for the appeal plus a premium (clause 8).
26. The solicitors provided a project budget for the funding of the appeal and it is a schedule to the Funding Agreement. According to this budget, costs of the entire appeal were estimated at approximately \$129,000.
27. In or about December 2011 Mr Fernon raised with me the need to amend the Funding Agreement. An "Agreement to Amend the Funding Agreement" was entered into on or about 18 December 2011. A copy of this agreement ("**First Amending Agreement**") is now produced and shown to me and marked "**EG-8**".
28. The purpose of the First Amending Agreement was as follows:
 - (a) The requirement to have the Funding Agreement approved by the Supreme Court was replaced by a requirement that, if the payment due to the Funders had to be approved, then the obligation to make that payment would be subject to approval by the Court;
 - (b) A system was introduced in the event that the Funders and the Represented parties disagreed on whether or not the proceeding should be settled. I am not aware of any particular incident requiring this amendment. I believe it was just Clarendon's seeking to avoid any problem potentially arising; and



- (c) The amount of the premium was reduced. Mr Fernon said that this would increase the prospect that the agreement would be approved by the Supreme Court. On that basis the Funders agreed to it.

Legal Costs

29. The accounts rendered to the Funders by Clarendons Lawyers were sent to me and I passed them on to Garnaut Private Client Advisers Pty Ltd. Now produced and shown to me and marked "EG-9" in a confidential exhibit are copies of most of the accounts together with the account rendered by the First Respondent which the Funders were required to pay in relation to abandoned pre-emptive costs order. The accounts (which total \$199,926.27) have been paid. Those accounts that have not been exhibited will be provided in a further exhibit to be sworn and filed very shortly.
30. The accounts were the subject of review by Tom Schubert of Garnaut Private Client Advisers Pty Ltd on behalf of the Funders. They were in excess of the project budget provided by the solicitors. This was due at least in part to greater than expected work involving preparation of the appeal book. By email dated 27 June 2012 from Mr Schubert to Mr Fernon, Mr Schubert raised the issue of the increasing costs. By email of the same day, Mr Fernon responded to the issues raised in Mr Schubert's email. Now produced and shown to me and marked "EG-10" is a copy of the emails between Mr Schubert and Mr Fernon dated 27 June 2012.
31. The Funders have paid those costs on the basis that they do believe that the costs claimed were reasonable given the amount of work involved in prosecuting the appeal. Of course, the Funders paid these sums without any knowledge as to whether these amounts would be reimbursed to them or not.

Settlement

32. By July 2012, settlement negotiations between the Appellants and the Respondents had reached an advanced stage. Mr Fernon told me that his




clients had sought to have included within the terms of settlement, a clause that provided that the Funders would be paid the amount due them under the Funding Agreement (as amended) in priority to payments to group members. The other parties to the appeal were not prepared to agree to such a term on the basis that they were concerned that including such a term may have resulted in the Supreme Court refusing to approve the settlement. Clarendon's Lawyers then asked the Funders to agree that the attempts that the Representative Parties to ensure payment to the Funders meant that the Representative Parties had complied with their requirements to use their best endeavours to bring about such an outcome as required under the Funding Agreement (as amended). The Funders agreed to this and a further amending agreement, entitled Deed of Amendment and Acknowledgement dated 24 July 2012 ("**Second Amending Agreement**") was entered into. Now produced and shown to me and marked "**EG-11**" is a copy of the Second Amending Agreement.

33. The settlement agreement between the parties was entered into on 25 July 2012.
34. The notice to growers that was published on the website of Clarendon's Lawyers, and the Frequently Asked Questions document, that was also posted on that website referred to the intention of the Funders to seek to have their claim paid out from the settlement proceedings. Now produced and shown to me and marked "**EG-12**" and "**EG-13**" respectively are copies of the first notice and first letter to growers dated 13 August 2012 and the frequently asked questions document respectively.

SWORN by Eli Goldfinger)
 At Melbourne)
 In the State of Victoria)
 On the 19 day of September 2012)



Before me:



MARK GEREMIA
 Level 9 179 Queen Street, Melbourne VIC 3000
 An Australian Legal Practitioner
 within the meaning of the
 Legal Profession Act 2004

SCHEDULE OF PARTIES

BETWEEN:

GRAHAM GOLDENBERG (in his capacity as representative of the Growers in the 2002 Almond Project)

First Appellant

CHRISTOPHER MARK LITTLE (in his capacity as representative of the Participant Growers in the 2005 Almond Project)

Second Appellant

CONSTANTINE MOSHOPOULOS (in HER capacity as representative of the Participant Growers in the 2006 Almond Project)

Third Appellant

DAVID BETTERFIELD (in his capacity as representative of the Participant Growers in the 2007 Almond Project and as representative of the Growers in the 2002 Private Offer Scheme)

Fourth Appellant

-and-

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

First Respondent

AUSTRALIA AND NEW ZEALAND BANK GROUP LIMITED ACN 005 357 522

Second Respondent

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

Third Respondent

MARK ANTHONY KORDA

(in his capacity of liquidator of Almond Land Pty Ltd (in liq))

Fourth Respondent

LEANNE KYLIE CHESSER

(in her capacity of liquidator of Almond Land Pty Ltd (in liq))

Fifth Respondent




**IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COURT OF APPEAL**

SACPI 2011 0103

BETWEEN:

GRAHAM GOLDENBERG & ORS (according to the Schedule)

Appellants

- and -

BOSI SECURITY SERVICES LIMITED (ACN 009 413 852) & ORS (according to the schedule attached)

Respondents

EXHIBIT EG-1

Date of document:	19 September 2012
Filed on behalf of:	MRB Equities Pty Ltd, Redvi Pty Ltd and Ferrari Investments Holdings Pty Ltd
MGA Lawyers	Solicitors Code: 104101
Level 9,	Tel: 8631 5555
179 Queen Street	Fax: 8631 5599
MELBOURNE VIC 3000	Ref: MG5400/08

This is the exhibit marked "EG-1" now produced and shown to Eli Goldfinger at the time of swearing his affidavit on 19 September 2012.

Before me:



MARK GEREMIA

Level 9 179 Queen Street, Melbourne VIC 3000

An Australian Legal Practitioner

within the meaning of the

..... Legal Profession Act 2004

MGA Lawyers, Level 9, 179 Queen St, Melbourne Vic
An Australian Legal Practitioner with the meaning of the Legal Practice Act
2001

"EG-1"

Company Search of Redvil Pty Ltd

LEAP Searching

Australian Securities & Investments Commission

Current Organisation Extract
Ordered on 19/09/2012 at 09:08

This extract contains information derived from the Australian Securities and Investment Commission's (ASIC) database under section 1274A of the Corporations Act 2001. Please advise ASIC of any error or omission which you may identify.

- 115 017 162 REDVIL PTY. LTD. -

ACN (Australian Company Number):	115 017 162	Document No.
ABN:		
Current Name:	REDVIL PTY. LTD.	
Registered in:	Victoria	
Registration Date:	29/06/2005	
Review Date:	29/06/2013	
Company Bounded By:	ACN (Australian Company Number)	

- Current Organisation Details -

Name:	REDVIL PTY. LTD.	021576532
Name Start Date:	29/06/2005	
Status:	Registered	
Type:	Australian Proprietary Company	
Class:	Limited By Shares	
Sub Class:	Proprietary Company	

- Company Addresses -

- Registered Office

021661176

Address: EGA CORPORATE ADVISERS PTY LTD LEVEL 18 499 ST KILDA ROAD
MELBOURNE VIC 3004
Start Date: 19/07/2005

- Principal Place of Business

021661176

Address: EGA CORPORATE ADVISERS PTY LTD LEVEL 18 499 ST KILDA ROAD
MELBOURNE VIC 3004
Start Date: 30/06/2005

- Company Officers -

Note:

A date or address shown as UNKNOWN has not been updated since ASIC took over the records in 1991. For

details, order the appropriate historical state or territory documents, available in microfiche or paper format.
* Check documents listed under ASIC Documents Received for recent changes.

Directors

Name:	ELI GOLDFINGER	023024780
Address:	56 BURRINDI ROAD CAULFIELD SOUTH VIC 3162	
Birth Details:	19/10/1963 TEL AVIV ISRAEL	
Appointment Date:	30/06/2005	

Secretaries

Name:	ELI GOLDFINGER	023024780
Address:	56 BURRINDI ROAD CAULFIELD SOUTH VIC 3162	
Birth Details:	19/10/1963 TEL AVIV ISRAEL	
Appointment Date:	30/06/2005	

- Share Structure -

Current

Class:	ORDINARY SHARES	021576532
Number of Shares Issued:	12	
Total Amount Paid / Taken to be Paid:	\$12.00	
Total Amount Due and Payable:	\$0	

Note:

For each class of shares issued by a company, ASIC records the details of the twenty members of the class (based on shareholdings). The details of any other members holding the same number of shares as the twentieth ranked member will also be recorded by ASIC on the database. Where available, historical records show that a member has ceased to be ranked amongst the twenty members. This may, but does not necessarily mean, that they have ceased to be a member of the company.

- Share/Interest Holding -

Current

- Holding -

Class:	ORD	Number Held:	12	021661176
Beneficially Owned:	Yes	Fully Paid:	Yes	

- Members -

Name:	ELI GOLDFINGER
Address:	56 BURRINDI ROAD CAULFIELD SOUTH VIC 3162
Joint Holding:	No

- Charges -

There are no charges held for this organisation.

Notes:

- * This extract may not contain all charges registered prior to the start of the Corporations Law. Please check STATE/TERRITORY records held by ASIC.
- * This extract may not contain provisional charges which lapsed prior to 1991.
- * For details of provisional charges deleted after 1991, order the relevant DOCIMAGE documents. These details will NOT appear in a Charges Extract.
- * Check documents listed under ASIC Documents Received for recent changes.

- Document List -

Notes:

- * Documents already listed under Registered Charges are not repeated here.
- * Data from Documents with no Date Processed are not included in this Extract.
- * Documents with '0' pages have not yet been imaged and are not available via DOCIMAGE. Imaging takes approximately 2 weeks from date of lodgement.
- * The document list for a current/historical extract will be limited unless you requested ALL documents for this extract.

Form Type	Date Received	Date Processed	No. Pages	Effective Date	Document No.
309	30/04/2007	04/05/2007	8	30/04/2007	023751514
309A	Notification of Details of a Charge				
312	30/04/2007	04/05/2007	1	30/04/2007	023751515
312C	Notification of Release of Property				
309	14/03/2007	15/03/2007	9	22/02/2007	023698198
309A	Notification of Details of a Charge				
902	14/07/2006	21/07/2006	2	29/06/2005	023024780
902	Supplementary Document Alters 021 576 532				
484	12/07/2005	13/07/2005	11	13/07/2005	021661176
484	Change to Company Details				
484B	Change of Registered Address				
484C	Change of Principal Place of Business (Address)				
484E	Appointment or Cessation of a Company Officeholder				
484G	Notification of Share Issue				
484O	Changes to Share Structure				
484N	Changes to (Members) Share Holdings				
201	29/06/2005	29/06/2005	8	29/06/2005	021576532
201C	Application For Registration as a Proprietary Company Altered by 023 024 780				

- Company Contact Addresses -

- Contact Address for ASIC use only

Address: PO BOX 7709 ST KILDA ROAD VIC 8004

Start Date: 20/08/2005

false

*** End of Document ***

**IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COURT OF APPEAL**

SACPI 2011 0103

BETWEEN:

GRAHAM GOLDENBERG & ORS (according to the Schedule)

Appellants

- and -

BOSI SECURITY SERVICES LIMITED (ACN 009 413 852) & ORS (according
the schedule attached)


Respondents

EXHIBIT EG-2

Date of document:	19 September 2012
Filed on behalf of:	MRB Equities Pty Ltd, Redvi Pty Ltd and Ferrari Investments Holdings Pty Ltd
MGA Lawyers	Solicitors Code: 104101
Level 9,	Tel: 8631 5555
179 Queen Street	Fax: 8631 5599
MELBOURNE VIC 3000	Ref: MG5400/08

This is the exhibit marked "EG-2" now produced and shown to Eli Goldfinger
at the time of swearing his affidavit on 19 September 2012.

Before me:



MARK GEREMIA

Level 9 179 Queen Street, Melbourne VIC 3000

An Australian Legal Practitioner

within the meaning of the

Legal Profession Act 2004

MGA Lawyers, Level 9, 179 Queen St, Melbourne Vic
An Australian Legal Practitioner with the meaning of the Legal Practice Act
2001

"EG-2"

Company Search of MRB Equities Pty Ltd

LEAP Searching

Australian Securities & Investments Commission

Current Organisation Extract
Ordered on 19/09/2012 at 09:09

This extract contains information derived from the Australian Securities and Investment Commission's (ASIC) database under section 1274A of the Corporations Act 2001. Please advise ASIC of any error or omission which you may identify.

- 102 694 708 MRB EQUITIES PTY. LTD. -

ACN (Australian Company Number):	102 694 708	Document No.
ABN:		
Current Name:	MRB EQUITIES PTY. LTD.	
Registered in:	Victoria	
Registration Date:	01/11/2002	
Review Date:	23/06/2013	
Company Bounded By:	ACN (Australian Company Number)	

- Current Organisation Details -

Name:	MRB EQUITIES PTY. LTD.	019620830
Name Start Date:	21/02/2003	
Status:	Registered	
Type:	Australian Proprietary Company	
Class:	Limited By Shares	
Sub Class:	Proprietary Company	

- Company Addresses -

- Registered Office		1F0136837
Address:	MAB CORPORATION PTY LTD LEVEL 5 441 ST KILDA ROAD MELBOURNE VIC 3004	
Start Date:	04/12/2007	
- Principal Place of Business		1F0136837
Address:	LEVEL 5 441 ST KILDA ROAD MELBOURNE VIC 3004	
Start Date:	19/11/2007	

- Company Officers -

Note:

A date or address shown as UNKNOWN has not been updated since ASIC took over the records in 1991. For details, order the appropriate historical state or territory documents, available in microfiche or paper format.

* Check documents listed under ASIC Documents Received for recent changes.

Directors

Name:	MICHAEL RAYMOND BUXTON	1F0261610
Address:	3816 POINT NEPEAN ROAD PORTSEA VIC 3944	
Birth Details:	19/09/1944 EAST MELBOURNE VIC	
Appointment Date:	02/12/2002	

Secretaries

Name:	MICHAEL RAYMOND BUXTON	1F0261610
Address:	3816 POINT NEPEAN ROAD PORTSEA VIC 3944	
Birth Details:	19/09/1944 EAST MELBOURNE VIC	
Appointment Date:	03/03/2003	

- Share Structure -

Current

Class:	ORDINARY SHARES	10269470M
Number of Shares Issued:	2	(AR 2002)
Total Amount Paid / Taken to be Paid:	\$2.00	
Total Amount Due and Payable:	\$0	

Note:

For each class of shares issued by a company, ASIC records the details of the twenty members of the class (based on shareholdings). The details of any other members holding the same number of shares as the twentieth ranked member will also be recorded by ASIC on the database. Where available, historical records show that a member has ceased to be ranked amongst the twenty members. This may, but does not necessarily mean, that they have ceased to be a member of the company.

- Share/Interest Holding -

Current

- Holding -

Class:	ORD	Number Held:	1	10269470M
Beneficially Owned:	No	Fully Paid:	Yes	(AR 2002)

- Members -

Name:	004 419 176 PITCHER PARTNERS NOMINEES PTY LTD
Address:	PITCHER PARTNERS LEVEL 6 161 COLLINS STREET MELBOURNE VIC 3000
Joint Holding:	No
Abn:	15 004 419 176

- Holding -

Class:	ORD	Number Held:	1	10269470M
Beneficially Owned:	No	Fully Paid:	Yes	(AR 2002)

- Members -

Name:	005 524 952 A.B.L. FIDUCIARY CORPORATION PTY. LTD.
Address:	LEVEL 21 333 COLLINS STREET MELBOURNE VIC 3000
Joint Holding:	No

- Charges -

There are no charges held for this organisation.

Notes:

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- Document List -**Notes:**

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Form Type	Date Received	Date Processed	No. Pages	Effective Date	Document No.
484	12/01/2010	12/01/2010	3	12/01/2010	1F0261610
484A1	Change to Company Details Change Officeholder Name Or Address				
484	27/11/2007	04/12/2007	3	27/11/2007	1F0136837
484	Change to Company Details				
484B	Change of Registered Address				
484C	Change of Principal Place of Business (Address)				
484	02/06/2004	03/06/2004	3	03/06/2004	020416310
484A1	Change to Company Details Change Officeholder Name Or Address				
484	24/12/2003	05/01/2004	3	10/12/2003	019966330
484A	Change to Company Details Change of Officeholder/member Name Or Address				
488	11/09/2003	15/10/2003	6	11/09/2003	019620830
488N	Application to Change Review Date of a Company or Scheme				

Synchronise Review Date By Office Holder - No Fee

488	13/08/2003	30/09/2003	6	13/08/2003	019620353
488N	Application to Change Review Date of a Company or Scheme Synchronise Review Date By Office Holder - No Fee				
309	24/04/2003	29/04/2003	9	17/04/2003	018859591
309A	Notification of Details of a Charge				
316	04/04/2003	22/04/2003	3	01/04/2003	10269470M
316L	Annual Return Annual Return - Proprietary Company				
304	06/03/2003	07/03/2003	1	03/03/2003	017586585
304A	Notification of Change to Officeholders of Australian Company				
205	21/02/2003	21/02/2003	1	14/02/2003	017586564
205A	Notification of Resolution Changing Company Name				
410	14/02/2003	14/02/2003	1	14/02/2003	0E8628509
410B	Application For Reservation of a New Name Upon Change Of Name				
304	23/12/2002	23/12/2002	2	02/12/2002	017586519
304A	Notification of Change to Officeholders of Australian Company				
203	23/12/2002	23/12/2002	2	02/12/2002	017586518
203	Notification Of				
203A	Change of Address				
203G	Change of Address - Principal Place of Business				
410	23/12/2002	23/12/2002	1	23/12/2002	018801229
410G	Application For Withdrawal of a Name Reservation				
205	23/12/2002	23/12/2002	1	02/12/2002	017586517
205A	Notification of Resolution Changing Company Name				
410	13/12/2002	13/12/2002	1	13/12/2002	0E8127200
410B	Application For Reservation of a New Name Upon Change Of Name				
201	01/11/2002	01/11/2002	3	01/11/2002	0E7866935
201C	Application For Registration as a Proprietary Company				

- Company Contact Addresses -

- Contact Address for ASIC use only

Address: PO BOX 7657 ST KILDA ROAD VIC 8004
Start Date: 04/12/2007

false

*** End of Document ***

**IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COURT OF APPEAL**

SACPI 2011 0103

BETWEEN:

GRAHAM GOLDENBERG & ORS (according to the Schedule)

Appellants

- and -

BOSI SECURITY SERVICES LIMITED (ACN 009 413 852) & ORS (according to the schedule attached)

Respondents

EXHIBIT EG-3

Date of document:	19 September 2012
Filed on behalf of:	MRB Equities Pty Ltd, Redvi Pty Ltd and Ferrari Investments Holdings Pty Ltd
MGA Lawyers	Solicitors Code: 104101
Level 9,	Tel: 8631 5555
179 Queen Street	Fax: 8631 5599
MELBOURNE VIC 3000	Ref: MG5400/08

This is the exhibit marked "EG-3" now produced and shown to Eli Goldfinger at the time of swearing his affidavit on 19 September 2012.

Before me:



MARK GEREMIA

Level 9 179 Queen Street, Melbourne VIC 3000

An Australian Legal Practitioner

within the meaning of the

..... Legal Profession Act 2004

MGA Lawyers, Level 9, 179 Queen St, Melbourne Vic
An Australian Legal Practitioner with the meaning of the Legal Practice Act
2001

"EG-3"

**Company Search of Ferrari Investments
Holdings Pty Ltd**

LEAP Searching

Australian Securities & Investments Commission

Current Organisation Extract
Ordered on 19/09/2012 at 09:10

This extract contains information derived from the Australian Securities and Investment Commission's (ASIC) database undersection 1274A of the Corporations Act 2001. Please advise ASIC of any error or omission which you may identify.

- 133 024 549 FERRARI INVESTMENTS HOLDINGS PTY. LTD. -

ACN (Australian Company Number):	133 024 549	Document No.
ABN:		
Current Name:	FERRARI INVESTMENTS HOLDINGS PTY. LTD.	
Registered in:	Victoria	
Registration Date:	01/09/2008	
Review Date:	01/09/2013	
Company Bounded By:	ACN (Australian Company Number)	

- Current Organisation Details -

Name:	FERRARI INVESTMENTS HOLDINGS PTY. LTD.	1E4736694
Name Start Date:	01/09/2008	
Status:	Registered	
Type:	Australian Proprietary Company	
Class:	Limited By Shares	
Sub Class:	Proprietary Company	

- Company Addresses -

- Registered Office		7E1802322
Address:	EGA CORPORATE ADVISERS PTY LTD LEVEL 18 499 ST KILDA ROAD MELBOURNE VIC 3004	
Start Date:	17/09/2008	
- Principal Place of Business		5E2514685
Address:	16 BEACH STREET PORT MELBOURNE VIC 3207	
Start Date:	14/10/2010	

- Company Officers -

Note:

A date or address shown as UNKNOWN has not been updated since ASIC took over the records in 1991. For details, order the appropriate historical state or territory documents, available in microfiche or paper format.

* Check documents listed under ASIC Documents Received for recent changes.

Directors

Name: PETER WARREN FERRARI 5E2514728
Address: 16 BEACH STREET PORT MELBOURNE VIC 3207
Birth Details: 24/07/1947 MELBOURNE VIC
Appointment Date: 01/09/2008

Secretaries

Name: PETER WARREN FERRARI 5E2514728
Address: 16 BEACH STREET PORT MELBOURNE VIC 3207
Birth Details: 24/07/1947 MELBOURNE VIC
Appointment Date: 01/09/2008

- Share Structure -

Current

Class: ORD 7E1802322
Number of Shares Issued: 12
Total Amount Paid / Taken to be Paid: \$12.00
Total Amount Due and Payable: \$0

Note:

For each class of shares issued by a company, ASIC records the details of the twenty members of the class (based on shareholdings). The details of any other members holding the same number of shares as the twentieth ranked member will also be recorded by ASIC on the database. Where available, historical records show that a member has ceased to be ranked amongst the twenty members. This may, but does not necessarily mean, that they have ceased to be a member of the company.

- Share/Interest Holding -

Current

- Holding -

Class: ORD **Number Held:** 6 5E2514728
Beneficially Owned: Yes **Fully Paid:** Yes

- Members -

Name: PETER WARREN FERRARI
Address: 16 BEACH STREET PORT MELBOURNE VIC 3207
Joint Holding: No

- Holding -

Class:	ORD	Number Held:	6	5E2514728
Beneficially Owned:	Yes	Fully Paid:	Yes	

- Members -

Name:	SANDRA FERRARI
Address:	16 BEACH STREET PORT MELBOURNE VIC 3207
Joint Holding:	No

- Charges -

There are no charges held for this organisation.

Notes:

- * This extract may not contain all charges registered prior to the start of the Corporations Law. Please check STATE/TERRITORY records held by ASIC.
- * This extract may not contain provisional charges which lapsed prior to 1991.
- * For details of provisional charges deleted after 1991, order the relevant DOCIMAGE documents. These details will NOT appear in a Charges Extract.
- * Check documents listed under ASIC Documents Received for recent changes.

- Document List -**Notes:**

- * Documents already listed under Registered Charges are not repeated here.
- * Data from Documents with no Date Processed are not included in this Extract.
- * Documents with '0' pages have not yet been imaged and are not available via DOCIMAGE. Imaging takes approximately 2 weeks from date of lodgement.
- * The document list for a current/historical extract will be limited unless you requested ALL documents for this extract.

Form Type	Date Received	Date Processed	No. Pages	Effective Date	Document No.
484	15/10/2010	15/10/2010	2	14/10/2010	5E2514728
484	Change to Company Details				
484A1	Change Officeholder Name or Address				
484A2	Change Member Name or Address				
484	15/10/2010	15/10/2010	2	14/10/2010	5E2514685
484C	Change to Company Details Change of Principal Place Of Business (Address)				
309	24/04/2009	24/04/2009	13	24/04/2009	7E2152465
309A	Notification of Details of a Charge				
484	10/09/2008	10/09/2008	4	10/09/2008	7E1802322
484	Change to Company Details				
484B	Change of Registered Address				
484C	Change of Principal Place of Business (Address)				
484E	Appointment or Cessation of a Company Officeholder				
484O	Changes to Share Structure				
484G	Notification of Share Issue				
484N	Changes to (Members) Share Holdings				

201 01/09/2008 01/09/2008 3 01/09/2008 1E4736694
201C Application For Registration as a Proprietary Company

- Company Contact Addresses -

- Contact Address for ASIC use only

Address: PO BOX 7709 ST KILDA ROAD VIC 8004

Start Date: 29/09/2008

false

*** End of Document ***

**IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COURT OF APPEAL**

SACPI 2011 0103

BETWEEN:

GRAHAM GOLDENBERG & ORS (according to the Schedule)

Appellants

- and -

BOSI SECURITY SERVICES LIMITED (ACN 009 413 852) & ORS (according to the schedule attached)

Respondents

EXHIBIT EG-4

Date of document:	19 September 2012
Filed on behalf of:	MRB Equities Pty Ltd, Redvi Pty Ltd and Ferrari Investments Holdings Pty Ltd
MGA Lawyers	Solicitors Code: 104101
Level 9,	Tel: 8631 5555
179 Queen Street	Fax: 8631 5599
MELBOURNE VIC 3000	Ref: MG5400/08

This is the exhibit marked "EG-4" now produced and shown to Eli Goldfinger at the time of swearing his affidavit on 19 September 2012.

Before me:



MARK GEREMIA
Level 9 179 Queen Street, Melbourne VIC 3000
An Australian Legal Practitioner
within the meaning of the
Legal Profession Act 2004

.....
MGA Lawyers, Level 9, 179 Queen St, Melbourne Vic
An Australian Legal Practitioner with the meaning of the Legal Practice Act
2001

"EG-4"

**Affidavit of Michael Fernon sworn 17
December 2009**

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

LIST E

S CI 2009 10699

BETWEEN:

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

**AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED (ACN 005 357 522)
AND OTHERS (according to the attached schedule)**
Defendant

AFFIDAVIT OF MICHAEL JOSEPH FERNON

Date of document:
Filed on behalf of:
Prepared by:
Clarendon Lawyers
Level 17, Rialto North Tower
525 Collins Street
MELBOURNE VIC 3000

December 2009
Timbercorp Growers Group
Tel: 03 8681 4400
Fax: 03 8681 4499
Solicitors Code: 101294
Ref: MJF:0900665

I, **MICHAEL JOSEPH FERNON** of Level 17, Rialto North Tower, 525 Collins Street, Melbourne, make oath and say that:

1. I am a director of Clarendon Lawyers Pty Ltd who are solicitors for the Timbercorp Growers Group.
2. Except where I state otherwise I make this affidavit from my own knowledge.
3. Clarendon Lawyers Pty Ltd has acted for the Timbercorp Growers Group (TGG) and its representatives in a number of proceedings relating to the Timbercorp forestry, almond and olive managed investment schemes.

Early days

4. Administrators were appointed to the Timbercorp companies on 23 April 2009.
5. On 4 June 2009 the liquidators issued an originating process 7114 of 2009 for an order that it was proper for them to make application to wind up the Timbercorp almond and olive schemes. Mr Christopher Garnaut instructed us to appear at the first directions hearing for this application. Mark Bland, who is also a director of Clarendon Lawyers Pty Ltd, appeared at the first directions hearing.

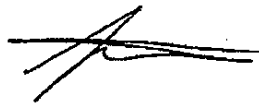
6. On 17 June 2009, His Honour Mr Justice Robson made an order that the administrators were justified in applying to the Court for orders that the managed investment schemes be wound up.

Establishment of Timbercorp Growers Group

7. Christopher Garnaut is founder and managing director of Garnaut Private Clients Advisers Pty Ltd (GPCA) which is the holder of an Australian Financial Services Licence. Mr Garnaut is the responsible officer for GPCA. GPCA is a leading independent financial advising consultancy in Australia with offices in Melbourne and Canberra and associated offices in Sydney, Brisbane, Perth and Adelaide. It is responsible for approximately \$2.5 billion assets under management. Mr Garnaut is a regular speaker at industry conferences. GPCA has 41 clients invested in various Timbercorp forestry, almond and olive schemes.
8. In June and July 2009, Mr Garnaut liaised with the members of other financial planning consultancies and together they formed the Timbercorp Growers Group, of which Mr Garnaut became the chairman. Mr Garnaut used his contacts and influence to raise a fighting fund to be used for the benefit of growers for both legal expenses and obtaining expert advice. The group raised \$536,791.80 which was deposited in a controlled monies account, controlled by Clarendon Lawyers Pty Ltd.
9. According to our trust account records 472 financial planners and growers contributed to the fighting fund and I am informed by Mr Garnaut and verily believe that these financial planners represent approximately 80% of the investors in the Timbercorp forestry, almond and olive schemes (Growers).

Application to wind up almond and olive schemes

10. On 25 June 2009, Mark Korda swore affidavits in relation to the almond and olive schemes in support of applications to wind up those schemes.
11. On 29 June 2009, the creditors of the Timbercorp Group of companies resolved to wind up the Timbercorp Group, including Timbercorp Securities Limited which was the responsible entity of the Timbercorp managed investment schemes.
12. The TGG instructed Clarendon Lawyers Pty Ltd to oppose the application to wind up the almond schemes. We acted for a grower nominated by the TGG for each scheme in opposing the application.
13. Clarendon Lawyers Pty Ltd acted for the same growers in seeking the appointment by the Court of a temporary responsible entity to the schemes.



14. The growers we acted for and the schemes of which they are members are as follows:

Scheme	Representative Investor
2001 Almond ARSN 095 649 746	Peter Holt
2002 Almond ARSN 099 611 935	Graham Goldenberg
2003 Almond ARSN 103 197 299	Malcom Arthur Weaver
2004 Almond ARSN 108 336 670	Kerree Bezencon
2005 Almond ARSN 112 935 092	Christopher Mark Littley
2006 Almond ARSN 118 387 974	Constantine Moshopoulos
2007 Almond ARSN 122 511	David Butterfield
2001 Olives ARSN 094 382 082	Pauline Emma Hammer
2002 Olives ARSN 098 233 455	David Sydney Butterfield
2003 Olives ARSN 104 648 473	Graham Goldenberg
2004 Olives ARSN 108 744 378	Kerree Anne Bezencon
2006 Olives ARSN 119 182 179	Michael Charles Vicary
2007 Olives ARSN 123 155 715	Pamela Jan Dry
2008 Olives ARSN 129 307 722	David Butterfield/Angus Hannah

The growers who have been nominated as defendants in this proceeding are the same persons who appeared in proceeding 7114 of 2009 and 9408 of 2009 in relation to the relevant schemes.
~~2002 and 2004-6 almond~~

15. Clarendon Lawyers Pty Ltd formed the view that the way the schemes' constitutions were drafted, an order by the Court that the schemes be wound up would immediately extinguish all growers' rights. This view was contrary to the view held by Arnold Bloch Leibler as solicitors for the liquidators. In our opinion and in the opinion of senior counsel engaged by us, there was a substantial risk that their view was wrong.
16. On 11 November 2009 in proceeding number 9998 of 2009 Mr Zwier from Arnold Bloch Leibler representing the liquidator said:

"Your Honour, the other point that the growers made is referred to in paragraph 30, that is they oppose the winding up for fear that the making of the winding up order itself might prejudice the rights of growers. The liquidators have always taken the view, and make submissions to Robson J on the basis that it's the termination of the winding up which determines rights, not the making of the order for the winding up, but Robson J was concerned that the making of the order might extinguish rights, and it would be fair to say that some of the secured creditors representatives in general – and one in particular – took the view that there was an argument that if a winding up order had been made, the growers rights had been terminated."

Now produced and shown to me and marked with the letters "MJF-1" is a copy of the transcript of proceedings where Mr Zwier made these comments.

17. On 21 July 2009 His Honour Mr Justice Robson made a direction that meetings be held of each of the almond and olive schemes at which agreed resolutions would be put and he made orders to facilitate the holding of the meetings. He also ordered that costs be reserved.

Scheme meetings

18. The meetings of the members of the almond schemes were held at Etihad Stadium on 31 July 2009.
19. At the meeting the growers overwhelmingly endorsed the continuation of the schemes and agreed to amendments to the constitution to enable the schemes to be restructured.

Continuation of the almond wind up application

20. In mid-August 2009 Arnold Bloch Leibler on behalf of the liquidators served notice that the liquidators would continue with the application to wind up the almond schemes.
21. The matter was listed for 18 August 2009.

Forestry proceedings

22. The liquidators pursued a different strategy in relation to the Timbercorp forestry assets. Rather than seek to wind up the schemes, the liquidators sought an order from the Federal Court that they were justified in selling the Timbercorp scheme assets.

23. His Honour Mr Justice Finkelstein indicated at a hearing on 14 August 2009 that he was unable to facilitate the order sought because the scheme constitution did not give the liquidators any right to sell the assets. He indicated that he could make an order permitting the liquidators to amend the scheme constitutions to give the responsible entity the power to terminate the subleases of the growers, so that the land owning entities and/or TSL as head lessee could then transfer the leasehold interest in the land to a purchaser free of any subleases.
24. At the hearing on 14 August 2009 there was no appearance by any grower but I attended at Court. No notice of the proceedings had been served on us by the liquidators. When the matter came back on before the Federal Court, on 17 August 2009, the TGG and its representatives were represented in Court by counsel instructed by Clarendon Lawyers Pty Ltd. Mr Justice Finkelstein eventually made an order that the liquidators were justified in amending the constitution.

Amendment of constitution

25. Instead of proceeding with the application to wind up the Timbercorp almond schemes at the hearing before Mr Justice Robson on 18 August 2009, the liquidators applied for a similar order to the order made by Mr Justice Finkelstein in the forestry proceeding.
26. On 20 August 2009, Mr Justice Robson adjourned the winding up of the almond schemes and the interlocutory process filed on behalf of the TGG to a date to be fixed and reserved costs and made a direction that the liquidators were justified in making the amendment to the scheme constitutions to enable the subleases to be terminated.

Appointment of special purpose liquidator

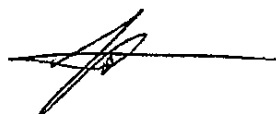
27. On 11 September 2009 the liquidators commenced an interlocutory process in proceeding 7114 of 2009 for the appointment of Ian Carson as a special purpose liquidator. The reasons advanced by the liquidators for the appointment were that they were the liquidators of the Timbercorp land owning entities and that they would be negotiating with themselves for the cancellation of the subleases. They required the assistance of a special purpose liquidator to advise, particularly on the amount of consideration to be paid to the growers for the cancellation of their subleases.
28. The TGG attended at Court to argue against several aspects of the appointment of Mr Carson, in particular, the fact that Mr Carson was required to act upon the advice provided by Arnold Bloch Leibler as solicitors for the liquidators. While we had not seen that advice, we were concerned that just as we believed their advice in relation to the effect of a winding up was wrong, their advice in relation to growers' rights might be wrong. This concern was reinforced by remarks made by Mr Zwier to Mr Garnaut that the growers had no rights, that a "train wreck" was coming and that they should accept whatever amount the banks as secured creditors would allow them.
29. The letter of appointment of Mr Carson included a request by the liquidators that he liaise with the grower representatives.



30. A number of meetings occurred between Mr Carson and his lawyers, Mallesons Stephen Jaques, Mr Garnaut, Mr Owen Lennie and Clarendon Lawyers Pty Ltd on behalf of the Timbercorp Growers Group. These meetings took place at the office of GPCA at 10 Queens Road, Melbourne and at Mr Carson's office at 90 Collins Street, Melbourne.
31. In addition to the meetings, there was considerable correspondence between Clarendon Lawyers Pty Ltd on behalf of the TGG and Mallesons in which we argued for the rights of the growers. Altogether, we wrote five letters to Mallesons setting out our views on growers rights. Now produced and shown to me and marked with the letters "MJF-2" to "MJF-6" are copies of the letters written by us.

Application for direction regarding sale of almond assets

32. On 5 October 2009 the liquidators bought proceeding 9408 of 2009 seeking an order that they were justified in entering into a contract to sell the almond assets to Olam Orchards Australia Pty Ltd. When the matter came on for hearing, the liquidators sought an additional order that they were justified in paying the sum of \$6 million out of the sale proceeds of \$28 million to the growers to extinguish their subleases. This sale related only to the almond schemes which were conducted on land owned by companies in the Timbercorp Group of companies. There were also Timbercorp almond schemes conducted on land owned by subtrusts of the Timbercorp Orchard Trust, which were not part of this application.
33. Counsel instructed by Clarendon Lawyers Pty Ltd on behalf of the TGG nominated defendants in the affected schemes attended at court to consent to the sale but oppose the making of the second order that the liquidators were justified in paying \$6 million to extinguish growers' rights.
34. Ms Kerree Bezencon also appeared in this proceeding on behalf of the TGG Almonds Committee Inc. This group sought an order for the appointment of a responsible entity to the schemes and were represented by separate counsel.
35. At this proceeding, we filed affidavits by myself, Owen Lennie and Christopher Garnaut in support of the growers case. Now produced and shown to me and marked with the letters "MJF-7", "MJF-8" and "MJF-9" are copies of these affidavits.
36. Counsel prepared detailed legal submission which we handed up to the judge. Now produced and shown to me and marked with the letters "MJF-10" is a copy of these legal submissions.
37. On 9 October 2009 His Honour Mr Justice Robson made an order that the liquidators were justified in entering into the sale contract but ordered that the net proceeds of sale be held in an interest bearing trust account pending the hearing of a determination by the Court of a proceeding to determine which persons have rights to the net proceeds. He rejected the application of Ms Bezencon. Costs were reserved.
38. Now produced and shown to me and marked with the letters "MJF-11" is a copy of the order made by His Honour Mr Justice Robson.



39. In his reasons for judgment, His Honour Mr Justice Robson endorsed many of the arguments put forward by the TGG. His Honour made the following comments:

The TGG contends that Mr Carson's report acknowledged that he was bound to accept the Arnold Bloch Leibler advice. They say he noted, however, that the Arnold Bloch Leibler advice relies heavily on an assumption that the growers' interests can in effect be disclaimed by the liquidators of Almond Land. He says that he has reservations about the correctness of that view, based upon his own legal advice. TGG submits, however, on the basis of the correctness of the Arnold Bloch Leibler advice, Mr Carson believes that \$6 million represents an offer that he would accept if the liquidator of TSL provided that he was satisfied that the offer is the product of a robust negotiation around the numerous difficult tasks.

"I will not canvass all the arguments put forward by TGG. It is sufficient to say that they are detailed and amply demonstrate that there are real issues to be resolved as the liquidators concede. There are many complex legal issues that would need to be resolved to precisely identify the proprietary interest of the growers."

Now produced and shown to me and marked with the letters "MJF-12" is a copy of the reasons for judgment.

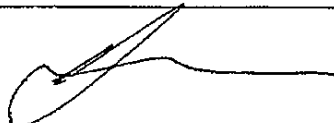
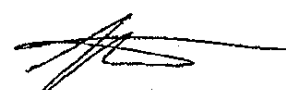
Sale of TPIF almond assets

40. On 27 November 2009 the liquidators commenced proceedings seeking an order for approval of the sale of those almond assets which relate to schemes conducted on the TPIF land.
41. Clarendon Lawyers Pty Ltd as instructed by Mr Garnaut on behalf of the TGG and its representatives appeared at the proceedings to support the application.
42. On 11 December 2009 His Honour Mr Justice Davies granted the order and reserved costs.

Apportionment case

43. Clarendon Lawyers Pty Ltd and counsel, Garry Bigmore QC, with either Michael Galvin or Sam Hopper have appeared in the following proceedings:

Proceeding	
7114 of 2009 Almonds and olives schemes	Application by liquidators to wind up the scheme. Application by growers for the appointment of a new responsible entity. Interlocutory proceedings for the appointment of Mr Carson. Continuation of the application to wind up the Almond Schemes.
9408 of 2009 Almond schemes	Application by liquidators for approval of sale (non-TPIF assets)
10382 of 2009 Almond schemes	Application by liquidators for approval of sale of TPIF assets.

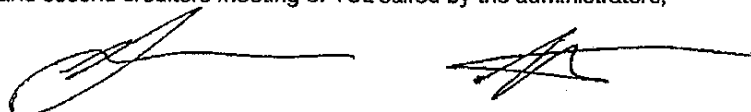



Proceeding	
9998 of 2009 Olive schemes	Application by liquidators for approval of sale.
VID 2005 of 2009 Forestry schemes	Application by liquidators for power of sale (Federal Court)
9299 of 2009 Forestry schemes	Application by liquidators for approval of sale.
9365 of 2009 Forestry schemes	Relief against forfeiture of lease by Plantation Land Limited.
S CI 2009 10240 Forestry schemes	Application concerning Plantation Land Limited settlement.
S CI 2009 10514 Forestry schemes	Application by liquidators for apportionment of forestry sale proceeds.

In all of these except the first proceeding we and counsel acted on behalf of the TGG and its representatives.

44. We have had success in preventing the winding up of the almond and olive schemes and in opposing the liquidators obtaining an order that the almond growers in the non-TPIF schemes receive the sum of \$6 million in compensation for their rights.
45. We are familiar with the constitutions of the almond schemes and the variations in those constitutions between projects. We have made detailed legal submissions to Mallesons Stephen Jaques acting on behalf of the special purpose liquidators in relation to the growers' rights. Counsel briefed by us made detailed legal submissions to the court on behalf of growers.
46. We have also engaged the services of Mr Owen Lennie who is an expert in managed investment schemes and valuation methodologies.
47. Mr Lennie is a fellow of CPA Australia and the Australian Property Institute. He is currently an Associate Professor at the University of Melbourne, in the property department of the Melbourne School of Design, where he teaches (inter alia) Property Investment, a post-graduate subject, involving valuation and risk analysis. He is also sessional member of the Victorian Civil and Administrative Tribunal in the Land Valuation and Planning lists. He has been a managing director and director of property funds management companies since 1996.
48. I am informed by Owen Lennie and verily believe that he has attended to the following matters on behalf of growers in the Almond Schemes:

- attended the first and second creditors meeting of TSL called by the administrators;



- been the proxy of Chris Garnaut at subsequent meetings of the Committee of Inspection of TSL;
 - assisted with the preparation of the evidence for the initial court appearance by the TGG opposing the application by the liquidators of TSL to wind up the schemes;
 - assisted Huntley Management Limited with information regarding the liabilities of a responsible entity taking over the almond schemes and met with the managing director in Sydney;
 - prepared the agenda for the meetings of growers ordered by the court and prepared the draft resolutions for the meeting, with legal advice;
 - prepared the advice to the growers on how to vote on the resolutions and had it published on the TGG Website;
 - compiled information and news bulletins to be sent to advisers by e-mail and published on the website for the information of growers;
 - examined various scheme documentation with a view to ascertaining the rights of the growers in the almond schemes;
 - built a financial model with Stephen Lynch for the purposes of evaluating the interests of the growers in the almond schemes;
 - met with KordaMentha, regarding the process of sale and re-capitalisation and examined the information memorandum on behalf of the TGG;
 - met with PPB on three occasions over the evaluation of the growers interests before Ian Carson reported to the Court;
 - met with officers of the ANZ to open communications for a possible settlement;
 - put into evidence before the Court his opinion on a possible methodology for evaluating the interests of the growers in the almond schemes.
49. The valuation of rights will be a significant part of the proposed proceedings and Mr Lennie's advice in relation to these matters will be vital to the growers' case.
50. The growers who appeared in the original winding up proceedings propose appearing in the apportionment proceedings and wish to instruct Clarendon Lawyers to act for them and to engage Mr Lennie to provide expert advice.
51. If appointed to represent growers in this action, we will be arguing for their rights based on the detailed legal submissions filed in proceeding 9408 of 2009, namely that the secured creditors interests are subject to the prior and superior rights of the growers arising under this sublease or licence and joint venture rights, that those growers rights have substantial value and they are entitled to a substantial share of the sale proceeds held in the fund.




Profile of Clarendon Lawyers Pty Ltd

52. Clarendon Lawyers is a city based law firm established on 10 October 2007. The Timbercorp matters have been under the care and custody of me and Mark Bland. I have been a barrister and solicitor of this Honourable Court for 36 years. I was a founding partner of Fernon & Ludescher in 1977, which merged with Gadens Lawyers in 1994. In 1999 I was invited to become a partner at Freehills. At that firm I practised in Melbourne, Brisbane and Sydney and worked as a partner in the financial services practice for three years in Sydney. I have practised in many areas of the law including equity, fund raising, financial services and property. Mark Bland was admitted to practice in 2000. He spent 4 years at ASIC during and immediately after the implementation of the Financial Services Reform Act 2001 both as a lawyer and manager of surveillance teams in relation to financial services. His expertise is in financial services law.

Costs

53. The TGG does not have any funding available to pursue the proceedings. The funds raised from the financial planners have been exhausted. All in all, I estimate the total amount of costs incurred by growers in relation to the Timbercorp matters to date to be approximately \$1.3 million.

54. The TGG seeks an order that the costs of the defendants in this proceeding be paid on a full indemnity basis out of the fund established under paragraph 7 of the order of Mr Justice Robson which is Exhibit "MJF-11" and that an initial sum of \$100,000 be set aside from the fund on account of these costs, to be held by Clarendon Lawyers Pty Ltd in a controlled monies account and expended as costs are incurred.

SWORN by the said MICHAEL JOSEPH FERNON)
at Melbourne in the State of Victoria)
this 17th day of December 2009)



Before me:.....

FRANCESCA FOGARTY
of Clarendon Lawyers Pty Ltd
Level 17, Rialto North Tower
525 Collins St, Melbourne Victoria 3000
an Australian Legal Practitioner within the
meaning of the *Legal Profession Act 2004*

**IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COURT OF APPEAL**

SACPI 2011 0103

BETWEEN:

GRAHAM GOLDENBERG & ORS (according to the Schedule)

Appellants

- and -

BOSI SECURITY SERVICES LIMITED (ACN 009 413 852) & ORS (according to the schedule attached)

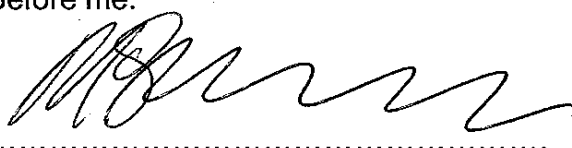
Respondents

EXHIBIT EG-5

Date of document:	19 September 2012
Filed on behalf of:	MRB Equities Pty Ltd, Redvi Pty Ltd and Ferrari Investments Holdings Pty Ltd
MGA Lawyers	Solicitors Code: 104101
Level 9,	Tel: 8631 5555
179 Queen Street	Fax: 8631 5599
MELBOURNE VIC 3000	Ref: MG5400/08

This is the exhibit marked "EG-5" now produced and shown to Eli Goldfinger at the time of swearing his affidavit on 19 September 2012.

Before me:



MARK GEREMIA
Level 9 179 Queen Street, Melbourne VIC 3000
An Australian Legal Practitioner
within the meaning of the
Legal Profession Act 2004

MGA Lawyers, Level 9, 179 Queen St, Melbourne Vic
An Australian Legal Practitioner with the meaning of the Legal Practice Act
2001

"EG-5"
Orders of Davies J dated 22 December
2009

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

LIST E
S CI 2009 10699

BETWEEN:

BOSI SECURITY SERVICES LIMITED AS TRUSTEE
FOR AUSTRALIA AND NEW ZEALAND BANKING
GROUP LIMITED AND BQS INTERNATIONAL
(AUSTRALIA) LIMITED AND WESTPAC BANKING
CORPORATION

Plaintiff

- and -

AUSTRALIA AND NEW ZEALAND BANKING GROUP
LIMITED
(ACN 005 357 522)
and others according to the schedule attached

Defendants

GENERAL FORM OF ORDER

JUDGE: The Honourable Justice Davies

DATE MADE: 22 December 2009

ORIGINATING PROCESS: Originating Motion filed 15 December 2009

HOW OBTAINED: On return of the order of the Honourable Justice Davies
made 18 December 2009

ATTENDANCE: Mr. P Anastassiou of Senior Counsel for the Plaintiff

Mr. M Moshinsky of Senior Counsel with
Ms. W Harris of Counsel for the First Defendant

Mr. L Zweir, Solicitor for the Second to Fourth
Defendants

Mr. G Bigmore of Her Majesty's Counsel with
Mr. S Hopper of Counsel for Garry Goldenberg,
Christopher Mark Littlely, Constantine Moshopoulos and
David Butterfield

Mr. D J O'Callaghan of Senior Counsel with
Mr. C Archibald of Counsel for Kerry Anne Bezencon
and the TGG Almond Committee Inc

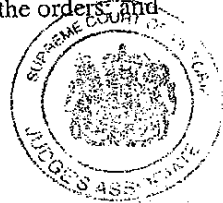


OTHER MATTERS:

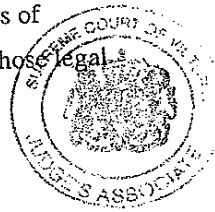
None

THE COURT ORDERS THAT:

1. Pursuant to rule 45.05 of the *Supreme Court (General Civil Procedure) Rules 2005* (Vic) the requirements of Rules 5.03(1) and 8.02 are dispensed with.
2. Pursuant to rule 45.05 of the *Supreme Court (General Civil Procedure) Rules 2005* (Vic) the Plaintiff has leave to proceed by originating motion in Form 5C.
3. Pursuant to rule 16.01(2) of the *Supreme Court (General Civil Procedure) Rules 2005* (Vic):
 - (a) Graham Goldenberg is appointed as the representative of the Growers in the 2002 Timbercorp Almond Project (ARSN 099 611 935);
 - (b) Christopher Mark Littley is appointed as the representative of the Growers in the 2005 Timbercorp Almond Project (ARSN 112 935 092);
 - (c) Constantine Moshopoulos is appointed as the representative of the Growers in the 2006 Timbercorp Almond Project (ARSN 118 387 974);
 - (d) David Butterfield is appointed as the representative of the Growers in the 2007 Timbercorp Almond Project (ARSN 122 511 040); and
 - (e) David Butterfield is appointed as the representative of the Growers in the unregistered managed investment scheme known as the 2002 Timbercorp Almond Project (Private Offer No 1).
4. The persons appointed pursuant to paragraph 3 above, are joined as the Fifth, Sixth, Seventh and Eighth Defendants in the proceeding pursuant to rule 9.02 and/or rule 9.06(b) of the *Supreme Court (General Civil Procedure) Rules 2005* (Vic).
5. The Plaintiff is granted leave to file and serve an amended originating motion on the Defendants on or before 4:00pm 23 December 2009:
 - (a) incorporating a declaration as to what, if any, right the Growers represented by the Fifth, Sixth, Seventh and Eighth Defendants have to the sale proceeds held on trust by the Second Defendant pursuant to paragraph 7 of the orders; and



- (b) amending paragraph 5 of the originating motion to read "A declaration as to how the sale proceeds held on trust by the second defendant pursuant to paragraph 7 of the Orders ought to be distributed between the plaintiff and the first, fifth, sixth, seventh and eighth defendants."
6. The parties file and serve a list of documents on which they intend to rely in relation to the issue of what right, if any, they have to the net sale proceeds (the **Funds**) to be held on trust by the second defendant pursuant to paragraph 7 of the orders (the **Rights Issue**) on or before 4:00pm on 12 February 2010.
7. The parties file and serve on or before 4:00pm on 19 February 2010:
- (a) written contentions of fact and law addressing the Rights Issue (the **Rights Contentions**);
- (b) any affidavit material upon which they wish to rely in relation to the Rights Issue.
8. The parties file and serve on or before 4:00pm on 5 March 2010:
- (a) written contentions of fact and law in reply to the Rights Contentions;
- (b) any affidavit material upon which they wish to rely by way of reply in relation to the Rights Issue.
9. Each party serve a copy of the documents referred to in paragraphs 6, 7 and 8 upon TGG Almond Committee Inc and any other document filed in the proceeding from the date of this order at the same time as the document is served upon a party to the proceeding.
10. The Liquidators of the Second Defendant pay from the Funds to Clarendon Lawyers, the solicitors for the Fifth, Sixth, Seventh and Eighth defendants, the legal costs and disbursements incurred in this proceeding by the Fifth, Sixth, Seventh and Eighth Defendants in complying with paragraphs 6, 7, 8 and 9 of this order on a solicitor and client basis pursuant to rule 63.32(2)(a) of the *Supreme Court (General Civil Procedure) Rules 2005* (Vic) up to a maximum of \$100,000 within 14 days of presentation to the Liquidator by Clarendon Lawyers of a tax invoice for those legal



costs and disbursements, such tax invoices rendered by Clarendon Lawyers with such frequency as it sees fit.

11. The proceeding is listed for further directions at 10:00am on 12 March 2010.
12. Costs of today are reserved.
13. Liberty to apply.

DATE AUTHENTICATED: 4 December 2010



SCHEDULE OF PARTIES

S CI 2009 10699

BETWEEN:

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

- and -

AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED (ACN 005 357 522) First Defendant

ALMOND LAND PTY LTD (IN LIQ) Second Defendant
(ACN 091 460 392)

MARK ANTHONY KORDA (in his capacity as liquidator of Almond Land Pty Ltd (in liq)) Third Defendant

LEANNE KYLIE CHIESSER (in her capacity as liquidator of Almond Land Pty Ltd (in liq)) Fourth Defendant



**IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COURT OF APPEAL**

SACPI 2011 0103

BETWEEN:

GRAHAM GOLDENBERG & ORS (according to the Schedule)

Appellants

- and -

BOSI SECURITY SERVICES LIMITED (ACN 009 413 852) & ORS (according to the schedule attached)

Respondents

EXHIBIT EG-6

Date of document:	19 September 2012
Filed on behalf of:	MRB Equities Pty Ltd, Redvi Pty Ltd and Ferrari Investments Holdings Pty Ltd
MGA Lawyers	Solicitors Code: 104101
Level 9,	Tel: 8631 5555
179 Queen Street	Fax: 8631 5599
MELBOURNE VIC 3000	Ref: MG5400/08

This is the exhibit marked "EG-6" now produced and shown to Eli Goldfinger at the time of swearing his affidavit on 19 September 2012.

Before me:



MARK GEREMIA
Level 9 179 Queen Street, Melbourne VIC 3000
An Australian Legal Practitioner
within the meaning of the
Legal Profession Act 2004

MGA Lawyers, Level 9, 179 Queen St, Melbourne Vic
An Australian Legal Practitioner with the meaning of the Legal Practice Act
2001.

"EG-6"

**Affidavit of Michael Fernon sworn 27 July
2011**

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
IN THE COURT OF APPEAL

S APCI 2011 0103

BETWEEN

GRAHAM GOLDENBERG & ORS (according to the Schedule)

Appellants

and

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

AFFIDAVIT OF MICHAEL JOSEPH FERNON

Date of Document: 27 July 2011
Filed on behalf of the Appellants
Prepared by:
Clarendon Lawyers
Level 17, North Rialto Tower
525 Collins Street
Melbourne VIC 3000

Solicitor Code: 101294
Tel: 03 8681 4400
Fax: 03 8681 4499
Ref: MJF:1100297
Email: Michael.fernon@clarendonlawyers.com.au

I, MICHAEL JOSEPH FERNON of Level 17, Rialto North Tower, 525 Collins Street, Melbourne, make oath and say that:

1. I am a director of Clarendon Lawyers Pty Ltd (Clarendon Lawyers) who are solicitors for the Appellants in this matter. I have the care and conduct of this appeal and have had the conduct of the proceeding below on behalf of the Appellants.
2. Except where I state otherwise, I make this affidavit from my own knowledge. Where I depose to matters arising from information and belief, I believe those matters to be true.
3. This application relates to an appeal from the decision of Her Honour Justice Davies in proceeding number SCI 2009 10699 (Proceeding).
4. Now produced and shown to me and marked "MJF-1", "MJF-2" and "MJF-3" respectively are:
 - (a) the order of Her Honour Justice Davies made 27 June 2011;
 - (b) Her Honour Justice Davies' reasons of 15 June 2011; and
 - (c) the notice of appeal dated 11 July 2011 filed in this proceeding.



Catherine M. Curtain

Background

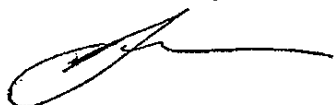
5. I am aware of this background from my involvement in the various proceedings for the Timbercorp Growers Group (TGG). Mark Anthony Korda and other members of the firm Korda Mentha (Administrators) were appointed administrators to Timbercorp Limited and its subsidiaries on 23 April 2009.
6. A subsidiary in the group, Timbercorp Securities Limited (TSL) was and remains responsible entity of a number of forestry, almond, olive, citrus, table grapes and other horticultural managed investment schemes.
7. On 4 June 2009 the Administrators issued an originating process 7114 of 2009 for an order that it was proper for them to make application to wind up the Timbercorp almond and olive schemes. Christopher Garnaut instructed Clarendon Lawyers to appear at the first directions hearing for this application.
8. On 17 June 2009, the Honourable Justice Robson made an order that the Administrators were justified in applying to the Court for orders that the various TSL managed investment schemes be wound up.

Establishment of Timbercorp Growers Group

9. Christopher Garnaut is founder and managing director of Garnaut Private Wealth (GPW) which is the holder of an Australian Financial Services Licence. Mr Garnaut is the responsible officer for GPW.
10. I am informed by Mr Garnaut that in June and July 2009, he liaised with the members of other financial planning consultancies and together they formed the TGG, of which Mr Garnaut became the chairman. Mr Garnaut used his contacts and influence to raise a fighting fund to be used for the benefit of members for both legal expenses and obtaining expert advice. The group raised \$536,791.80 which was deposited in a controlled monies account, controlled by Clarendon Lawyers Pty Ltd.
11. According to our trust account records 472 financial planners and members contributed to the fighting fund and I am informed by Mr Garnaut and verily believe that these financial planners represent approximately 80% of the investors in the Timbercorp forestry, almond and olive schemes.

Application to wind up almond and olive schemes

12. On 29 June 2009, the creditors of the Timbercorp Group of companies resolved to wind up the Timbercorp Ltd and its subsidiaries, including TSL, and appointed the Administrators as Liquidators (Liquidators).
13. The TGG instructed Clarendon Lawyers to oppose the application to wind up the almond schemes. We acted for a member nominated by the TGG for each scheme in opposing the application.

*Catherine M. Curtin*

14. On 21 July 2009 His Honour Mr Justice Robson made a direction that meetings be held of each of the almond and olive schemes at which agreed resolutions would be put and he made orders to facilitate the holding of the meetings.
15. Now produced and shown to me marked MJF-4 is a true copy of Robson J's order of 21 July 2009.

Scheme meetings

16. The meetings of the members of the almond schemes were held at Etihad Stadium on 31 July 2009. I attended that meeting.
17. At the meeting the members overwhelmingly endorsed the continuation of the schemes and agreed to amendments to the constitution to enable the schemes to be restructured.

Continuation of the almond schemes winding up application

18. On 10 August 2009 Arnold Bloch Leibler on behalf of the Liquidators served notice that the Liquidators would continue with the application to wind up the almond schemes.
19. That application was listed for 18 August 2009.
20. Now produced and shown to me marked MJF-5 is a true copy of that notice.

Amendment of constitution

21. Instead of proceeding with the application to wind up the Timbercorp almond schemes at the hearing before Mr Justice Robson on 18 August 2009, the Liquidators applied for an order that they were justified in amending the constitutions of the schemes to enable members' subleases and/or leases to be terminated. In each of the almond schemes, the scheme members held either a licence or a sub-lease over an identifiable lot.
22. On 21 August 2009, Mr Justice Robson adjourned the application to wind up the almond schemes and the TGG's application to replace the responsible entity to a date to be fixed and made a direction that the liquidators were justified in making the amendment to the scheme constitutions to enable the members' licences and subleases to be terminated.
23. Now produced and shown to me marked MJF-6 is a true copy of Robson J's order of 21 August 2009.

Application for direction regarding sale of almond assets

24. On 5 October 2009 the Liquidators brought proceeding 9408 of 2009 in the Victorian Supreme Court seeking an order that they were justified in entering into a contract to sell the almond assets of 5 of the schemes to a Singaporean controlled company Olam Orchards Australia Pty Ltd. When the matter came on for hearing, the Liquidators sought an additional order that they were justified in paying the sum of \$6 million out of the sale proceeds of \$128 million to the members to extinguish their subleases. I have reviewed the documents filed in support of that application. This sale related only to the almond schemes which were conducted on land owned by a company in the



Catherine M. Curtain

Timbercorp group of companies known as Almond Land Pty Ltd. There were also Timbercorp almond schemes conducted on land owned by sub-trusts of the Timbercorp Orchard Trust, which, although using the name "Timbercorp", were not part of the Timbercorp Group. The schemes affected by the proceeding were the Private Offer 2002 Timbercorp Almond Project, the 2002 Timbercorp Almond Project, the 2005 Timbercorp Almond Project, the 2006 Timbercorp Almond Project and the 2007 Timbercorp Almond Project (**Relevant Schemes**).

25. I am informed by Associate Professor Owen Lennie, who is a consultant valuer assisting the TGG with significant expertise in managed investment schemes, that prior to receipt of 2009 harvest proceeds, the members of the Relevant Schemes had contributed \$387 million (net of distributions) to the Schemes. Although the land owned by Almond Land Pty Ltd secured debts to secured creditors of \$249 million, a substantial portion of that was collateral security for debt owed by other Timbercorp companies. The amount contributed directly by secured creditors to the Almond assets was approximately \$150 million.
26. Counsel instructed by Clarendon Lawyers on behalf of the TGG nominated defendants who are members in the Relevant Schemes appeared at court in that proceeding to consent to the sale but oppose the making of the second order that the Liquidators were justified in paying \$6 million to extinguish members' rights.
27. Ms Kerree Bezencon also appeared in this proceeding on behalf of the TGG Almonds Committee Inc (another group established to represent the interests of members of the various Timbercorp almond schemes). I have reviewed the documents filed in this proceeding by that group. This group sought an order for the appointment of a replacement responsible entity to the schemes.
28. On 9 October 2009 His Honour Justice Robson made an order that the Liquidators were justified in entering into the sale contract but ordered that the net proceeds of sale be held in an interest bearing trust account (**Fund**) pending the hearing and determination by the Court of a proceeding to determine which persons have rights to the Fund. His Honour Justice Robson dismissed the application of Ms Bezencon.
29. Now produced and shown to me and marked with the letters "MJF-7" is a copy of the order made by His Honour Justice Robson.

Background to appeal

30. Proceeding S CI 2009 10699 (**Apportionment Proceeding**) was commenced by the first respondent, one of the secured creditors of the Timbercorp land owning company Almond Land Pty Ltd, to determine the apportionment of the proceeds of the sale to Olam Orchards Australia Pty Ltd.
31. On 22 December 2010, Her Honour Justice Davies made an order that the Appellants be appointed as representative defendants on behalf of members in the Relevant Schemes and that the costs of the representative defendants be paid from the fund constituted by the proceeds of the sale. The order was subsequently varied on 22 March 2010 to remove the \$100,000 limit and to add a requirement for Clarendon Lawyers to produce a costs certificate.



Catherine M. Curtain

32. Now produced and shown to me and marked with the letters "MJF-8" are copies of the order of Her Honour Justice Davies made on 22 December 2010 appointing the Appellants as member representatives and of 22 March 2011 amending that order.
33. The Appellants made a claim on the Fund but were unsuccessful. They now seek to challenge that decision in this appeal.

Other Proceedings

34. There are a number of other proceedings before the Supreme Court of Victoria relating to the apportionment of the proceeds of sale of assets relating to Timbercorp managed investment schemes.
35. The assets and the sale proceeds which are held in funds pending apportionment are summarised in the table below:

Asset	Sale Proceeds
Almond Land Pty Ltd (the current proceedings)	\$128 Million
TPIF almond assets	\$160 Million
Boort olive assets	\$36 Million
Boundary Bend olive assets	\$23.5 Million
Solara citrus assets	\$13.1 Million
Kangara citrus assets	\$11 Million*
TOTAL	\$371.6 Million

* this is an estimate. The Receivers have not disclosed the sale price for the land and water rights.

36. The source of my information for the amount of sale proceeds referred to in paragraph 35 for the TPIF almond assets is paragraph 41 of the affidavit of David Lawrence McEvoy sworn 27 November 2009 in proceeding S CI 2009 10382. Mr McEvoy is one of the receivers of OIM#2 Pty Ltd, OIM#3 Pty Ltd and OIM#5 Pty Ltd which are the trustees of land owning sub-trusts of Timbercorp Primary Infrastructure Fund (TPIF).
37. The source of my information for the amount of sale proceeds for the Boort olive assets and the Boundary Bend olive assets is paragraph 81 of the affidavit of Mark Anthony Korda (the fourth respondent in this appeal) sworn 10 November 2009 in proceeding S CI 2009 9998.
38. The source of my information concerning the sale proceeds of the Solara citrus assets is paragraph 26 of the affidavit of David Lawrence McEvoy sworn 25 January 2010 in proceeding S CI 2010 398.
39. Information concerning the Kangara citrus assets is contained in confidential exhibits to the affidavit of Paul William Kirk sworn 23 February 2010 in proceeding S CI 2011 0888. The amount



Catherine M. Curtain

contained in the table in paragraph 35 is an estimate provided to me by Kerree Bezencon, whom I believe to be the Chairperson of the Timbercorp Citrus Committee Inc, which is an unincorporated association whose members are members of the citrus schemes

40. Now produced and shown to me and marked with the letters "MJF-9", "MJF-10" and "MJF-11" are copies of the orders of His Honour Justice Croft relating to the apportionment of Boort Olives sale proceeds made on 12 November 2009 and of Her Honour Justice Davies relating to the apportionment of TPIF Almond sale proceeds made on 11 December 2009 and Solara Citrus sale proceeds made on 26 February 2010.
41. I am familiar with the documents in the other schemes for which funds have been created by the above order. The decision in the Apportionment Proceeding affects the decision on the apportionment of these funds. For example, Her Honour Justice Davies' finding (which is being appealed against) that His Honour Justice Robson in his order of 9 October 2009 did not intend members to have any rights to a portion of sale proceeds unless they held rights which were proprietary, impacts upon the members of the 2001, 2002 and 2003 almond schemes who have a potential claim against the \$160 million fund held from the sale of the TPIF almond assets. It also affects the members of the early Boort Olive schemes and the Citrus schemes.
42. Also, Her Honour Justice Davies ruled that the water rights held by members in all schemes before her were purely contractual. This finding is also being appealed. This finding impacts on members in the almond schemes affected by the sale of the TPIF almond assets and of the Boort olive and Boundary Bend olive schemes where subleases were held which included water rights in the sublease grants.
43. According to paragraph 12 of the affidavit of Mark Anthony Korda sworn 17 August 2009 in proceeding number 7114 of 2009, there are 6,957 members in Timbercorp almond schemes. According to paragraph 9 of the affidavit of Mark Anthony Korda sworn 10 November 2009 in proceeding 9998 of 2009, there are 3,307 members in the olive schemes. I am informed by Kerree Bezencon that there are 320 members (after allowing for Timbercorp-related interests) in the citrus schemes.
44. Clarendon Lawyers are acting for member groups in relation to other collapsed managed investment schemes, namely Willmott, Great Southern, Forest Enterprises Australia and Rewards. There are no apportionment proceedings yet commenced in these schemes, but there is a strong chance that there will be, particularly in relation to Rewards and Willmott where sale processes are currently under way. Receivers in Rewards have rejected a deed of company arrangement proposal sponsored by members and approved by creditors, which in the members' view would have paid out the secured creditors and rescued the schemes, and are currently negotiating with prospective buyers following advertisements placed by them. The receivers in the Willmott companies placed a sale advertisement in the *Financial Review* on 12 July 2011 and have made an application to the Federal Court of Australia that foreshadows the creation of a similar fund.



Catherine M. Curtin

45. Now produced and shown to me marked MJF-12 is a true copy of the advertisement dated 12 July 2011.
46. Now produced and shown to me and marked with the letters "MJF-13", is a copy of the Federal Court Originating Process commenced by Willmott Forests Limited (Receivers and Managers Appointed) (In Liquidation).

Ability of the representative members to pay costs

47. In past cases involving Timbercorp matters, members and/or financial planners have made contributions to fighting funds to conduct litigation on behalf of members. I estimate that \$1.3 million has been raised to pay for the costs of these actions.
48. In addition to these cases many members have contributed to the case *Woodcroft-Brown v Timbercorp Securities Ltd (In Liquidation)* List B proceeding 9807 of 2009 where scheme members have commenced a class action against Timbercorp directors.
49. A significant number of members borrowed to invest in these schemes. Typically, Timbercorp Finance Ltd provided a loan to an investor of up to 90% of the amount invested. Those members not only face the loss of their investment but also may be saddled with repaying the borrowings.
50. I am informed by Chris Garnaut who is chairman of the TGG and Kerree Bezencon who is chairperson of the Timbercorp Almonds Committee Inc., Timbercorp Olives Committee Inc. and Timbercorp Citrus Committee Inc, and verily believe, that there is little prospect of raising further funding from members to cover the cost of this appeal and any adverse costs order against the Appellants.
51. The Appellants do not have the personal resources available to them to fund the appeal and any potential adverse costs order.
52. The Appellants seek an order that the fund created by the sale proceeds of the sale of the almond assets utilized in the Relevant Schemes can be reconstituted and that the costs of the Appellants in this proceeding be paid on a solicitor and client basis out of the fund.

SWORN by the said MICHAEL JOSEPH
FERNON at Melbourne in the State of
Victoria this 27th day of July 2011

Signature of Michael Joseph Fernon

Before me:

Catherine M. Curtain

CATHERINE CURTAIN
of Clarendon Lawyers Pty Ltd
Level 17, Rialto North Tower
525 Collins St, Melbourne Victoria 3000
an Australian Legal Practitioner within the
meaning of the *Legal Profession Act 2004*

**IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COURT OF APPEAL**

SACPI 2011 0103

BETWEEN:

GRAHAM GOLDENBERG & ORS (according to the Schedule)

Appellants

- and -

BOSI SECURITY SERVICES LIMITED (ACN 009 413 852) & ORS (according to the schedule attached)

Respondents

EXHIBIT EG-7

Date of document:	19 September 2012
Filed on behalf of:	MRB Equities Pty Ltd, Redvi Pty Ltd and Ferrari Investments Holdings Pty Ltd
MGA Lawyers	Solicitors Code: 104101
Level 9,	Tel: 8631 5555
179 Queen Street	Fax: 8631 5599
MELBOURNE VIC 3000	Ref: MG5400/08

This is the exhibit marked "EG-7" now produced and shown to Eli Goldfinger at the time of swearing his affidavit on 19 September 2012.

Before me:



MARK GEREMIA

Level 9 179 Queen Street, Melbourne VIC 3000

An Australian Legal Practitioner

within the meaning of the

..... Legal Profession Act 2004

MGA Lawyers, Level 9, 179 Queen St, Melbourne Vic
An Australian Legal Practitioner with the meaning of the Legal Practice Act
2001

"EG-7"

Funding Agreement dated 22 October 2011

**Management and Funding
Agreement for the funding
of the Almonds Appeal
S APCI 2011 0103**

**Graham Goldenberg & Others
(Claimants)**

**MRB Equities Pty Ltd as
trustee for MRB Equities Trust
ACN 102 694 708 & Others
(Managers)**



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Management and Funding Agreement for the funding of the Almonds Appeal S APCI 2011 0103

Date 22 October 2011

Parties Graham Goldenberg, Christopher Littley, Constantine Moshopoulos and David Butterfield

of C/- Clarendon Lawyers, Level 17, Rialto North Tower, 525 Collins Street, Melbourne, Victoria, 3000 (Claimants)

MRB Equities Pty Ltd ACN 102 694 708 as trustee for MRB Equities Trust

of C/- MAB Corporation Pty Ltd, Level 5, 441 St Kilda Road, Melbourne, Victoria, 3004

Redvil Pty Ltd ACN: 115 017 162

of C/- EGA Corporate Advisers Pty Ltd, Level 18, 499 St Kilda Rd, Melbourne, Victoria, 3004

Ferrari Investments Holdings Pty Ltd ACN: 133 024 549 as trustee for Ferrari Investments Holdings Trust

of C/- EGA Corporate Advisers Pty Ltd, Level 18, 499 St Kilda Rd, Melbourne, Victoria, 3004

(together, Managers)

Background

- (A) The Claimants have lodged an appeal with the Victorian Court of Appeal against the decision of Davies J in BOSI Security Services Limited (ACN 009 413 852) as trustee for Australia & New Zealand Banking Group Limited (ACN 005 357 522) and BOS International (Australia) Limited (ACN 066 601 250) and Westpac Banking Corporation (ACN 007 457 141) v Australia & New Zealand Banking Group Limited (ACN 005 357 522) & Ors [SCI 2009 10699] (the Apportionment case) and the appeal proceedings are identified as S APCI 2011 0103.
- (B) The Claimants have requested the Managers to provide the management and funding for the Appeal.
- (C) The Managers are prepared to conduct the Project Management and pay the Project Costs pursuant to the terms of this Agreement.
- (D) The Managers propose to appoint the Lawyers to provide the Legal Work to the Claimants on the terms of the Standard Lawyers Terms.
- (E) The Claimants acknowledge that the Managers have, by virtue of their obligations and entitlements (including receiving a percentage of the Resolution Sum) set out in this Agreement, an interest in the Appeal.

1 Definitions and Interpretation

1.1 Definitions

Acquisition	The meaning given to this term in the GST Act.
Adverse Costs Order	Any costs order made in favour of the Respondents against the Claimants in the Appeal in respect of costs incurred during the term of this Agreement.
Almond Land Schemes	The Timbercorp Almond schemes the subject matter of the Apportionment case.
Appeal	The appeal referred to in Recital A.
Commencement Date	6 October 2011.
Consideration	The meaning given to this term in the GST Act.
Costs Order	An order made by a Court requiring one or more parties to the Appeal and/or the Managers to pay the costs incurred by another party or other parties to the Appeal.
Court	The Victorian Court of Appeal.
GST	The meaning given to this term in the GST Act.
GST Act	The <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
Agreement	This agreement between the Claimants and the Managers and, if amended, this agreement as amended, and (for the avoidance of doubt) includes Schedules 1, 2 and 3.
Input Tax Credit	The meaning given to this expression by the GST Act.
Lawyers	Clarendon Lawyers Pty Ltd of Level 17, Rialto North Tower, 525 Collins Street, Melbourne or any firm of solicitors appointed in their place.
Legal Work	Advice and other legal services which the Lawyers consider reasonably necessary to prosecute the Appeal.
Privilege	Unless the context otherwise requires, means legal professional privilege and includes any joint interest privilege or common interest privilege.
Project	The Project Management and the conduct of the Appeal in order to achieve Resolution of the Appeal, with the aim of maximising settlement or judgment proceeds, net of Project Costs, in respect of the Appeal as quickly as possible, having due regard to all risks, and, in particular, the Appeal being unsuccessful.
Project Budget	The budget (inclusive of any GST payable) for the Project prepared by the Lawyers and accepted by the Managers and the Lawyers at the commencement of the Standard Lawyers Terms, which is to be in the form of Schedule 2 to this Agreement, and any amended or varied budget which may subsequently be prepared by the Lawyers and which is accepted by the Managers as replacing the previous budget.

Project Costs	<p>The costs and expenses, including any GST payable on any Supply made by any entity as a result of the cost or expense being incurred, comprising:</p> <ul style="list-style-type: none"> (a) the costs and expenses associated with the Project Management; (b) the costs involved in the provision by the Managers of any security for costs; (c) any Adverse Costs Order paid by the Managers; (d) the reasonable legal costs and disbursements of the Lawyers Incurred (including any costs incurred prior to the Commencement Date) for the sole purpose of prosecuting and resolving the Appeal; and (e) all of the Managers' out of pocket costs and expenses paid or incurred in relation to the Project (other than those already referred to in this definition).
Project Management	The management services described in sub-clause 3(a) of this Agreement.
Resolution	When all or any part of the Resolution Sum is received and where the Resolution Sum is received in parts, a "Resolution" occurs each time a part is received.
Resolution Sum	The amount or amounts of money, or the value of goods, services or benefits, for which the Appeal is Settled, or for which judgement is given, in favour of the Claimants, including any interest and costs.
Respondents	<i>BOSI Security Services Limited (ACN 009 413 852) as trustee for Australia & New Zealand Banking Group Limited (ACN 005 357 522) and BOS International (Australia) Limited (ACN 066 601 250) and Westpac Banking Corporation (ACN 007 457 141) and Australia & New Zealand Banking Group Limited (ACN 005 357 522) in respect of whom the Appeal was commenced and in respect of whom the Managers accept Adverse Costs Order exposure.</i>
Settlement	Any compromise, discontinuance, waiver, payment, release or other form of settlement whatsoever where value passes from or on behalf of one or more Respondents to the Claimants in circumstances where the Appeal does not continue, as a result of or in connection with the passing of that value and "Settle", "Settles" and "Settled" have corresponding meanings.
Standard Lawyers Terms	Means the terms and conditions attached as Schedule 1 to this Agreement.
Supply	The meaning given to this term in the GST Act.
Taxable Supply	The meaning given to this term in the GST Act.
Termination	A termination in accordance with clauses 12 or 13 and also any completion, failure, avoidance, rescission, annulment or other cessation of effect of this Agreement.
Trust Account	The account referred to in sub-clause 5(a).

1.2 General

- (a) The written terms of this Agreement constitute the entire agreement between the parties.
- (b) Neither the Claimants nor the Managers intend to be partners or fiduciaries with or to each other. Nothing in this Agreement shall constitute the Claimants and the Managers as partners or fiduciaries.
- (c) There will be no variation or amendment to the terms of this Agreement or the Project Budget except in writing signed by each of the Claimants and the Managers.
- (d) A facsimile transmission of this Agreement signed by any party to it will be treated as an original signed by that party.
- (e) If any provision of this Agreement, or the application thereof to any person or circumstances, is or becomes invalid or unenforceable, the remaining provisions will not be affected and each provision shall remain valid and be enforceable to the full extent permitted by law.
- (f) The Claimants and the Managers will promptly execute all documents and do all things that either of them from time to time reasonably requires of the other to effect, perfect or complete the provisions of this Agreement and any transaction contemplated by it.
- (g) The singular includes the plural in this Agreement and vice versa.
- (h) All references to clauses, sub-clauses and paragraphs are references to clauses, sub-clauses and paragraphs in this Agreement.

2 Condition

This Agreement is conditional upon the approval of the Supreme Court of Victoria.

3 Project Management

- (a) As from the Commencement Date The Managers will provide the following management services in respect of the Project during the term of this Agreement:
 - (i) advising the Claimants on strategy;
 - (ii) retention of service providers (including the Lawyers) for the Project other than barristers and expert witnesses, including, where necessary, personnel to assist in the Project Management;
 - (iii) creating and seeking compliance with the Project Budget;
 - (iv) considering the advice of the Lawyers and providing instructions to the Lawyers subject to clause 9;
 - (v) database and document management;
 - (vi) facilitating periodic meetings between Project participants and reporting to the Claimants in respect of progress;
 - (vii) facilitating non litigious means of resolving the Appeal; and
 - (viii) designing and implementing any process for the resolution of the Appeal other than through legal Appeal.
- (b) If and when requested to do so by the Lawyers, the Claimants will at the cost of the Claimants:
 - (i) provide to the Lawyers all documents and information in the possession, control or power of the Claimants relevant to the Appeal;
 - (ii) provide a written statement of evidence in relation to the Appeal; and
 - (iii) attend the Court to give evidence in relation to the Appeal.

4 Project Costs

- (a) The Managers will pay the Project Costs on the terms of this Agreement.
- (b) The Managers will not seek reimbursement from the Claimants of any internal overheads incurred as part of the Project Costs.
- (c) If the Respondents make any payment by way of costs during the course of the Appeal then such payment will be made into the Trust Account on trust for the Managers and may be utilised by the Managers in paying or reimbursing Project Costs. The Lawyers will make payment of such monies as directed by the Managers from time to time.
- (d) The Managers will pay any Adverse Costs Order. If there is any Resolution Sum or other monies in the Trust Account at the time of the Adverse Costs Order being made then those monies will first be employed to pay the Adverse Costs Order and the Managers will pay any balance outstanding after such payment. The Lawyers will pay out those monies from the Trust Account at the request of the Managers.
- (e) As soon as it is requested to do so by the Lawyers, the Managers will execute a Deed in the form set out in Schedule 3 and will deliver a copy of it to the Respondents and to the Court.
- (f) The Managers will not be required to provide any security for costs in the Appeal to meet the Respondents' costs.

5 Receipt of Resolution Sum

- (a) The Claimants and the Managers agree that the Lawyers will (and will be directed to) receive any Resolution Sum and are to immediately pay any Resolution Sum into a separate trust account kept for that purpose.
- (b) The Lawyers will hold that part of the Resolution Sum disposed of or otherwise due to the Managers under this Agreement on trust for the Managers and the balance on trust for the Claimants to be dispensed in accordance with the directions of the Claimants.
- (c) If, in spite of sub-clause 5(a), the Claimants directly or indirectly receive all or any part of the Resolution Sum, the Claimants will pay it over, together with the reasonable market value of any non monetary component of the Resolution Sum received, to the Lawyers to be paid into the Trust Account and dealt with on the terms of this Agreement. If there is a dispute in relation to the appropriate amount of any non-monetary component, then the dispute shall be conclusively resolved in accordance with the opinion of the most senior counsel retained by the Lawyers in the Appeal or, if no counsel has been retained, the opinion of Lawyers.
- (d) The obligation in sub-clause 5(c) is a continuing obligation and survives any Termination of this Agreement save for a Termination pursuant to sub-clause 13(a).

6 Application of Resolution Sum

- (a) The Lawyers will forthwith pay out of the Trust Account all amounts referred to in sub-clause 8(a) upon cleared funds being available.
- (b) The obligation imposed by sub-clause 6(a) and sub-clause 8(a) is to be met prior to the payment from the Resolution Sum of any other expenses or obligations of the Claimants, including any other fees or costs.
- (c) If any part or all of the Resolution Sum is not money, the Claimants will, as soon as the part or all of it is received, pay to the Lawyers for deposit in the Trust Account an amount equal to the reasonable market value of the non monetary component of the

Resolution Sum so received. If there is a dispute in relation to the appropriate amount of any non-monetary component, then the dispute shall be conclusively resolved in accordance with the opinion of the most senior counsel retained by the Lawyers in the Appeal or, if no counsel has been retained, the opinion of Lawyers.

7 Retrial

If there is a final judgment in the Appeal in favour of the Claimants which orders a retrial, then the Managers may elect to fund the legal costs and disbursements of the retrial. If the Managers so elect, the Claimants will cause the Lawyers to prosecute the retrial in the name of the Claimants. The Claimants and the Lawyers will take all reasonable steps to expeditiously prosecute the retrial. The Managers will pay any Adverse Costs Order if the retrial is funded by the Managers and is lost by the Claimants.

8 Project Costs and Commission

- (a) Upon Resolution, and before any other payments are made from the Resolution Sum, the Claimants will pay to the Managers from the Resolution Sum:
- (i) an amount equal to the total Project Costs (reduced by an amount equal to the sum of any Input Tax Credits received or receivable by the Managers on Acquisitions made in incurring the Project Costs, including pursuant to sub-clause 8(c));
 - (ii) an amount equal to an additional amount, on account of GST, being the amount obtained by multiplying the prevailing rate of GST (currently 10%) by an amount equal to the Consideration to be received by the Managers for any Taxable Supply made by the Managers under or in connection with this Agreement (apart from any Consideration to be provided pursuant to this paragraph 8(a)(ii));
 - (iii) an amount equal to the percentage of the Resolution Sum determined as follows:
 - (A) if the Appeal proceeds to judgment in the Appellants' favour, 35% of any judgment amount on the Appeal or \$5,000,000, whichever is the lesser; or
 - (B) If a Settlement is reached and approved by the Court:
 - (1) If the Court approves the Resolution Sum as a global amount in resolution of all Timbercorp horticultural schemes, or, for all Timbercorp Olive and Almond schemes, without allocating apportionments between discrete schemes, then 17½% of the Resolution Sum; or
 - (2) If the Court apportions the Resolution Sum between schemes and allocates a discrete portion to the Almond Land Schemes, then 35% of the amount apportioned to the schemes the subject of the Appeal.
- (b) The Claimants hereby dispose of and assign to the Managers, as Consideration for the financing of the Appeal, that part of the Resolution Sum equal to the total of the amounts referred to in paragraphs 8(a)(i) to 8(a)(ii), but where that total is greater than the amount of the balance of the Resolution Sum after the disposition and assignment referred to in this paragraph 8(b) (provided that disposition and assignment has not been terminated), then limited to that balance;
- (c) The Claimants will, at the Managers' request, pay to the Managers any Input Tax Credit to which the Claimants are entitled under the GST Act in respect of the incurrance of the Project Costs. Any such amount is payable at the earliest time the Claimants can claim the benefit of the Input Tax Credit from the Commissioner of Taxation. If upon Resolution, there is any Input Tax Credit not paid to the Managers, that is payable, or would be payable if the Managers had made a request, under this

sub-clause, then the Managers will be entitled to receive payment of the GST (paid by the Managers) to which that Input Tax Credit relates or would relate, under sub-clause 8(a);

- (d) Subject to sub-clause 8(c), no fees or commissions will become due or owing by the Claimants to the Managers unless and until Resolution and then will not exceed the Resolution Sum.

9 The Lawyers' Retainer and Settlement

- (a) The Managers will appoint the Lawyers to provide the Legal Work to the Claimants on the terms of the Standard Lawyers Terms.
- (b) The Claimants agree that if there is any inconsistency between the terms of any retainer agreement between the Claimants and the Lawyers and this Agreement or the Standard Lawyers Terms, the terms of this Agreement or the Standard Lawyers Terms, as applicable, will prevail.
- (c) The Managers will give day to day instructions concerning the Appeal, however the Claimants may override the instructions given by the Managers by the Claimants giving instructions to the Lawyers.
- (d) Except in relation to Settlement, which is dealt with below, if the Lawyers notify the Managers and the Claimants that the Lawyers believe that circumstances have arisen such that they may be in a position of conflict with respect to any obligations they owe to the Managers and those they owe to the Claimants, the Claimants and the Managers agree that, in order to resolve that conflict, the Lawyers may:
- (i) seek instructions from the Claimants, which instructions will override those that may be given by the Managers;
 - (ii) give advice to the Claimants and take instructions from the Claimants, even though such advice and instructions are or may be contrary to the Managers' interests; and
 - (iii) refrain from giving the Managers advice and from acting on the Managers' instructions, where that advice or those instructions are or may be contrary to the Claimants' instructions.
- (e) Nothing in sub-clauses 9(c) or 9(d) entitles the Claimants to breach, or authorises the breach of, any terms of this Agreement.
- (f) In recognition of the fact that the Managers have an interest in the Resolution Sum, if the Claimants:
- (i) want to Settle the Appeal for less than the Managers consider appropriate; or
 - (ii) do not want to Settle the Appeal when the Managers consider it appropriate for the Claimants to do so;

then the Managers and the Claimants must seek to resolve their difference of opinion by referring it to counsel for advice on whether, in counsel's opinion, Settlement of the Appeal on the terms and in the circumstances identified by either the Managers or the Claimants or both, is reasonable in all of the circumstances.

- (g) In the first instance counsel will be the most senior counsel of those retained by the Lawyers. If no counsel has been retained then the Lawyers in consultation with the Claimants and the Managers will appoint senior counsel for that purpose. If the Managers and the Claimants are unable to agree on the selection of a senior counsel then the senior counsel will be one appointed by the President of the Victorian Bar Association for that purpose.
- (h) The opinion of counsel will be final and binding on both the Claimants and the Managers. Counsel may proceed as he or she sees fit to inform himself or herself before forming and delivering his or her opinion. If counsel's opinion is that the Settlement is reasonable then the parties agree that the Lawyers will be instructed to do all that is necessary to Settle the Appeal on that basis.

- (i) The Managers will pay the costs of counsel providing his or her opinion as part of the Project Costs.
- (j) The Managers and the Claimants agree that, should any conflict arise as between the interests of the Managers and the interests of the Claimants, then the Lawyers may continue to provide the Legal Work to the Claimants and the Managers will raise no objection to them doing so.

10 Confidentiality and Provision of Documents

- (a) In providing to the Managers any documents or information about the Appeal, the Claimants do not intend to waive any Privilege that may attach to such documents or information.
- (b) The Managers agree that information, communications and documentation provided to them or that is generated by the Managers in the course of the Project Management or that is provided to them by the Claimants, the Lawyers or any counsel instructed by the Lawyers, is provided, acquired or generated in circumstances where the Claimants are contemplating, participating in or conducting litigation against the Respondents, and the Managers and the Claimants acknowledge that all such information, communications and documentation are confidential within the meaning of equity and the communications are "confidential communications" and any documents are "confidential documents" within the meaning of Part 3.10 of the *Evidence Act 2008* (Vic) unless already in the public domain. The Managers agree to preserve that confidentiality unless disclosure is authorised, agreed to or contemplated by this Agreement, or is otherwise required by law.

11 Duration of Agreement

Subject to clauses 12 and 13, this Agreement commences on the Commencement Date and continues in operation until:

- (a) the Appeal has concluded; and
- (b) the Managers have complied with all of their obligations pursuant to this Agreement, and the Resolution Sum (if any) has been disbursed in accordance with this Agreement.

12 Termination by the Manager

- (a) If the Claimants commit a serious breach of this Agreement and do not remedy the breach within 30 days after receiving written notice from the Managers requiring them to do so, the Managers may terminate this Agreement forthwith by giving 7 days' written notice to the Claimants.
- (b) If the Managers terminate their obligations pursuant to sub-clause 12(a), then the disposition and assignment referred to in paragraph 8(b) will be terminated and the Managers will not be entitled to any amount pursuant to paragraph 8(a)(iii) but they will continue to be entitled to receive amounts pursuant to paragraphs 8(a)(i) and 8(a)(ii) from any Resolution Sum. The Claimants will notify the Managers upon receipt by the Claimants of all or any part of the Resolution Sum. The obligations in this clause survive any Termination of this Agreement.
- (c) All obligations of the Managers under this Agreement cease on the date the Managers' termination becomes effective, save for obligations accrued to that date.
- (d) The accrued obligations of the Managers referred to in sub-clauses 12(a) and 12(c) comprise:
 - (i) payment of any outstanding Project Costs pursuant to sub-clause 4(a) incurred up to the date the notice of termination becomes effective; and
 - (ii) payment of any quantified Adverse Costs Order (which, for the avoidance of doubt, relates only to costs which arise in, or are attributed to, the period

beginning on the Commencement Date and ending on the date the notice of termination becomes effective).

13 Termination by the Claimants

- (a) If the Managers commit a serious breach of this Agreement and do not remedy the breach within 30 days after receiving written notice from the Claimants requiring them to do so, the Claimants may terminate this Agreement forthwith by giving 7 days' written notice to the Managers.
- (b) If this Agreement is terminated by the Claimants pursuant to sub-clause 13(a), then:
 - (i) the Managers remain liable for the obligations referred to in sub-clause 12(d); and
 - (ii) the dispositions and assignments referred to in sub-clause 8(b) will be terminated and the Claimants will not be required to make any payment to the Managers under sub-clause 8.

14 Miscellaneous

- (a) The Claimants and the Managers will, save as otherwise expressly provided in this Agreement, not do or permit to be done anything likely to deprive any party of the benefit for which the party entered this Agreement.
- (b) Each Claimant will use his, her or its best endeavours to cause any Resolution Sum to be received or recovered as quickly as possible and particularly after any Settlement or judgment in respect of the Appeal.
- (c) If this Agreement or any part thereof is annulled, avoided or held unenforceable, the Claimants will forthwith do all things necessary, including without limitation executing any further or other agreement or Instrument, to ensure that the Managers receive any remuneration, entitlement or other benefit to which this Agreement refers or which is contemplated by this Agreement. The Claimants irrevocably agree that production of a copy of this Agreement shall be conclusive evidence of the Claimants' obligation as set out in this clause.
- (d) The Claimants will not seek any order from any court that may detrimentally affect the Managers' rights under this Agreement other than with the consent of the Managers or as arises out of any breach by the Managers of this Agreement.
- (e) If the Claimants act in breach of this Agreement, clauses 6 and 8 will continue to apply to any payment received by the Claimants in respect of the Appeal.
- (f) The Claimants and the Managers will keep the contents of this Agreement confidential in so far as it concerns the terms of the relationship between the Claimants and the Manager, except where disclosure to the Australian Securities Exchange or to a Court is required or disclosure is, in the Manager's absolute discretion, made by the Managers to the Respondents or the Respondents' agent or agents.

15 Governing Law

This Agreement is entered into in Victoria and is to be construed in accordance with and governed by the laws of Victoria and the parties submit to the jurisdiction of the courts of that State.

16 Notices

- (a) All notices given under this Agreement shall be in writing and may be served personally, by post, facsimile or by email.
- (b) The address for service of each of the Managers is as follows:

MRB Equities Pty Ltd

MAB Corporation Pty Ltd
Level 5,
441 St Kilda Road
Melbourne, Victoria 3004

Redvill Pty Ltd

EGA Corporate Advisers Pty Ltd
Level 18,
499 St Kilda Road
Melbourne, Victoria 3004

Ferrari Investments Holdings Pty Ltd

EGA Corporate Advisers Pty Ltd
Level 18,
499 St Kilda Road
Melbourne, Victoria 3004

- (c) The address for service of the Claimants is:
Clarendon Lawyers
Level 17, Rialto North Tower
525 Collins Street
Melbourne, Victoria 3000
- (d) Notices shall be deemed to be received on the day after they are posted and the day they are transmitted by facsimile or email.

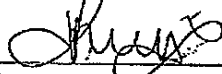
17 Acknowledgement

By executing this Agreement the Claimants acknowledge that the Managers recommended to the Claimants that the Claimants first obtain legal advice as to its meaning and effect.

Signing page

Executed as an Agreement

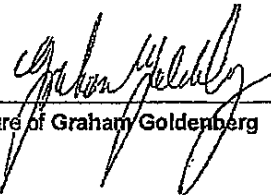
SIGNED by GRAHAM GOLDENBERG in the presence of:



Signature of witness

Tania Phillips

Name of witness (please print)



Signature of Graham Goldenberg

SIGNED by CHRIS MARK LITTLE in the presence of:

Signature of witness

Signature of Chris Little

Name of witness (please print)

SIGNED by CONSTANTINE MOSHOPOULOS in the presence of:

Signature of witness

Signature of Constantine Moshopoulos

Name of witness (please print)

SIGNED by DAVID BUTTERFIELD in the presence of:

Signature of witness

Signature of David Butterfield

Name of witness (please print)

Executed as an Agreement

SIGNED by GRAHAM GOLDENBERG in the presence of :

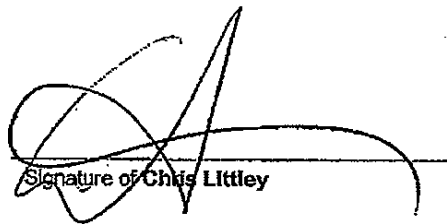
Signature of witness

Signature of Graham Goldenberg

Name of witness (please print)

SIGNED by CHRIS MARK LITTLE in the presence of :


Signature of witness


Signature of Chris Little

Marija Lakouska
Name of witness (please print)

SIGNED by CONSTANTINE MOSHOPOULOS in the presence of :

Signature of witness

Signature of Constantine Moshopoulos

Name of witness (please print)

SIGNED by DAVID BUTTERFIELD in the presence of :

Signature of witness

Signature of David Butterfield

Name of witness (please print)

Executed as an Agreement

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Signature of witness

Signature of Graham Goldenberg

Name of witness (please print)

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Signature of witness

Signature of Chris Littley

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Signature of witness

Signature of Constantine Moshopoulos

Tania Phillips

Name of witness (please print)

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Signature of witness

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Name of witness (please print)

SIGNED by DAVID BUTTERFIELD in the presence of :


Signature of witness

Signature of David Butterfield

MICHAEL FERNAN

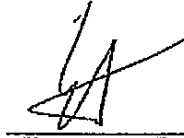
Name of witness (please print)

EXECUTED by MRB EQUITIES PTY LTD as trustee for MRB EQUITIES TRUST in accordance with the *Corporations Act 2001* by being signed by Michael Raymond Buxton, who states that he is the sole director:



Signature of Michael Raymond Buxton

EXECUTED by REDVIL PTY LTD in accordance with the *Corporations Act 2001* by being signed by Eli Goldfinger, who states that he is the sole director:



Signature of Eli Goldfinger

EXECUTED by FERRARI INVESTMENT HOLDINGS PTY LTD as trustee for FERRARI INVESTMENTS HOLDINGS TRUST in accordance with the *Corporations Act 2001* by being signed by Peter Ferrari who states that he is the sole director:



Signature of Peter Ferrari

Schedule 1 – Standard Lawyers Terms

This agreement is made the 22nd day of October 2011.

BETWEEN: Clarendon Lawyers Pty Ltd ACN 126 880 411 (Lawyers).
of Level 17, Rialto North Tower, 525 Collins Street, Melbourne, Victoria, 3000

AND: MRB Equities Pty Ltd ACN 102 694 708 as trustee for MRB Equities Trust
of Level 5 441 St Kilda Road, Melbourne, Victoria, 3004

Redvile Pty Ltd ACN: 115 017 162
of C/- EGA Corporate Advisers Pty Ltd, Level 18, 499 St Kilda Rd, Melbourne, Victoria, 3004

Ferrari Investments Holdings Pty Ltd ACN: 133 024 549 as trustee for Ferrari Investments Holdings Trust
of C/- EGA Corporate Advisers Pty Ltd, Level 18, 499 St Kilda Rd, Melbourne, Victoria, 3004

(together, Managers)

RECITALS

- A. The Managers have entered into or propose to enter into the Management & Funding Agreement.
- B. The Lawyers are aware of the contents of the Management & Funding Agreement and have agreed to act consistently with, and in accordance with, the terms of the Management & Funding Agreement.
- C. The Management & Funding Agreement provides that the Managers will appoint the Lawyers to provide the Legal Work and the Managers propose to do so on these Terms.
- D. These Terms set out the basis on which the Lawyers are appointed by the Managers to provide the Legal Work to the Claimants.

1 Definitions

In these Terms, unless the contrary intention appears:

- (a) **Management & Funding Agreement** means the agreement between the Managers and Claimants with respect to the management and funding of the Appeal;
- (b) **Term** means a clause, sub-clause or paragraph in this Agreement;
- (c) **Agreement** means this agreement; and
- (d) the definitions of words used in the Management & Funding Agreement will apply to define the meaning of those words as used in these Terms.

2 Appointment of the Lawyers

- (a) The Managers hereby appoint the Lawyers to provide the Legal Work to the Claimants pursuant to these Terms.
- (b) The Lawyers will:
 - (i) act consistently with the terms of the Management & Funding Agreement; and
 - (ii) do all things which the Management & Funding Agreement contemplates the Lawyers will do.
- (c) The Lawyers agree that if there is any inconsistency between these Terms and the terms of any retainer between the Lawyers and the Claimants, these Terms prevail.

3 Commencement of the Project

The Lawyers will inform the Managers in writing of:

- (a) the names of the Lawyers who it is proposed will provide the Legal Work;
- (b) the hourly rates of those Lawyers (inclusive of GST), for the purposes of Term 5(a);
- (c) the hourly and daily rates of barristers retained or proposed to be retained by the Lawyers (inclusive of GST); and
- (d) the Lawyers' estimate of fees and disbursements to prosecute the Appeal (separately identifying the estimated fees of the Lawyers, the barristers and the experts if any, by reference to each event in the Project Budget).

4 Reporting

- (a) The Lawyers will keep the Managers fully informed of all matters concerning the Appeal, including any mediation and Settlement discussions. The Lawyers will ensure that the Managers are given all necessary information and advice in order to facilitate informed instructions and to enable the Managers to provide the Project Management.
- (b) Without limiting Term 4(a), if, after the date of the Management & Funding Agreement, the Lawyers become aware of any information which has or may have a material impact on the Appeal or the potential for any judgement sum to be recovered, the Lawyers will immediately inform the Managers of that information.

5 Costs and Disbursements

- (a) The Lawyers will charge for the Legal Work provided by reference to the time reasonably and properly spent at the hourly rates as notified to the Managers pursuant to Term 3(a), subject to the Lawyers' right to increase the hourly rates by no more than five percent of the initial hourly rates on each anniversary of the date on which these Terms are made. Detailed time records must be kept to facilitate time details being provided in accordance with Term 6 of these Terms.
- (b) The Lawyers will only seek reimbursement from the Managers for expenditure reasonably incurred by the Lawyers in progressing the Appeal and supported by invoices.

6 Invoices

- (a) The Lawyers will render monthly invoices to the Managers with a copy to the Claimants by the 20th day of each month, accompanied by:
 - (i) a summary of the tasks performed in respect of which time was incurred; and
 - (ii) invoices from barristers and experts and for any other disbursements costing at least \$500.

- (b) The monetary details in the monthly invoices will include a charge for the time detailed at the hourly rates notified to the Managers pursuant to Term 3(b) including any GST.
- (c) The Managers will pay:
 - (i) the reasonable legal costs of the Lawyers incurred during the duration of the Management & Funding Agreement for the sole purpose of prosecuting the Appeal; and
 - (ii) the reasonable disbursements incurred during the term of the Management & Funding Agreement for the sole purpose of prosecuting the Appeal;
 - (iii) in so far as those costs and disbursements form part of the Project Costs.
- (d) Provided invoices from the Lawyers comply with these Terms, the Managers will pay them within 30 days from the month in which the Lawyers' invoice is received by the Managers.

7 Priorities, Lien and Insurance

- (a) The Lawyers agree not to seek payment of any amounts outstanding to them in excess of that for which the Managers are liable under these Terms.
- (b) The Lawyers are not entitled to claim a lien in respect of documents in their possession relevant to the Appeal if there are no fees payable pursuant to Term 6(c).
- (c) The Lawyers will maintain professional indemnity insurance in an amount of at least \$10 million for the duration of these Terms plus three years.
- (d) The Lawyers will provide evidence of the insurance to the Managers on the Managers' request from time to time.

8 Termination of Appointment

- (a) The Lawyers may terminate their appointment by the Managers to provide the Legal Work to the Claimants on 7 days' written notice to the Managers and to the Claimants, in the following circumstances:
 - (i) if the Managers fails to pay any costs in accordance with the terms of the Management & Funding Agreement or these Terms after the Managers have been given 30 days' written notice to do so; or
 - (ii) if the Management & Funding Agreement is terminated.

9 Address For Service

- (a) The Managers' addresses for service are as set out in the Management & Funding Agreement.
- (b) The Lawyers' address for service is the address identified above (in identifying the parties to these Terms) or as otherwise notified to the Managers in writing if that address changes.

10 Variation

These Terms may only be varied in writing signed by the Lawyers and the Managers.

Executed as an Agreement


EXECUTED by CLARENDON LAWYERS
PTY LTD in accordance with the
Corporations Act 2001 by being signed by
the following officers:


Signature of Michael Joseph Fernon


Signature of Mark Albert Bland

EXECUTED by MRB EQUITIES PTY LTD
as trustee for MRB EQUITIES TRUST in
accordance with the *Corporations Act 2001*
by being signed by Michael Raymond
Buxton, who states that he is the sole
director:


Signature of Michael Buxton


EXECUTED by REDVILLE PTY LTD in
accordance with the *Corporations Act 2001* by
being signed by Eli Goldfinger, who states
that he is the sole director:


Signature of Eli Goldfinger

EXECUTED by FERRARI INVESTMENT
HOLDINGS PTY LTD as trustee for
FERRARI INVESTMENTS HOLDINGS
TRUST in accordance with the *Corporations
Act 2001* by being signed by Peter Ferrari
who states that he is the sole director:


Signature of Peter Ferrari

Schedule 2 – Rates and Contact Details

Rates and Contact Details – Lawyers/Barristers

[Insert investment name]

Name of Lawyer	Title	Email Address	Telephone No.	Hourly Rate (incl GST)
Michael Fernon	Director	Michael.fernon@clarendonlawyers.com.au	+61 3 8681 4419	\$577.50
Catherine Curtain	Solicitor	Catherine.curtain@clarendonlawyers.com.au	+61 3 8681 4442	\$357.50
Yu-chiao Hsueh	Solicitor	Yu-chiao.hsueh@clarendonlawyers.com.au	+61 3 8681 4438	\$357.50

Name of Barrister	Title	Email Address	Telephone No.	Hourly Rate (incl GST)	Daily Rate (incl GST)
Garry Bignmore	Queens Counsel	garry.bignmore@vicbar.com.au	+61 3 9225 7201	\$847.00	\$8,470.00
Sam Hopper	Junior Barrister	samuel.hopper@vicbar.com.au	+61 3 9225 6857	\$412.50	\$3,300.00

PROJECT BUDGET

Event	Solicitor's fees (incl GST) \$	Jnr Barrister's fees (incl GST) \$	Snr Barrister's fees (incl GST) \$	Disbursements (court fees, printing) \$	TOTAL (incl GST) \$
Draft appeal and filing	3,300	3,300	5,500	2,700	14,800
Appeal book	11,000	3,300	4,235	10,000	28,535
Submissions	2,200	9,900	16,940	0	29,040
Preparation for hearing	4,400	3,300	8,470	0	16,170
Hearing	4,400	3,300	8,470	0	16,170
Interlocutory Applications	2,200	3,300	0	0	5,500
Miscellaneous	5,500	6,600	5,500	1,500	19,100
TOTALS	33,000	33,000	49,115	14,200	129,315

Schedule 3 – Deed

PARTY NAMES

ACN	MRB EQUITIES PTY LTD as trustee for MRB EQUITIES TRUST
ADDRESS	102 694 708 Level 5, 441 St Kilda Road, Melbourne VIC 3004
TELEPHONE	03 8681 2215
ATTENTION	Tiffany Shepherd
E-MAIL	tshepherd@mabcorp.com.au

ACN	REDVILE PTY LTD
ADDRESS	115 017 162 Level 18, 499 St Kilda Road, Melbourne VIC 3004
TELEPHONE	03 9866 6200
ATTENTION	Eli Goldfinger
E-MAIL	eli@ega.com.au

ACN	FERRARI INVESTMENTS HOLDINGS PTY LTD as trustee for FERRARI INVESTMENTS HOLDINGS TRUST
ADDRESS	133 024 549 Level 18, 499 St Kilda Road, Melbourne VIC 3004
TELEPHONE	03 9866 6200
ATTENTION	Eli Goldfinger
E-MAIL	eli@ega.com.au

(together, Managers)

DEFINITIONS

ADVERSE COST ORDER

Means any costs order made in favour of the Respondents against the Applicants in the Proceedings in respect of costs incurred during the term of the LFA.

APPLICANTS

Graham Goldenberg, Christopher Little, Constantine Moshopoulos and David Butterfield

COURT

The Supreme Court of Victoria Court of Appeal

LFA

The litigation funding agreement which commenced on 6 October 2011 between the Managers and the Applicants.

PROCEEDINGS

S APCI 2011 0103

RESPONDENTS

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

GOVERNING LAW

The law of Victoria.

BY THIS DEED, the Managers, for the benefit of the Court and the Respondents:

- (a) submit to the jurisdiction of the Court in relation to any order the Court may wish to make directly against the Managers in the Proceedings that the Managers pay any Adverse Costs Order;
- (b) agree not to oppose any joinder application made by the Respondents in the Proceedings for the purpose of seeking an order that the Managers pay any Adverse Cost Order, and agree, in circumstances where the rules of the Court prevent that joinder, at the Respondents' request, to itself apply to be joined to the Proceedings, to enable such an order to be made against it;
- (c) agree to pay to the Respondents the final, quantified amount of any Adverse Cost Order such that the Respondents may enforce the payment of that amount as a debt due and owing by the Managers to the Respondents;
- (d) agree to notify the Respondents in writing of any termination of the LFA within 7 days of it so terminating; and
- (e) acknowledge having received valuable consideration for this Deed.

DATED this 22nd day of October 2011.

Executed as a Deed

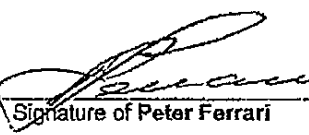
EXECUTED by MRB EQUITIES PTY LTD as trustee for MRB EQUITIES TRUST in accordance with the Corporations Act 2001 by being signed by Michael Raymond Buxton, who states that he is the sole director:


Signature of Michael Raymond Buxton

EXECUTED by REDVILK PTY LTD in accordance with the Corporations Act 2001 by being signed by Eli Goldfinger, who states that he is the sole director:


Signature of Eli Goldfinger

EXECUTED by FERRARI INVESTMENT HOLDINGS PTY LTD as trustee for FERRARI INVESTMENTS HOLDINGS TRUST in accordance with the Corporations Act 2001 by being signed by Peter Ferrari who states that he is the sole director:


Signature of Peter Ferrari

**IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COURT OF APPEAL**

SACPI 2011 0103

BETWEEN:

GRAHAM GOLDENBERG & ORS (according to the Schedule)

Appellants

- and -

BOSI SECURITY SERVICES LIMITED (ACN 009 413 852) & ORS (according to the schedule attached)

Respondents

EXHIBIT EG-8

Date of document:	19 September 2012
Filed on behalf of:	MRB Equities Pty Ltd, Redvi Pty Ltd and Ferrari Investments Holdings Pty Ltd
MGA Lawyers Level 9, 179 Queen Street MELBOURNE VIC 3000	Solicitors Code: 104101 Tel: 8631 5555 Fax: 8631 5599 Ref: MG5400/08

This is the exhibit marked "EG-8" now produced and shown to Eli Goldfinger at the time of swearing his affidavit on 19 September 2012.

Before me:



MARK GEREMIA
Level 9 179 Queen Street, Melbourne VIC 3000
An Australian Legal Practitioner
within the meaning of the
Legal Profession Act 2004

MGA Lawyers, Level 9, 179 Queen St, Melbourne Vic
An Australian Legal Practitioner with the meaning of the Legal Practice Act
2001

"EG-8"
**First Amending Agreement dated 18
December 2011**

**Agreement to amend Funding
Agreement**

**Graham Goldenberg & Others
(Claimants)**

**MRB Equities Pty Ltd as
trustee for MRB Equities Trust
ACN 102 694 708 & Others
(Managers)**

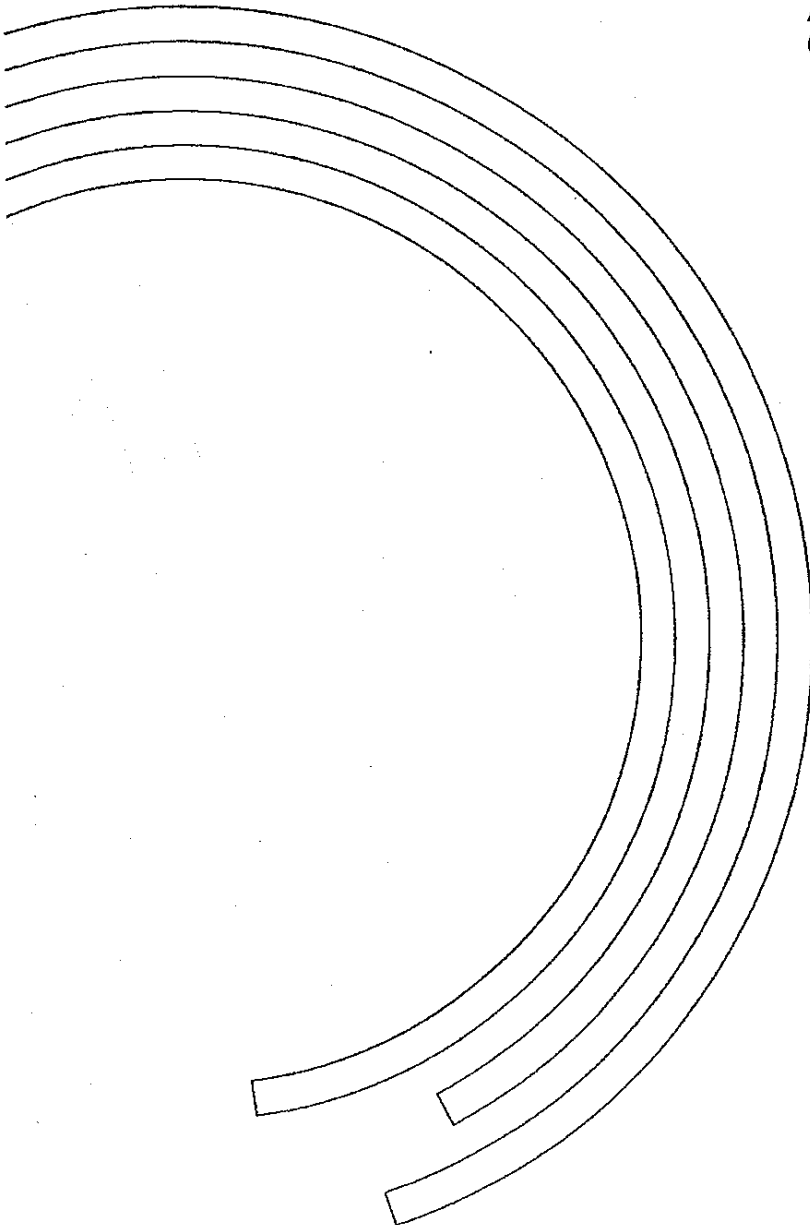


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Signing page	4

Agreement to amend Funding Agreement

Date

Parties

Graham Goldenberg, Christopher Littley, Constantine Moshopoulos and David Butterfield

of C/- Clarendon Lawyers, Level 17, Rialto North Tower, 525 Collins Street, Melbourne, Victoria, 3000 (Claimants)

MRB Equities Pty Ltd ACN 102 694 708 as trustee for MRB Equities Trust

of C/- MAB Corporation Pty Ltd, Level 5, 441 St Kilda Road, Melbourne, Victoria, 3004

Redvil Pty Ltd ACN: 115 017 162

of C/- EGA Corporate Advisers Pty Ltd, Level 18, 499 St Kilda Rd, Melbourne, Victoria, 3004

Ferrari Investments Holdings Pty Ltd ACN: 133 024 549 as trustee for Ferrari Investments Holdings Trust

of C/- EGA Corporate Advisers Pty Ltd, Level 18, 499 St Kilda Rd, Melbourne, Victoria, 3004

(together, **Managers**)

Background

- (A) The parties are parties to a Management and Funding Agreement for the Funding of Almonds Appeal S APCI 2011 0103 (**Funding Agreement**) dated 22 October 2011.
- (B) The parties have agreed to amend the Funding Agreement as set out in this agreement.

1 Definitions and Interpretation

Terms and rules of interpretation defined or set out in the Funding Agreement have the same meaning in this agreement.

2 Amendments

The parties agree to amend the Funding Agreement as follows:

2.1 Clause 2

Clause 2 is deleted.

2.2 Clause 8(a)(iii)(B)

Clause 8(a)(iii)(B) of the Funding Agreement is amended by replacing "17½%" and "35%" in subparagraphs (1) and (2) respectively with "15%" and "25%".

2.3 Clause 8

Insert a new clause 8(aa) after clause 8(a) to read as follows:

- "(aa) If approval of the Supreme Court is required to make payment of any of the amounts referred to in clause 8(a), the obligation to pay the amount is subject to such approval being obtained. The Claimants must use their best endeavours to obtain such approval."*

2.4 Clause 9(f)

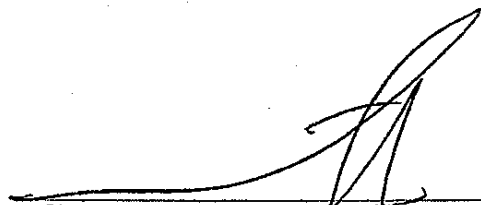
Clause 9(f) of the Funding Agreement shall be amended by inserting the words "subject to clause 12(aa)," at the commencement of paragraph (ii).

2.5 Clause 12

Clause 12 of the Funding Agreement shall be amended by replacing clause 12(b) with the following new clauses 12(aa) to (ba) as follows:

- (aa) If the Claimants do not want to settle the Appeal when the Managers consider it appropriate for the Claimants to do so or the Supreme Court of Victoria does not approve a settlement approved by the Managers and the Claimants, the Managers may serve 30 days notice of their intention to withdraw from further funding of the Appeal at the expiration of the 30 day period. Unless the notice is withdrawn, the obligation of the Managers to provide any funding services or to manage the Appeal will cease upon expiration of the notice.*
- (ab) If the Managers serve a notice in accordance with clause 12(aa) they remain liable to pay all costs incurred by the Claimants (including any Adverse Costs Order) made in respect of the relevant period up to the date that the notice is delivered and to indemnify the Claimants against any Adverse Costs Order which the Claimants may incur if they withdraw from the Appeal or the Appeal is dismissed following the withdrawal of funding by the Managers.*
- (ac) If the Claimants procure a new manager to pay the costs of the Appeal they must use their reasonable endeavours to seek to have the new manager reimburse all amounts paid by the Managers pursuant to this agreement.*
- (b) If the Managers terminate their obligations pursuant to sub-clauses 12(a) and 12(aa), then the disposition and assignment referred to in paragraph 8(b) will be terminated and, subject to clause 12(ba), the Managers will not be entitled to any amount pursuant to paragraph 8(a)(iii) but they will continue to be entitled to receive amounts pursuant to paragraphs 8(a)(i) and 8(a)(ii) from any Resolution Sum. The Claimants will notify the Managers upon receipt by the Claimants of all or any part of the Resolution Sum. If the Claimants enter into an agreement with a new manager who reimburses the Managers with all of the amounts paid by the Manager under this Agreement, they shall not be entitled to the payments under paragraphs 8(a)(i) and (ii). The obligations in this clause survive any Termination of this Agreement.*
- (ba) If a new manager does not reimburse the Manager with the amounts paid by them under this Agreement, the Claimants must ensure that the agreement with the new manager provides for a portion of any award or settlement sum payable to the new manager over and above reimbursement of costs paid by the new manager is apportioned between the Managers and the new manager in the same proportion as the Project Costs paid by the Manager and the costs of the Appeal paid by the new manager bear to the total of such costs. The obligations in this clause survive any Termination of this Agreement.*

EXECUTED by MRB EQUITIES PTY LTD as trustee for MRB EQUITIES TRUST in accordance with the *Corporations Act 2001* by being signed by **Michael Raymond Buxton**, who states that he is the sole director:


Signature of **Michael Raymond Buxton**

EXECUTED by REDVIL PTY LTD in accordance with the *Corporations Act 2001* by being signed by **Eli Goldfinger**, who states that he is the sole director:


Signature of **Eli Goldfinger**

EXECUTED by FERRARI INVESTMENT HOLDINGS PTY LTD as trustee for FERRARI INVESTMENTS HOLDINGS TRUST in accordance with the *Corporations Act 2001* by being signed by **Peter Ferrari** who states that he is the sole director:


Signature of **Peter Ferrari**

Executed as an Agreement

SIGNED by GRAHAM GOLDENBERG in the presence of :

Signature of witness

Signature of Graham Goldenberg

Name of witness (please print)

SIGNED by CHRIS MARK LITTLE in the presence of :

Signature of witness

Signature of Chris Littley

Name of witness (please print)

SIGNED by CONSTANTINE MOSHOPOULOS in the presence of :



Signature of witness



Signature of Constantine Moshopoulos

Tania Phillips

Name of witness (please print)

SIGNED by DAVID BUTTERFIELD in the presence of :

Signature of witness

Signature of David Butterfield

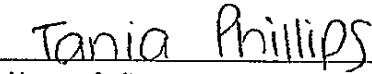
Name of witness (please print)

Executed as an Agreement

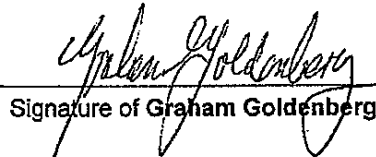
SIGNED by GRAHAM GOLDENBERG in the presence of :



Signature of witness



Name of witness (please print)



Signature of Graham Goldenberg

SIGNED by CHRIS MARK LITTLE in the presence of :

Signature of witness

Signature of Chris Little

Name of witness (please print)

SIGNED by CONSTANTINE MOSHOPOULOS in the presence of :

Signature of witness

Signature of Constantine Moshopoulos

Name of witness (please print)

SIGNED by DAVID BUTTERFIELD in the presence of :

Signature of witness

Signature of David Butterfield

Name of witness (please print)

Executed as an Agreement

SIGNED by **GRAHAM GOLDENBERG** in the presence of :

Signature of witness

Signature of **Graham Goldenberg**

Name of witness *(please print)*

SIGNED by **CHRIS MARK LITTLE** in the presence of :

Signature of witness

Signature of **Chris Little**

Name of witness *(please print)*

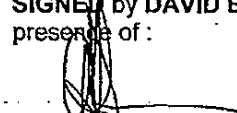
SIGNED by **CONSTANTINE MOSHOPOULOS** in the presence of :

Signature of witness

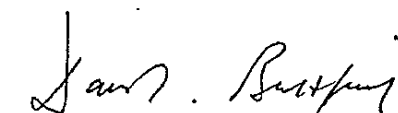
Signature of **Constantine Moshopoulos**

Name of witness *(please print)*

SIGNED by **DAVID BUTTERFIELD** in the presence of :



Signature of witness



Signature of **David Butterfield**

ANDREW (DREW) ROBINSON

Name of witness *(please print)*

Executed as an Agreement

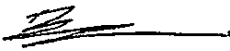
SIGNED by GRAHAM GOLDENBERG in the presence of :

Signature of witness

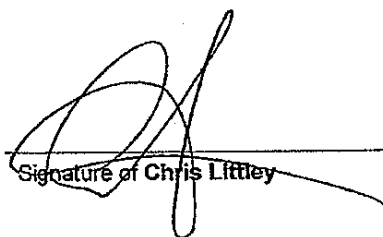
Signature of Graham Goldenberg

Name of witness (please print)

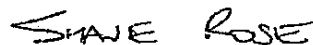
SIGNED by CHRIS MARK LITTLE in the presence of :



Signature of witness



Signature of Chris Little



Name of witness (please print)

SIGNED by CONSTANTINE MOSHOPOULOS in the presence of :

Signature of witness

Signature of Constantine Moshopoulos

Name of witness (please print)

SIGNED by DAVID BUTTERFIELD in the presence of :

Signature of witness

Signature of David Butterfield

Name of witness (please print)

**IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COURT OF APPEAL**

SACPI 2011 0103

BETWEEN:

GRAHAM GOLDENBERG & ORS (according to the Schedule)

Appellants

- and -

BOSI SECURITY SERVICES LIMITED (ACN 009 413 852) & ORS (according
the schedule attached)

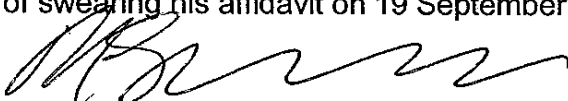
Respondents

EXHIBIT EG-10

Date of document:	19 September 2012
Filed on behalf of:	MRB Equities Pty Ltd, Redvi Pty Ltd and Ferrari Investments Holdings Pty Ltd
MGA Lawyers	Solicitors Code: 104101
Level 9,	Tel: 8631 5555
179 Queen Street	Fax: 8631 5599
MELBOURNE VIC 3000	Ref: MG5400/08

This is the exhibit marked "EG-10" now produced and shown to Eli Goldfinger
at the time of swearing his affidavit on 19 September 2012.

Before me:



MARK GEREMIA
Level 9 179 Queen Street, Melbourne VIC 3000
An Australian Legal Practitioner
within the meaning of the
Legal Profession Act 2004

.....
MGA Lawyers, Level 9, 179 Queen St, Melbourne Vic
An Australian Legal Practitioner with the meaning of the Legal Practice Act
2001

"EG-10"
**Emails between Tony Schubert and
Michael Fernon dated 27 June 2012**

EG-10

From: Michael Fernon <Michael.Fernon@clarendonlawyers.com.au>
Sent: Wednesday, 27 June 2012 4:46 PM
To: Thomas Schubert; Celia Armstrong
Cc: Chris Garnaut; 'Eli Goldfinger'
Subject: RE: Timbercorp Appeal Costs

Tom,

I refer to your email to Celia. I don't think the points you make are valid.

Chris may have made a representation to the funders that the costs would be approximately \$100,000. He would have made that representation based on an estimate given by counsel in conference at which we attended. It is always difficult to estimate costs in a litigation process because there are other parties and we have no control over their actions which can cause additional and unexpected costs to be incurred..

You make comments about the supervision of a junior. We engaged a graduate to attend to putting the appeal book together. This is a substantial task. You seem to be indicating that we ought not to have done that and that Celia herself should have attended to the appeal book. As Celia's charge out rate is \$425 and the graduate's charge out rate is \$135, there would have been a significant increase in costs if we had adopted this course. It is unreasonable to expect us, having engaged a graduate to do the task, not to supervise that graduate. We believe that our actions in this matter have saved the funders considerable costs, rather than causing them to incur additional costs. In addition to the appeal, Celia is running the other court matters and, in particular, the proposed settlement.

Your point about Celia chasing up costs is also not valid. The costs were not our costs but the costs awarded by the court to the other side who were threatening to take action to enforce them. In the circumstances it was entirely appropriate for a solicitor and not a secretary to chase them up. Our secretaries chase up our own costs, except when a director gets involved (which has occurred on this file) and no charge is made for that.

So far as next steps are concerned, we are waiting for the Appeal Court Registrar to advise us of the date when the appeal will be heard. There are no steps to be undertaken in the immediate future until the actual appeal hearing date. We anticipate that this may be 6 months to a year in the future.

We were very surprised to have received your email and the critical tone adopted in it. We would have thought a phone call may have resolved the matter.

Celia is working assiduously to achieve the settlement, which, subject to the court's approval, will result in a substantial premium being earned by the funders.

Kind regards

Michael Fernon | Director

Clarendon Lawyers | Level 17, Rialto North Tower, 525 Collins Street, Melbourne 3000
T + 61 3 8681 4419 | F + 61 3 8681 4499
www.clarendonlawyers.com.au

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From: Thomas Schubert [mailto:tschubert@garnaut.com.au]
Sent: Wednesday, 27 June 2012 1:08 PM
To: Celia Armstrong
Cc: Michael Fernon; Chris Garnaut; Eli Goldfinger
Subject: Timbercorp Appeal Costs

Hi Celia,

The funding group are becoming very sensitive to the continued stream of high legal bills from Clarendons. Monthly invoices are ~\$15,000 and with potentially 3-4 months to run are concerned at the total cost involved. Clarendon's invoices to date are \$162,340 plus an additional \$25,000 for Ashurst when Chris Garnaut initially made representations that it would be ~\$100k to get the job completed.

The most recently issued invoice attached has you billing us to supervise a junior on many occasions. The funders will not accept paying two people to complete the job of one, if the junior cannot complete unsupervised then we would expect you do not charge for their time or complete the work yourself. The funders are all entrepreneurs with strong value principals and expect professionals which they engage to shares those principals.

In addition there is time charged to follow up the payment of an invoice, clearly this is unacceptable. If payment is that urgent then perhaps we could have your receptionist follow us up as opposed to yourself at a significant cost to us.

Could you also please provide us with an estimate to complete the job so we can update the funding group.

Regards

Tom



Tom Schubert

Private Wealth Adviser

tschubert@garnaut.com.au

T: +61 3 9856 4500 | M: +61 434 893 497 | F: +61 3 9820 8485

Level 10, 499 St Kilda Road, Melbourne VIC 3004

www.garnaut.com.au

CAUTION

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**IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COURT OF APPEAL**

SACPI 2011 0103

BETWEEN:

GRAHAM GOLDENBERG & ORS (according to the Schedule)

Appellants

- and -

BOSI SECURITY SERVICES LIMITED (ACN 009 413 852) & ORS (according to the schedule attached)

Respondents

EXHIBIT EG-11

Date of document:	19 September 2012
Filed on behalf of:	MRB Equities Pty Ltd, Redvi Pty Ltd and Ferrari Investments Holdings Pty Ltd
MGA Lawyers	Solicitors Code: 104101
Level 9,	Tel: 8631 5555
179 Queen Street	Fax: 8631 5599
MELBOURNE VIC 3000	Ref: MG5400/08

This is the exhibit marked "EG-11" now produced and shown to Eli Goldfinger at the time of swearing his affidavit on 19 September 2012.

Before me:



MARK GEREMIA
Level 9 179 Queen Street, Melbourne VIC 3000
An Australian Legal Practitioner
within the meaning of the
Legal Profession Act 2004

MGA Lawyers, Level 9, 179 Queen St, Melbourne Vic
An Australian Legal Practitioner with the meaning of the Legal Practice Act
2001

"EG-11"
**Second Amending Agreement dated 24
July 2012**

**Deed of amendment and
acknowledgment**

Graham Goldenberg & Others

**MRB Equities Pty Ltd as
Trustee for MRB Equities Trust
ACN 102 694 708 & Others**

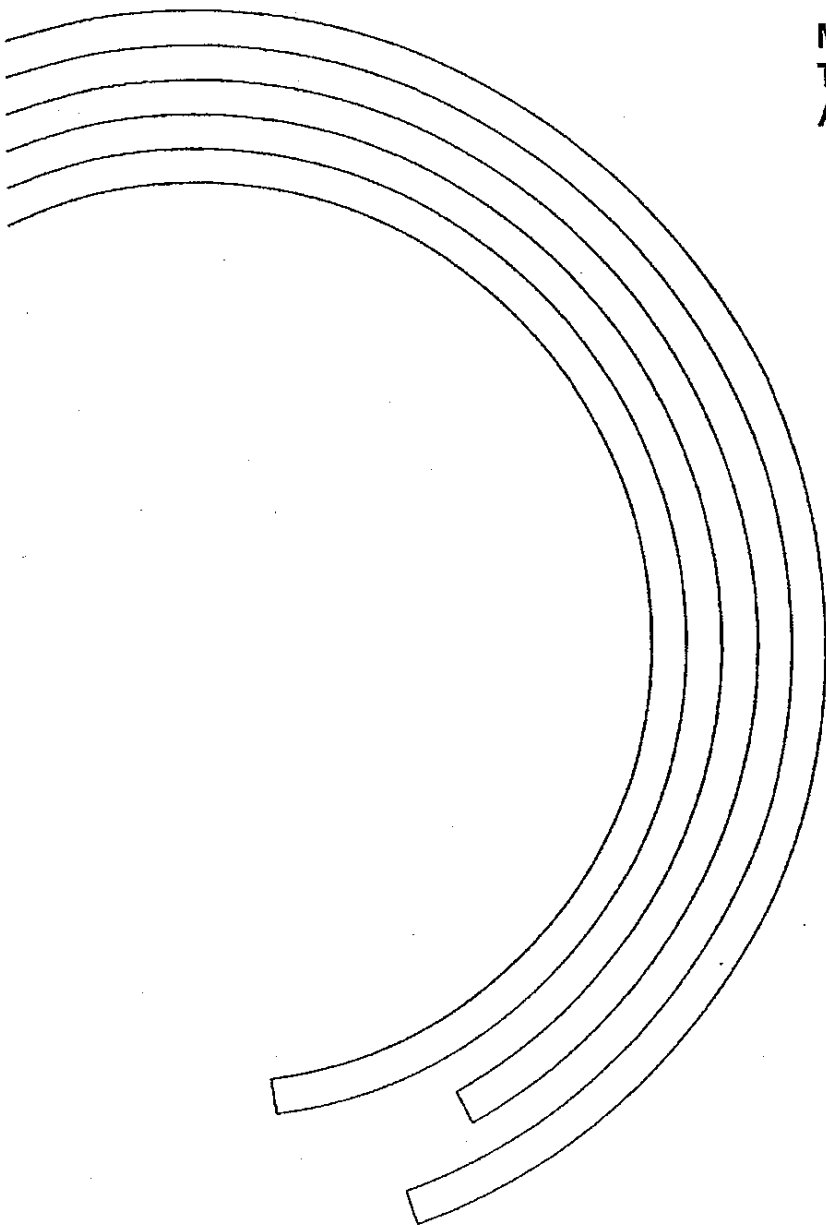


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Deed of amendment and acknowledgment

- Date** 24 July 2012
- Parties** **Graham Goldenberg, Christopher Littley, Constantine Moshopoulos and David Butterfield**
of C/- Clarendon Lawyers, Level 17, Rialto North Tower, 525 Collins Street, Melbourne, Victoria, 3000 (Claimants)
MRB Equities Pty Ltd ACN 102 694 708 as trustee for MRB Equities Trust
of C/- MAB Corporation Pty Ltd, Level 5, 441 St Kilda Road, Melbourne, Victoria, 3004
Redvil Pty Ltd ACN 115 017 162
Of C/- EGA Corporate Advisers Pty Ltd, Level 18, 499 St Kilda Road, Melbourne, Victoria 3004
Ferrari Investment Holdings Pty Ltd ACN 133 024 549 as trustee for Ferrari Investment Holdings Trust
of C/- EGA Corporate Advisers Pty Ltd, Level 18, 499 St Kilda Road, Melbourne, Victoria, 3004
(together, **Managers**)
- Background**
- (A) On or about 22 October 2011 the Claimants and the Managers entered into the funding agreement for the funding of the appeal and on or about 18 December 2011 the Claimants and the Managers agreed to amend that agreement and entered into the Amendment.
- (B) Clauses 8(a) and 8(aa) of the Funding Agreement provide that:
- (a) *Upon Resolution, and before any other payments are made from the Resolution Sum, the Claimants will pay to the Managers from the Resolution Sum:*
-
- (iii) *an amount equal to the percentage of the Resolution Sum determined as follows:*
-
- (B) *if a Settlement is reached and approved by the Court:*
- (1) *if the Court approves the Resolution Sum as a global amount in resolution of all Timbercorp horticultural schemes, or, for all Timbercorp Olive and Almond schemes, without allocating apportions between discrete schemes, then 15% of the Resolution Sum; or*
- (2) *if the Court apportions the Resolution Sum between schemes and allocates a discrete portion to the Almond Land Schemes, then 25% of the amount apportioned to the schemes the subject of the Appeal.*
- (aa) *If approval of the Supreme Court is required to make payment of any of the amounts referred to in clause 8(a), the obligation to pay the amount is subject to such approval being obtained. The Claimants must use their best endeavours to obtain such*

approval.

- (C) The Claimants and the Managers wish to amend clause 8(a)(iii)(B) of the Funding Agreement and confirm the satisfaction of the Claimants' Obligation in accordance with the terms of this deed.

1 Definitions

In this deed:

Amendment means the Agreement to amend Funding Agreement between the Claimants and Managers executed on or about 18 December 2011.

Appeal means the Supreme Court of Victoria, Court of Appeal proceeding *Graham Goldenberg & Ors v BOSI Security Services Limited* (ACN 009 413 852) as trustee for the Australia and New Zealand Banking Group Ltd (ACN 005 357 522) and BOS International (Australia) Ltd (ACN 066 601 250) and Westpac Banking Corporation (ACN 007 457 141) and Ors, Proceeding Number S APCI 2011 0103.

Claimants' Obligation means the obligation of the Claimants under clauses 8(a) and 8(aa) of the Funding Agreement to use their best endeavours to obtain the approval by the Court of payment to the Managers of:

- (a) 15% of the Resolution Sum if the Court approves the Resolution Sum as a global amount in resolution of all Timbercorp Horticultural schemes, or for all Timbercorp Olive and Almond schemes, without allocating apportions between discrete schemes; or
- (b) 25% of the Resolution Sum if the Court apportions the Resolution Sum between schemes and allocates a discrete portion to the Almond Land Schemes.

Effective Date means 23 July 2012;

Funding Agreement means the Management and Funding Agreement for the Funding of the Appeal between the Claimants and Managers dated 22 October 2011 as amended by the Amendment.

Parties means the parties to the Proceedings.

Proceedings means the Appeal and the Timbercorp Horticultural Proceedings, each a Proceeding.

Proposed Clause means the following clause:

"From the [X] Settlement Amount and the [X] Settlement Amount, TSL will pay to Clarendon Lawyers an amount approved by the Court (if any) as fees due to the Litigation Funders under the Funding Agreement" where:

"Funding Agreement" means an agreement between Graham Goldenberg, Christopher Little, Constantine Moshopoulos and David Butterfield and Litigation Funders for funding the Almond Land Rights Appeal Proceeding; and

"Litigation Funders" mean the funders under the Funding Agreement"

Resolution Sum has the same meaning given to that term in the Funding Agreement.

Timbercorp Horticultural Proceedings means the following Supreme Court of Victoria proceedings:

- (a) BOSI Security Services Limited (ACN 009 413 852) as trustee for the Australia and New Zealand Banking Group Ltd (ACN 005 357 522) and BOS International (Australia) Ltd (ACN 066 601 250) and Westpac Banking Corporation (ACN 007 457 141) v Boundary Bend Olives Pty Ltd (in liquidation) (ACN 083 992 367) & Ors Proceeding Number S CI 2010 1354;
- (b) Fenceport Proprietary Limited (ACN 139 604 121) & Ors v Con Moshopoulos & Ors Proceeding Number S CI 2011 6777;
- (c) Australia and New Zealand Banking Group Limited (ACN 005 357 522) v OIM#2 Pty Ltd (Receivers and Managers Appointed) (ACN 112 691 997) as trustee for Timbercorp Orchard Trust #3 and Ors Proceeding Number S CI 2011 6604;
- (d) Australia v New Zealand Banking Group Limited v OIM2 Pty Ltd (receivers and managers appointed as trustee for Timbercorp Orchard Trust #3) & Ors Proceeding Number S CI 2011.

2 Further amendment to the Funding Agreement

The Managers and the Claimants agree to further amend the Funding Agreement as of and from the Effective Date as follows:

2.1 Clause 1.1 (Court)

The definition of "Court" in Clause 1.1 of the Funding Agreement is amended by:

- (a) deleting the word "Victorian" and replacing it with the word "Supreme" after the word "The"; and
- (b) deleting the word "Appeal" and replacing it with the word "Victoria" after the word "of".

2.2 Clause 8(aa)

Clause 8(aa) of the Funding Agreement is amended by deleting the word "Supreme" after the words "If approval of the".

2.3 Clause 8(a)(iii)(B)(1)

Clause 8(a)(iii)(B)(1) of the Funding Agreement is amended by inserting the words "or such other amount that is approved or determined by the Court" at the end of the clause after the words "of the Resolution Sum".

2.4 Clause 8(a)(iii)(B)(2)

Clause 8(a)(iii)(B)(2) of the Funding Agreement is amended by inserting the words "or such other amount that is approved or determined by the Court" at the end of the clause after the words "the subject of the Appeal".

2.5 Clause 12(aa)

Clause 12(aa) of the Funding Agreement is amended by deleting the:

- (a) word "Supreme" after the words "for the Claimants to do so or the" and
- (b) words "of Victoria" after the word "Court".

3 Confirmation

The Claimants confirm that:

- (a) the Parties are involved in negotiations for a global settlement of all Proceedings;
- (b) the Parties propose separate terms of settlement for each of the Proceedings which set out a specific settlement sum for the settlement of that Proceeding;
- (c) during the negotiations of the terms of settlement, the Claimants have requested that the Proposed Clause be included in the terms of settlement for all Proceedings;
- (d) the other Parties to the Proceedings have rejected the inclusion of the Proposed Clause in the terms of settlement for all Proceedings;
- (e) they understand that insisting on the inclusion of the Proposed Clause in the terms of settlement for all Proceedings will seriously jeopardise the settlement and that, even if the other Parties agreed to the inclusion of the Proposed Clause in the terms of settlement for all Proceedings, the Court is not likely to approve such a clause;
- (f) they have requested from the other Parties inclusion of the Proposed Clause or a substantially similar clause, in the terms of settlement for the Appeal;
- (g) the other Parties have rejected the inclusion of the Proposed Clause or a substantially similar clause in the terms of settlement for the Appeal;
- (h) they will, assuming settlement is reached, instruct their counsel to inform the Court that the Managers have a claim against the Resolution Sum under the terms of the Funding Agreement.

4 Acknowledgment by Managers

On the basis of the matters set out in clause 3, the Managers acknowledge and confirm that:

- (a) the requirement for the Claimants to use their best endeavours in respect of paragraph (a) of the Claimants' Obligation has been satisfied by virtue of their request to include the Proposed Clause in the terms of settlement of all Proceedings despite such request being rejected by the other Parties;
- (b) the requirement for the Claimants to use their best endeavours in respect of paragraph (b) of the Claimants' Obligation has been satisfied by virtue of their request to include the Proposed Clause in the terms of settlement of the Appeal despite such request being rejected by the other Parties.

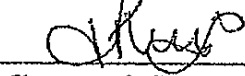
5 Mutual acknowledgement

The Managers and the Claimants acknowledge that if the Managers decide to pursue their claim for payment under the terms of the Funding Agreement, they may, without any objection from the Claimants:

- (a) seek to be joined as a party to any application for judicial approval of the settlement of the Appeal in order to pursue their claim for payment; or
- (b) subject to clauses 4(a) and 4(b) of this deed and the terms of the Funding Agreement, take any such other action as they reasonably deem appropriate.

Executed as a deed

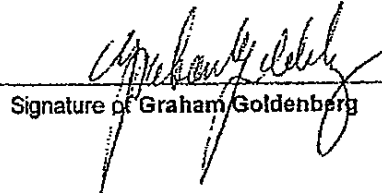
SIGNED SEALED and DELIVERED by
GRAHAM GOLDENBERG in the presence of:



Signature of witness

Tania Phillips

Name of witness (please print)



Signature of Graham Goldenberg

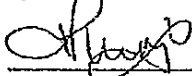
SIGNED SEALED and DELIVERED by
CHRIS MARK LITTLE in the presence of:

Signature of witness

Signature of Chris Little

Name of witness (please print)

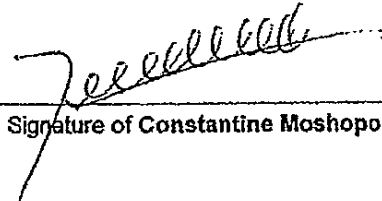
SIGNED SEALED and DELIVERED by
CONSTANTINE MOSHOPOULOS in the
presence of:



Signature of witness

Tania Phillips

Name of witness (please print)



Signature of Constantine Moshopoulos

SIGNED SEALED and DELIVERED by
DAVID BUTTERFIELD in the presence of:

Signature of witness

Signature of David Butterfield

Name of witness (please print)

Signing page

Executed as a deed

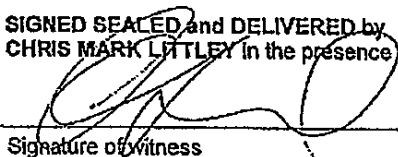
SIGNED SEALED and DELIVERED by
GRAHAM GOLDENBERG in the presence of:

Signature of witness

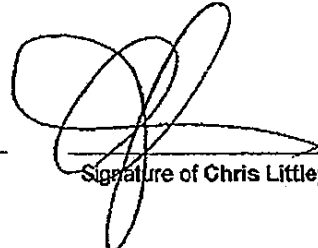
Signature of Graham Goldenberg

Name of witness (please print)

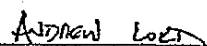
SIGNED SEALED and DELIVERED by
CHRIS MARK LITTLE in the presence of:



Signature of witness



Signature of Chris Little



Name of witness (please print)

SIGNED SEALED and DELIVERED by
CONSTANTINE MOSHOPOULOS in the
presence of:

Signature of witness

Signature of Constantine Moshopoulos

Name of witness (please print)

SIGNED SEALED and DELIVERED by
DAVID BUTTERFIELD in the presence of:

Signature of witness

Signature of David Butterfield

Name of witness (please print)

Executed as a deed

**SIGNED SEALED and DELIVERED by
GRAHAM GOLDBERG in the presence of:**

Signature of witness

Signature of **Graham Goldberg**

Name of witness *(please print)*

**SIGNED SEALED and DELIVERED by
CHRIS MARK LITTLE in the presence of:**

Signature of witness

Signature of **Chris Little**

Name of witness *(please print)*

**SIGNED SEALED and DELIVERED by
CONSTANTINE MOSHOPOULOS in the
presence of:**

Signature of witness

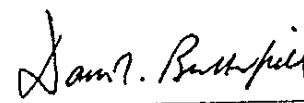
Signature of **Constantine Moshopoulos**

Name of witness *(please print)*

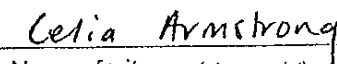
**SIGNED SEALED and DELIVERED by
DAVID BUTTERFIELD in the presence of:**



Signature of witness



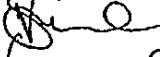
Signature of **David Butterfield**



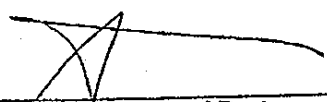
Name of witness *(please print)*

Stephen Buxton for and
on behalf of

EXECUTED by MRB EQUITIES PTY LTD as
trustee for MRB EQUITIES TRUST in
accordance with the Corporations Act 2001 by
being signed by Michael Raymond Buxton,
who states that he is the sole director.
Under power of attorney dated
in the presence of:

Signature of witness: 

name of witness: VERONIKA JANISZEWSKA


Signature of Michael Raymond Buxton
Stephen

EXECUTED by REDVIL PTY LTD in
accordance with the Corporations Act 2001 by
being signed by Eli Goldfinger, who states
that he is the sole director:

Signature of Eli Goldfinger

EXECUTED by FERRARI INVESTMENT
HOLDINGS PTY LTD as trustee for
FERRARI INVESTMENTS HOLDINGS
TRUST in accordance with the Corporations
Act 2001 by being signed by Peter Ferrari
who states that he is the sole director:

Signature of Peter Ferrari

EXECUTED by MRB EQUITIES PTY LTD as trustee for MRB EQUITIES TRUST in accordance with the *Corporations Act 2001* by being signed by Michael Raymond Buxton, who states that he is the sole director:


Signature of Michael Raymond Buxton

EXECUTED by REDVIL PTY LTD in accordance with the *Corporations Act 2001* by being signed by Eli Goldfinger, who states that he is the sole director:



Signature of Eli Goldfinger

EXECUTED by FERRARI INVESTMENT HOLDINGS PTY LTD as trustee for FERRARI INVESTMENTS HOLDINGS TRUST in accordance with the *Corporations Act 2001* by being signed by Peter Ferrari who states that he is the sole director:



Signature of Peter Ferrari

**IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COURT OF APPEAL**

SACPI 2011 0103

BETWEEN:

GRAHAM GOLDENBERG & ORS (according to the Schedule)

Appellants

- and -

BOSI SECURITY SERVICES LIMITED (ACN 009 413 852) & ORS (according
the schedule attached)

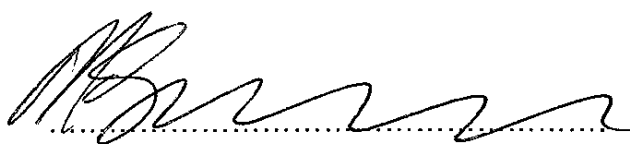
Respondents

EXHIBIT EG-12

Date of document:	19 September 2012
Filed on behalf of:	MRB Equities Pty Ltd, Redvi Pty Ltd and Ferrari Investments Holdings Pty Ltd
MGA Lawyers	Solicitors Code: 104101
Level 9,	Tel: 8631 5555
179 Queen Street	Fax: 8631 5599
MELBOURNE VIC 3000	Ref: MG5400/08

This is the exhibit marked "EG-12" now produced and shown to Eli Goldfinger
at the time of swearing his affidavit on 19 September 2012.

Before me:



MARK GEREMIA
Level 9 179 Queen Street, Melbourne VIC 3000
An Australian Legal Practitioner
within the meaning of the
Legal Profession Act 2004

MGA Lawyers, Level 9, 179 Queen St, Melbourne Vic
An Australian Legal Practitioner with the meaning of the Legal Practice Act
2001

"EG-12"

First Letter and First Notice to Growers



Level 17 Rialto North Tower
525 Collins Street Melbourne
Victoria 3000 Australia

T 03 8681 4400 F 03 8681 4499
www.clarendonlawyers.com.au
ABN 15 774 771 940

13 August 2012

Our ref: CJA:MJF:1100297

Dear Grower

**2002 Timbercorp Almond Project ARSN 099 611 935,
2005 Timbercorp Almond Project ARSN 112 935 092,
2006 Timbercorp Almond Project ARSN 118 387 974,
2007 Timbercorp Almond Project ARSN 122 511 040,
2002 Timbercorp Almond Project (Private Offer No 1),
(collectively, the Almond Projects)**

You are receiving this letter in your capacity as a grower investor in one or more of the Almond Projects (**Grower**).

The Almond Projects are the subject of a dispute between Growers and other parties to Proceeding No APCI 2011 0103 in the Supreme Court of Victoria Court of Appeal (**Almond Land Rights Appeal Proceeding**) in relation to their respective entitlements to the net sale proceeds of the assets used in the Almond Projects. In that proceeding, the interests of all Growers are represented by representative Growers appointed by the Supreme Court of Victoria (**Representative Growers**). Clarendon Lawyers acts on behalf of the Representative Growers.

The parties to the Almond Land Rights Appeal Proceeding have now reached a compromise resolving the dispute between them (**Compromise**). Each Representative Grower, acting on our and our barristers' advice, considers that the Compromise is in the best interests of the Growers they represent. If approved by the Supreme Court of Victoria (or the Court of Appeal) and the compromises in respect of the other Timbercorp Almond Projects, the Timbercorp Olive Projects and the 2005 Timbercorp Citrus Project are also approved, the Compromise will bind all Growers and you will lose any right to seek a different outcome of the dispute.

We have prepared a notice to Growers explaining the Almond Land Rights Appeal Proceeding, the Compromise (including its effect on Growers' rights and entitlements) and the application to be made to the Supreme Court of Victoria (or the Court of Appeal) for approval of the Compromise (**First Notice to Growers**). The First Notice to Growers also provides details on how you can comment on or object to the Compromise or obtain further information.

It is important that you read the First Notice to Growers carefully as, if approved by the Supreme Court of Victoria (or the Court of Appeal), the Compromise will affect your rights and entitlements as a Grower.

You can view the First Notice to Growers on the following websites:

- www.clarendonlawyers.com.au
- www.kordamentha.com/creditor-information/Australia/51
- www.abl.com.au/timbercorp/compromises.htm

If you would like the First Notice to Growers to be sent to you, call the telephone hotline on (03) 8615 1200 or email investorqueries@timbercorp.com.au.

Yours faithfully

Clarendon Lawyers

GAR001_1100297_218

13 August 2012

**DEED OF COMPROMISE FOR THE ALMOND LAND RIGHTS APPEAL PROCEEDING – FIRST
NOTICE TO GROWERS**

This notice is for growers in one or more of the following Almond Projects:

2002 Timbercorp Almond Project ARSN 099 611 935
2005 Timbercorp Almond Project ARSN 112 935 092
2006 Timbercorp Almond Project ARSN 118 387 974
2007 Timbercorp Almond Project ARSN 122 511 040
2002 Timbercorp Almond Project (Private Offer No 1)
(together, the Almond Projects and each an Almond Project).

Introduction

You may be aware there was a proceeding (the Almond Land Rights Proceeding described in sections 1 and 2 of this notice) issued in the Supreme Court of Victoria (**Supreme Court**) in 2009 concerning the net proceeds arising from the sale of the land on which the Almond Projects were conducted, and related assets. The purpose of the proceeding was to resolve the dispute as to how those net sale proceeds were to be apportioned between the secured creditors, growers and other interested parties claiming an interest in them.

A representative grower was appointed by the Supreme Court in respect of each of the Almond Projects to represent the interests of the growers in that Almond Project in the proceeding. Each such representative grower is acting on the advice of Clarendons Lawyers and counsel retained by Clarendons Lawyers on behalf of the representative growers.

In a judgment delivered on 15 June 2011 the Supreme Court determined that the secured creditors were entitled to the entire amount of the net sale proceeds and that the relevant growers were not entitled to any of those proceeds.

That judgment is now the subject of an appeal presently before the Supreme Court of Victoria Court of Appeal (**Court of Appeal**).

A deed of compromise has been executed by the parties to the proceeding (including the representative growers) as a proposed solution to this dispute subject to certain conditions, including Supreme Court or Court of Appeal approval. The purpose of this notice is to explain the compromise and to help you to understand the impact of the compromise on you should it be approved by the Supreme Court or the Court of Appeal.

If the compromise is approved by the Supreme Court, or the Court of Appeal, and the other conditions are satisfied, you may receive a payment. However, if the compromise is not approved by either



Court, or the other conditions are not satisfied, any entitlement you may have to receive a payment will depend on the outcome of the appeal.

For the reasons set out in section 5 of this notice, each representative grower, on the advice of their legal advisers, considers that the compromise is in the best interests of the growers they represent.

Next steps

The Court of Appeal has been asked to refer the appeal proceeding to the Supreme Court and, if the referral is made, the Supreme Court will be asked to approve the compromise at a hearing currently anticipated to commence in October 2012 at the Supreme Court of Victoria, Melbourne. If the referral is not made, then the Court of Appeal will be asked to approve the compromise. The confirmed date of this hearing, whether in the Supreme Court or the Court of Appeal, will be notified to growers online at each of:

www.clarendonlawyers.com.au

www.kordamentha.com/creditor-information/Australia/51

www.abl.com.au/timbercorp/compromises.htm

as soon as it is known.

If the Supreme Court, or the Court of Appeal, approves the compromise and the other conditions are satisfied, you will be bound by the compromise and you will lose any right to argue for an alternative outcome of the dispute. It is therefore important to read this notice carefully.

Answers to some Frequently Asked Questions (FAQ) are available online and a telephone hotline facility and an email facility have been set up to assist growers who:

- wish to comment on the compromise;
- have any questions or wish to obtain further information on the compromise; or
- wish to object to the compromise.

Details of where you can access the FAQ, the telephone hotline facility and the email facility are set out in section 14 of this notice.

If you wish to object to the compromise, you should call the telephone hotline facility or email **as soon as possible before 14 September 2012**. Your objections will be passed on to the lawyers acting for the representative growers.

You are not required to attend or appear at the Court hearing (either in the Supreme Court or the Court of Appeal) at which approval of the compromise will be sought. However, you may wish to attend or appear at that hearing, and/or seek independent legal advice and/or obtain representation at

that hearing (outside the existing representative grower arrangement established by the Supreme Court). If you do so, any legal or other costs of doing so will be at your own expense unless the Court orders otherwise.

The representative growers will keep you informed of future developments regarding the compromise and Court approval of that compromise (see section 6 of this notice).

Important Information for Growers

1 Background to the dispute

Timbercorp Limited (in liquidation) (**Timbercorp**) and its subsidiary entities (together, the **Timbercorp Group**) conducted various agribusiness managed investment schemes across a number of properties involving, among other things, the management, cultivation, harvesting, processing and sale of almonds, olives and citrus. A member of the Timbercorp Group, Timbercorp Securities Limited (in liquidation) (**TSL**) was the responsible entity of the registered Timbercorp managed investment schemes.

The Timbercorp Group went into administration on 23 April 2009 and was placed into liquidation on 29 June 2009. Thereafter, the land on which the Timbercorp managed investment schemes were conducted, and related assets, were sold in a series of transactions each of which was approved by the Supreme Court.

In approving each of the sale transactions, the Supreme Court, in each case, ordered (among other things) that:

- (a) the net sale proceeds be placed into trust pending a proceeding to determine the rights of the land owners, the secured creditors, the investors in the Timbercorp managed investment schemes (**Growers**) and other interested parties to all, or any part, of those proceeds; and
- (b) neither the release of the secured creditors' securities upon completion of the sale contracts, nor the extinguishment of the Growers' rights, would prejudice those parties' respective rights to the assets sold insofar as they had such rights for the purpose of making a claim to all or any part of the net proceeds.

As a result, five separate proceedings were commenced to determine how the net sale proceeds the subject of each sale transaction were to be apportioned between the land owners, the secured creditors, Growers and other interested parties claiming an interest in those proceeds. These five proceedings, collectively referred to as the **Timbercorp Apportionment Proceedings**, are as follows:

- Supreme Court of Victoria Proceeding No. S CI 2009 10699 (**Almond Land Rights Proceeding**);



- Supreme Court of Victoria Proceeding No. S CI 2011 6604 (**Liparoo and Yungera Rights Proceeding**);
- Supreme Court of Victoria Proceeding No. S CI 2011 6606 (**Solara Rights Proceeding**);
- Supreme Court of Victoria Proceeding No. S CI 2010 1354 (**BB Olives Rights Proceeding**); and
- Supreme Court of Victoria Proceeding No. S CI 2011 6777 (**Fenceport Rights Proceeding**).

In each of the Timbercorp Apportionment Proceedings, one or more parties has been appointed by the Supreme Court pursuant to Rule 16.01(2) of the Supreme Court (General Civil Procedure) Rules 2005 (Vic) (**Rule 16**) as the representative of the Growers in the Timbercorp managed investment schemes the subject of that proceeding.

As each of the Timbercorp Apportionment Proceedings involves similar issues, it was considered appropriate for one such proceeding to be heard and determined first, with the intention that the result in that proceeding would then form the basis for determination of the other proceedings. This led to the hearing and determination of the Almond Land Rights Proceeding in early 2011. By her judgment in that proceeding, Justice Davies of the Supreme Court found that the Growers in the Almond Projects were not entitled to any part of the net sale proceeds and that the full amount of the net sale proceeds should be paid to the secured creditors of the land owner (**Judgment**). The Judgment has been appealed by the Representative Growers in Supreme Court of Victoria Court of Appeal Proceeding No. APCI 2011 0103 (**Almond Land Rights Appeal Proceeding**). A hearing date for that appeal is yet to be fixed.

2 Almond Land Rights Proceeding

On 15 December 2009, BOSI Security Services Limited as trustee for Australia and New Zealand Banking Group Limited (**ANZ**), BOS International (Australia) Limited and Westpac Banking Corporation (**BOSI**), commenced the Almond Land Rights Proceeding. BOSI was a secured lender with respect to the Almond Projects.

The Almond Land Rights Proceeding was the proceeding which specifically related to the Almond Projects. In the Almond Land Rights Proceeding, BOSI sought, among other things, declarations from the Supreme Court as to:

- its rights;
- the rights of the Growers in the Almond Projects; and



- the rights of other relevant parties,

if any, to the net sale proceeds from the sale of the land on which the Almond Projects were conducted together with the other assets used in the Almond Projects (**Almond Land Assets**). The gross sale proceeds from the sale of the Almond Land Assets were (approx) \$128 million. In accordance with orders of the Supreme Court, certain costs have been deducted from these proceeds, and interest accrued on them, with the balance of the proceeds from time to time being referred to in this document as the **Fund**.

On 22 December 2009, the Supreme Court made orders in the Almonds Land Rights Proceeding pursuant to Rule 16 that the Growers in each of the Almond Projects have their interests represented in that proceeding by particular Growers. The relevant Growers are:

- (a) Graham Goldenberg as representative of the Growers in the 2002 Timbercorp Almond Project;
- (b) Christopher Mark Littley as representative of the Growers in the 2005 Timbercorp Almond Project;
- (c) Constantine Moshopoulos as representative of the Growers in the 2006 Timbercorp Almond Project; and
- (d) David Butterfield as representative of the Growers in the 2007 Timbercorp Almond Project and the 2002 Almond Project (Private Offer No 1).

(collectively, the **Representative Growers** and each a **Representative Grower**).

The other parties to the Almond Land Rights Proceeding, and subsequently the Almond Land Rights Appeal Proceeding, are ANZ (which was separately a secured lender with respect to the Almond Projects), Almond Land Pty Ltd (in liquidation) (**Almond Land**) and its liquidators, Mark Korda and Leanne Chesser. Almond Land was the entity within the Timbercorp Group that owned the land on which the Almond Projects were conducted. The liquidators of Almond Land held the Fund on trust pending the Judgment in the Almond Land Rights Proceeding.

On 15 June 2011, her Honour Justice Davies delivered the Judgment in favour of BOSI and ANZ (**Secured Lenders**) as the secured creditors of Almond Land and, in accordance with the Judgment, the Fund was subsequently paid in full to the Secured Lenders.

The Representative Growers have appealed the Judgment to the Court of Appeal in the Almond Land Rights Appeal Proceeding. A hearing date for the appeal has not yet been fixed.



The Secured Lenders, Almond Land and the Representative Growers have now reached a proposed resolution of the dispute between them as to their respective entitlements to the Fund and have, therefore, agreed to compromise the Almond Land Rights Appeal Proceeding. The compromise is subject to Court approval. The Representative Growers each believe (for the reasons set out in section 5 of this notice) that the compromise is in the best interests of the Growers in the Almond Projects they represent. However, under Rule 16, the Supreme Court, or the Court of Appeal must also approve the compromise before it is binding on all Growers.

3 Details of the Compromise

On 25 July 2012, the parties to the Almond Land Rights Appeal Proceeding entered into a deed of compromise for the Almond Land Rights Appeal Proceeding (**Compromise**). A copy of the deed of compromise may be viewed at any of:

www.clarendonlawyers.com.au
www.kordamentha.com/creditor-information/Australia/51
www.abl.com.au/timbercorp/compromises.htm

The Compromise is conditional on the approval of the Supreme Court, or the Court of Appeal, by 31 December 2012 or such later date as may be agreed between the parties. It is also conditional on the Supreme Court approving similar compromises reached in relation to all of the other Timbercorp Apportionment Proceedings (**Other Compromises**).

If the Supreme Court, or the Court of Appeal, approves the Compromise and the Supreme Court approves the Other Compromises, all Growers will be bound by the Compromise in respect of their claims against the Fund. You will lose any right to argue for an alternative outcome of the dispute and any payment made to you will be in full and final settlement of your claim against the Fund.

Under the terms of the Compromise:

- (a) \$6,000,000 (approximately 5% of the gross sale proceeds of the Almond Land Assets) will be paid by the Secured Lenders to TSL (**Almond Settlement Amount**) as follows:
 - (i) BOSI will pay to TSL 63.65% of the Almond Settlement Amount (being \$3,819,000); and
 - (ii) ANZ will pay to TSL 36.35% of the Almond Settlement Amount (being \$2,181,000),

to be held on trust for Growers for distribution to, or on behalf of, Growers in accordance with their entitlements, as set out in section 8 of this notice.



- (b) The amount set aside for Growers will be divided between Growers on a pro-rated basis according to the number of almondlots held by each such Grower on 2 December 2009 (being the date on which Growers' rights in the Almond Projects were extinguished). The amount payable per almondlot located on the land formerly owned by Almond Land will be \$186.57. This amount will be in full and final settlement of the Growers' claim to any part of the Fund.
- (c) Each party to the Compromise will release all other parties from any further claim in relation to their entitlement to the Fund or the allocation and disbursement of the Fund. The Representative Growers provide and receive these releases on behalf of the Growers.
- (d) The Almond Land Rights Appeal Proceeding will be dismissed with no order as to costs.

The amount to which Growers in each Almond Project are entitled will differ depending on the percentage of the almondlots in that Almond Project that were located on land formerly owned by Almond Land. If the Almond Project was also conducted on Liparoo and Yungera land, the Growers' entitlement per lot under the Compromise will be reduced proportionately but those Growers will also have an entitlement under the compromise of the Liparoo and Yungera Rights Proceeding. The FAQ (available from the websites set out in section 13) contains a table showing, for each Almond Project, the Growers' entitlements under each compromise.

In considering the Compromise, Growers should also be aware that the Representative Growers have entered into funding arrangements with litigation funders regarding the Almond Land Rights Appeal Proceeding. The litigation funders have notified the Representative Growers that they intend to bring a claim for payment out of the Almond Settlement Amount of amounts said to be owing to them under those arrangements (**Litigation Funders' Claim**). Further details about the Litigation Funders' Claim and its potential impact on the amount payable to Growers under the Compromise are set out in section 9 of this notice.

If the Supreme Court, or the Court of Appeal, does not approve the Compromise and the Other Compromises:

- the Compromise ceases to have any effect;
- any documents prepared or circulated pursuant to the Compromise and/or for the purposes of the application to the Supreme Court, alternatively the Court of Appeal, for approval of the Compromise may not be referred to or tendered in evidence in the Almond Land Rights Appeal Proceeding; and
- the Almond Land Rights Appeal Proceeding will continue and the Growers' entitlement (if any) to the Fund will be determined by the Court of Appeal.



The parties to the Almond Land Rights Appeal Proceeding are presently awaiting notification from the Court of Appeal of the date for the hearing of the appeal. It is unlikely that the Almond Land Rights Appeal Proceeding would be heard and determined before mid-2013.

4 Court approval

If the Supreme Court, or the Court of Appeal, approves the Compromise of the Almond Land Rights Appeal Proceeding, it will be binding on all Growers in each of the Almond Projects, even though only the Representative Growers (but not all Growers) are parties to the Almond Land Rights Appeal Proceeding. The Supreme Court, or the Court of Appeal, may approve the Compromise if it is satisfied that the Compromise is for the benefit of the Growers.

5 Benefit of the Compromise to the Growers

The Representative Growers have appointed Clarendon Lawyers, and counsel retained on their behalf by Clarendon Lawyers, to act for them in the Almond Land Rights Proceeding and the Almond Land Rights Appeal Proceeding. The Representative Growers have obtained legal advice from Garry Bigmore QC and Sam Hopper of counsel and from their instructing solicitors, Clarendon Lawyers, with respect to the Compromise. In coming to their advice counsel have taken into account (among other things) the Judgment and the appeal of the Judgment. Having regard to this advice, the certainty of the payments to be made under the Compromise once approved by the Supreme Court and the cost and delay before the Almond Land Rights Appeal Proceeding would be finally heard and determined by the Court of Appeal, the Representative Growers consider that the Compromise is for the benefit of the Growers in the Almond Projects.

The representative Growers hold this view irrespective of whether the Litigation Funders' Claim (see section 9 below) is successful in whole or in part.

6 Application to the Court for approval of the Compromise (Approval Application)

If the Court of Appeal refers the Almond Land Rights Appeal Proceeding to the Supreme Court, the Secured Lenders, Almond Land and the Representative Growers will apply to the Supreme Court for approval of the Compromise. The parties anticipate that a directions hearing will be held in or shortly after the week beginning 27 August 2012 and that, at that directions hearing, the Supreme Court will make orders (among other things) confirming the date on which the Approval Application will be heard. Notice of the date of this hearing will be posted at each of:

www.clarendonlawyers.com.au

www.kordametha.com/creditor-information/Australia/51

www.abl.com.au/timbercorp/compromises.htm

shortly after the conclusion of the directions hearing.



It is proposed that the hearing of the applications for approval of the Other Compromises will be held concurrently with the hearing of the Approval Application. The current expectation is that the concurrent hearings will not be before October 2012 but will be at the earliest opportunity thereafter convenient to the Supreme Court.

If the Court of Appeal does not refer the Almond Land Rights Appeal Proceeding to the Supreme Court for this purpose, the Court of Appeal itself will be asked to approve the Compromise. Should this occur, notice of the date of the hearing before the Court of Appeal will be posted at each of:

www.clarendonlawyers.com.au

www.kordamentha.com/creditor-information/Australia/51

www.abl.com.au/timbercorp/compromises.htm

as soon as it is known.

7 Rights of Growers in connection with the Approval Application

Although the Representative Growers believe that the Compromise is for the benefit of Growers in the Almond Projects (as outlined in section 5 of this notice), some Growers may wish to comment on, raise questions in relation to, or object to the Compromise. Without prejudice to any other course Growers may be advised by their own advisers to take, Growers may:

- (a) address any comments on the Compromise, the Litigation Funders' Claim (see section 9 below) the Approval Application or their individual circumstances;
- (b) ask any questions or obtain further information on the Compromise, the Litigation Funders' Claim or the Approval Application; or
- (c) raise any objection to the Compromise or the Litigation Funders' Claim,

to the Representative Growers by calling the telephone hotline on (03) 8615 1200 or emailing investorqueries@timbercorp.com.au. The telephone hotline facility will be staffed by representatives of TSL (see section 12).

Before calling the telephone hotline facility or emailing, we suggest that you read and carefully consider this notice and the FAQ available at any of:

www.clarendonlawyers.com.au

www.kordamentha.com/creditor-information/Australia/51

www.abl.com.au/timbercorp/compromises.htm



for answers to your queries. If you do not find a suitable response and you call the hotline facility or email, you will receive a reply and your comments or objections will be noted and passed on to the Representative Growers for the purposes of the hearing of the Approval Application.

If you wish to object to the Compromise, you should notify the Representative Growers by calling the telephone hotline on (03) 8615 1200 or by emailing investorqueries@timbercorp.com.au as soon as possible before **14 September 2012**.

At the hearing of the Approval Application, the Representative Growers will disclose to the Supreme Court, or the Court of Appeal, all material facts relating to the Compromise, including all comments or objections they have received from Growers prior to the hearing of the Approval Application in relation to the Compromise, the Litigation Funders' Claim or the Approval Application. Any such comments or objections will be considered by the Court in the context of determining whether the Compromise is for the benefit of Growers.

You are not required, but are able, to attend or appear at the Supreme Court, or the Court of Appeal for the hearing of the Approval Application. Any Grower who objects to the Compromise and/ or the Litigation Funders' Claim may raise their objection at the Approval Application. Growers may choose to appear in person, or have their own lawyers represent them. If you wish to appear or have your own lawyers appear on your behalf, you should seek legal advice in relation to the steps that you will be required to take in order for this to happen.

Shortly after the Supreme Court or the Court of Appeal delivers its decision in respect of the Approval Application the Representative Growers will publish a further notice setting out the consequences of the decision (**Second Notice**) and will notify you of the publication of the Second Notice by post or email.

8 Distribution of the Almond Settlement Amount to Growers

If the Approval Application is successful (either before the Supreme Court or the Court of Appeal) and the necessary Supreme Court approvals are obtained in relation to each of the Other Compromises, the terms of the Compromise require the Almond Settlement Amount to be paid to TSL on trust for the Growers for distribution to, or on behalf of, the Growers in accordance with their entitlements. As noted above, each Grower's entitlement will be calculated on a pro-rated basis based on the number of almondlots in the Almond Projects held by that Grower on 2 December 2009 (for each Grower, its **Almond Settlement Entitlement**). The Almond Settlement Entitlement for each Grower will be subject to the amount, if any, of the Litigation Funders' Claim approved by the Supreme Court or Court of Appeal for payment out of the Almond Settlement Amount (see section 9 below).

Growers who are recorded in the books and records of:



- (a) Timbercorp Finance Limited (in liquidation) (TFL) as owing amounts under an outstanding loan from TFL in connection with their investment in the Almond Projects (TFL Indebtedness); or
- (b) TSL as owing amounts to TSL (Timbercorp Indebtedness),

will be able (should they choose) to direct that their Almond Settlement Entitlements are paid, in whole or in part, to TFL or TSL to pay, to the extent possible, their TFL Indebtedness or Timbercorp Indebtedness (as applicable). The amount of your TFL Indebtedness may be affected by the offer of settlement made by TFL to relevant Growers by letter dated 8 February 2012.

A direction to pay form is available at any of:

www.clarendonlawyers.com.au

www.kordamentha.com/creditor-information/Australia/51

www.abl.com.au/timbercorp/compromises.htm

If you are recorded as having any TFL Indebtedness or Timbercorp Indebtedness you can (if you choose) give your directions to TSL by completing and returning a direction to pay form. To arrange for a direction to pay form to be sent to you, call the telephone hotline on (03) 8615 1200 or email investorqueries@timbercorp.com.au.

A Grower who has both TFL Indebtedness and Timbercorp Indebtedness may not give any direction to TSL to pay all or part of their Timbercorp Indebtedness out of its Almond Settlement Entitlement before there is an agreement in writing between TFL and the Grower, or a court order, about the manner in which the entitlement is to be disbursed.

If you wish to confirm whether you have any, or the extent of your, TFL Indebtedness or Timbercorp Indebtedness, the number of almondlots you held in the Almond Projects on 2 December 2009 or any other private information which TSL holds in relation to your individual circumstances in respect of the Compromise, you should call the Timbercorp telephone hotline on (03) 8615 1200 or email investorqueries@timbercorp.com.au.

To receive your Almond Settlement Entitlement (if payable to you having regard to your TFL Indebtedness and Timbercorp Indebtedness, if any), you must notify TSL of the bank account you nominate to receive payment. You can notify TSL of your bank account details by completing and returning the bank account nomination form available at any of:

www.clarendonlawyers.com.au

www.kordamentha.com/creditor-information/Australia/51

www.abl.com.au/timbercorp/compromises.htm



To arrange for a bank account nomination form to be sent to you, call the telephone hotline on (03) 8615 1200 or email investorqueries@timbercorp.com.au.

9 **Litigation Funders' Claim**

To pursue the appeal of the Judgment, the Representative Growers entered into an agreement with MRB Equities Pty Ltd, Redvil Pty Ltd and Ferrari Investments Holdings Pty Ltd (**Litigation Funders**) to manage and fund the Almond Land Rights Appeal Proceeding (**Litigation Funding Agreement**).

Under the Litigation Funding Agreement, in return for assuming the cost and risk associated with the Almond Land Rights Appeal Proceeding, the Litigation Funders are entitled, if and to the extent approved by the Supreme Court or the Court of Appeal, to be reimbursed the costs they have paid to fund the Appeal plus 25% of the amount payable to Growers (**Litigation Funders' Fee**) if an amount is payable to Growers because the Appeal is won or settled.

The Litigation Funders have notified the Representative Growers that they intend to bring a claim for payment of the Litigation Funders' Fee. The Litigation Funders have indicated that the amount of the Litigation Funders' Fee is currently approximately \$1.68 million. Once the Litigation Funders' Claim is brought by the Litigation Funders, details of the claim and copies of all relevant documents will be posted at each of:

www.clarendonlawyers.com.au

www.kordamentha.com/creditor-information/Australia/51

www.abl.com.au/timbercorp/compromises.htm

The Representative Growers will not oppose the Litigation Funders' Claim, however individual Growers or other interested parties may seek to make submissions in relation to it. It is not presently known if the Supreme Court or the Court of Appeal (as appropriate) will hear and determine the Litigation Funders' Claim at the time of considering the Approval Application or at a later time. If at a later time, the Court may well require the full amount of the Almond Settlement Amount, or that amount which corresponds with the amount of the Litigation Funders' Claim claimed by the Litigation Funders, to be held on trust by TSL pending that determination.

Should the Court approve any payment of the Litigation Funders' Claim to the Litigation Funders from the Almond Settlement Amount before any distribution to or on behalf of Growers (including in payment of any Grower's TFL Indebtedness or Timbercorp Indebtedness), the practical consequence is that this will reduce the amount available for Growers. The amount of the reduction will depend on whether the Court approves the full amount of the Litigation Funders' Claim claimed or only part of it and the priority afforded to any such approved amount.

By way of example only, if the Litigation Funders' Claim is \$1.68 million and the Court determines that the full amount of the Litigation Funders' Claim is payable from the Almond Settlement Amount before any distribution to or on behalf of Growers, the amount set aside for Growers will be reduced to \$134.33 per almondlot. If the Court determines that none of the Litigation Funders' Claim is payable from the Almond Settlement Amount before any distribution to or on behalf of Growers, the amount set aside for Growers will remain at \$186.57 per almondlot. The Court may determine that only part of the Litigation Funders' Claim is payable, which will mean that the amount set aside for Growers is reduced accordingly to an amount between \$134.33 and \$186.57 per almondlot.

10 Timing of payments to Growers

If the Approval Application is successful and the necessary Supreme Court approvals are obtained in relation to each of the Other Compromises, the Second Notice will notify you of (among other things) the anticipated timing of payments to Growers. The timing of a Grower's payment of their Almond Settlement Entitlement will depend, in part, on their individual circumstances. It may also depend on the outcome of the Litigation Funders' Claim.

If a Grower does not have any TFL Indebtedness, TSL will pay the Grower's Almond Settlement Entitlement to its nominated bank account (or, if directed by the Grower, to TSL in payment of any Timbercorp Indebtedness) as soon as practicable following approval of the Compromise by the Supreme Court, or the Court of Appeal, and the necessary approvals being obtained from the Supreme Court in respect of the Other Compromises.

If a Grower has any TFL Indebtedness and:

- (a) has directed TSL to pay its TFL Indebtedness, to the extent possible, out of its Almond Settlement Entitlement, TSL will, as soon as practicable, use the Grower's Almond Settlement Entitlement to pay, to the extent possible, the TFL Indebtedness as soon as practicable and remit the balance of the Grower's Almond Settlement Entitlement (if any) to the Grower into its nominated bank account (or, if directed by the Grower, to TSL in payment of any Timbercorp Indebtedness),
- (b) has directed TSL to use its Almond Settlement Entitlement to pay only part of the Grower's TFL Indebtedness, TSL will, as soon as practicable, pay to TFL that part of the Grower's TFL Indebtedness and retain the balance of the Grower's Almond Settlement Entitlement (if any) on trust pending an agreement between TFL and the Grower or court order as to whom it should be paid.
- (c) has not directed TSL to pay any part of its Almond Settlement Entitlement to TFL, TSL will hold that Grower's Almond Settlement Entitlement on trust pending agreement between TFL and the Grower or court order as to whom it should be paid.



Accordingly, there is an important difference between the treatment of a Grower's TFL Indebtedness and the treatment a Grower's Timbercorp Indebtedness. This is because, in relation to those Growers with a TFL Indebtedness, TFL asserts that it has a proprietary and/or secured claim over those Growers' Almond Settlement Entitlements, whereas the claim of TSL is merely contractual and unsecured. For this reason, if a Grower who has TFL Indebtedness chooses not to direct TSL to use its Almond Settlement Entitlement to pay its TFL Indebtedness, that Grower's Almond Settlement Entitlement will be held on trust pending agreement or Court order.

A Grower who has both TFL Indebtedness and Timbercorp Indebtedness may not give any direction to TSL to pay all or part of their Timbercorp Indebtedness out of its Almond Settlement Entitlement before there is an agreement in writing between TFL and the Grower, or a Court order, about the manner in which the entitlement is to be disbursed.

Importantly, if a Grower gives a direction to TSL to use its Almond Settlement Entitlement to pay TFL all or part of its TFL Indebtedness, that direction does not constitute an admission of liability by the Grower to TFL in respect of its TFL Indebtedness and is without prejudice to the Grower's rights (if any) in relation to its TFL Indebtedness. Similarly, nothing in the receipt by TFL of any such payment will constitute a waiver of any rights that TFL has in respect of a Grower's remaining TFL Indebtedness.

11 Tax consequences of the Compromise

The Compromise and payment of the Almond Settlement Entitlement may have tax consequences for each Grower. The consequences for each Grower will depend on the Grower's individual circumstances. You may wish to seek advice from your personal financial or taxation adviser about the potential tax consequences of receiving your Almond Settlement Entitlement and any choice you may make to give directions to pay your Almond Settlement Entitlement to TFL or TSL or both.

12 Role of TSL

At the request of the Representative Growers, TSL has agreed to perform various administrative roles in connection with the Compromise and the Approval Application. In addition to distributing this notice on behalf of the Representative Growers, TSL has established a telephone hotline facility and email facility so that Growers may address any comments or questions, or raise any objections, with the Representative Growers. TSL will provide the Representative Growers with details of the comments, questions and objections that are received through the telephone hotline or email facilities.

The Representative Growers have agreed a protocol with TSL as to the comments, questions or objections which TSL may answer or respond to without further reference to

Representative Growers and those which will be referred to the Representative Growers for the preparation of an appropriate response.

TSL will record in appropriate detail, in an affidavit to be filed with the Supreme Court or the Court of Appeal on behalf of the Representative Growers in connection with the Approval Application, the tasks it has undertaken at the request and on the instruction of the Representative Growers, the substance of all comments and questions raised to it by the Growers and their responses to those Growers, and the nature of any objections made to it by Growers and the responses provided by it to those Growers.

TSL will also make the payments to or on behalf of Growers as required under the Compromise and hold amounts in trust pending their distribution to the relevant party. Under the terms of the Compromise, TSL will only be released by each Grower upon distribution in full of that Growers' Almond Settlement Entitlement to the Grower or at the direction of, or on the authorisation of, the Grower.

TSL has agreed to pay, from its own funds, the Representative Growers' costs relating to the Approval Application and certain other costs relating to the Almond Land Rights Appeal Proceeding. These costs will not be deducted from the Fund, the Almond Settlement Amount or individual Grower's Almond Settlement Entitlements.

13 Further information

The Representative Growers have prepared answers to what they believe will be frequently asked questions. These questions and answers are available online at any of:

www.clarendonlawyers.com.au

www.kordamentha.com/creditor-information/Australia/51

www.abl.com.au/timbercorp/compromises.htm

or can be obtained by calling the telephone hotline on (03) 8615 1200 or emailing investorqueries@timbercorp.com.au.

14 Key contacts

Telephone Hotline Facility

(03)8615 1200

Email address

investorqueries@timbercorp.com.au

Frequently Asked Questions
and Notices to Growers

Available online at any of:

www.clarendonlawyers.com.au

www.kordamentha.com/creditor-information/Australia/51

www.abl.com.au/timbercorp/compromises.htm

**IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COURT OF APPEAL**

SACPI 2011 0103

BETWEEN:

GRAHAM GOLDENBERG & ORS (according to the Schedule)

Appellants

- and -

BOSI SECURITY SERVICES LIMITED (ACN 009 413 852) & ORS (according
the schedule attached)

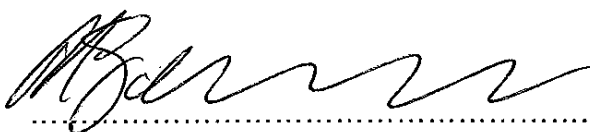
Respondents

EXHIBIT EG-13

Date of document:	19 September 2012
Filed on behalf of:	MRB Equities Pty Ltd, Redvi Pty Ltd and Ferrari Investments Holdings Pty Ltd
MGA Lawyers Level 9, 179 Queen Street MELBOURNE VIC 3000	Solicitors Code: 104101 Tel: 8631 5555 Fax: 8631 5599 Ref: MG5400/08

This is the exhibit marked "EG-13" now produced and shown to Eli Goldfinger at the time of swearing his affidavit on 19 September 2012.

Before me:



MARK GEREMIA
Level 9 179 Queen Street, Melbourne VIC 3000
An Australian Legal Practitioner
within the meaning of the
Legal Profession Act 2004

MGA Lawyers, Level 9, 179 Queen St, Melbourne Vic
An Australian Legal Practitioner with the meaning of the Legal Practice Act
2001

"EG-13"

Frequently Asked Questions Document

Almond Land Rights Appeal Proceeding

Frequently Asked Questions

for Growers in the
2002 Timbercorp Almond Project (Private Offer No 1) and
the 2002, 2005, 2006 and 2007 Timbercorp Almond Projects

1 What Project am I in?

Call the hotline on (03) 8615 1200 or email investorqueries@timbercorp.com.au.

2 How many lots do I have?

Call the hotline on (03) 8615 1200 or email investorqueries@timbercorp.com.au.

3 Do I owe money to Timbercorp Securities Limited (in liquidation) and how much?

Call the hotline on (03) 8615 1200 or email investorqueries@timbercorp.com.au.

4 Do I owe money to Timbercorp Finance Pty Ltd (in liquidation) and how much?

Call the hotline on (03) 8615 1200 or email investorqueries@timbercorp.com.au.

5 What's my entitlement under the Compromise?

Under the Compromise, an amount of \$186.57 per lot located on the land formerly owned by Almond Land will be set aside for Growers. The entitlement of Growers in each Almond Project will differ depending on the percentage of lots in that Almond Project that were located on the land formerly owned by Almond Land. Each Grower's entitlement will be determined on the basis of the lots held by them as at 2 December 2009. See FAQ 34 and 35 for more details and a table of Growers' entitlements for each Almond Project.

6 When am I going to receive my entitlement under the Compromise?

The Compromise (and the similar compromises in relation to other Timbercorp Projects) must be approved by the Supreme Court (or the Court of Appeal) before any payments are made. You will be notified if Court Approval is received and, if so, of the expected date of payment. The date of any Court Approval and payment will be after October 2012.

If you do not have any loans owing to Timbercorp Finance in relation to the Almond Projects, your entitlement will be paid as soon as possible after Court approval is received.

If you have loans owing to Timbercorp Finance in relation to the Almond Projects, you may direct that your entitlement is paid to Timbercorp Finance to reduce your loan balance. If your entitlement exceeds the amount you owe to Timbercorp Finance, you can direct that the excess be used to pay any amounts you owe to TSL or to pay other loans you have with Timbercorp Finance. Otherwise, the excess will be paid to you.

You will need to complete a new Direction to Pay Form specifically relating to the Compromise, even if you have previously provided a Timbercorp Finance or TSL direction to pay in relation to other distributions. You can obtain an Almond Direction to Pay Form at any of:

www.clarendonlawyers.com.au

www.kordamentha.com/creditor-information/Australia/51

www.abl.com.au/timbercorp/compromises.htm

or by:

- calling the hotline on (03) 8615 1200 or
- emailing investorqueries@timbercorp.com.au.

If you do not execute an Almond Direction to Pay Form for loans you have owing to Timbercorp Finance in relation to the Almond Projects, your entitlement will be held on trust, in an interest bearing account, pending a legal determination in relation to the competing claims of Growers and Timbercorp Finance to the entitlement.

If you do not have loans owing to Timbercorp Finance in relation to the Almond Projects, but you have amounts owing to TSL, and you do not execute an Almond Direction to Pay Form, you will still receive your entitlement.

7 How am I going to receive my payment?

Payments to Growers (who do not have any loans owing to Timbercorp Finance in relation to the Almond Projects) will be made by direct deposit into the bank account nominated by the Grower. Payments will only be made by direct deposit and will not be made by cheque.

If you have not previously provided TSL with a completed direct credit authorisation, you will need to nominate a bank account to receive your payment. You can obtain a Bank Account Nomination Form at any of:

www.clarendonlawyers.com.au

www.kordamentha.com/creditor-information/Australia/51

www.abl.com.au/timbercorp/compromises.htm

or by:

- calling the hotline on (03) 8615 1200 or
- emailing investorqueries@timbercorp.com.au.

If you have previously provided TSL with a completed direct credit authorisation nominating a bank account, any payment to you will be made by direct deposit to that bank account, unless you nominate a different bank account now.

If you have loans owing to Timbercorp Finance in relation to the Almond Projects and you have not executed an Almond Direction to Pay Form, your entitlement will be held in trust, in an interest bearing account, until there is a legal determination in relation to the competing claims of Growers and Timbercorp Finance to the entitlement.

If you have executed an Almond Direction to Pay Form and your entitlement exceeds the amount you owe to Timbercorp Finance in relation to the Almond Projects, unless you have directed that the excess be used to pay amounts owing by you to TSL or to pay other loans you have with Timbercorp Finance, the excess will be paid by direct deposit into the bank account nominated by you. You can obtain a Bank Account Nomination Form at any of:

www.clarendonlawyers.com.au

www.kordamentha.com/creditor-information/Australia/51

www.abl.com.au/timbercorp/compromises.htm

or by:

- calling the hotline on (03) 8615 1200 or
- emailing investorqueries@timbercorp.com.au.

8 I have previously completed a direct credit authorisation, do I need to nominate a another bank account?

If you have previously provided TSL with a completed direct credit authorisation nominating a bank account, any payment to you will be made by direct deposit to that bank account, unless you nominate a different bank account now.

9 Once I have nominated a bank account, will it be used for other payments to me (if any) in the future?

Yes, once you nominate a bank account, any future payment to be made to you by TSL will be made by direct deposit to that nominated bank account, unless you nominate a different bank account to TSL.

10 Do I need to sign any documents in relation to the Compromise?

If the Compromise and the compromises in relation to other Timbercorp Projects are approved by the Supreme Court, they will be binding on each Grower, even though the Grower did not sign the deed of compromise.

You will need to nominate a bank account into which your entitlement will be paid. You can obtain a Bank Account Nomination Form at any of:

www.clarendonlawyers.com.au

www.kordamentha.com/creditor-information/Australia/51

www.abl.com.au/timbercorp/compromises.htm

or by:

- calling the hotline on (03) 8615 1200 or
- emailing investorqueries@timbercorp.com.au.

If you have previously provided TSL with a completed direct credit authorisation nominating a bank account, any payment to you will be made by direct deposit to that bank account, unless you nominate a different bank account now.

If you have loans owing to Timbercorp Finance or amounts owing to TSL in relation to the Almond Projects, you may direct that your entitlement is used to reduce the amounts owing by you. You can obtain an Almond Direction to Pay Form at any of:

www.clarendonlawyers.com.au

www.kordamentha.com/creditor-information/Australia/51

www.abl.com.au/timbercorp/compromises.htm

or by:

- calling the hotline on (03) 8615 1200 or
- emailing investorqueries@timbercorp.com.au.

You will need to complete a new Almond Direction to Pay Form specifically relating to the Compromise, even if you have previously provided a Timbercorp Finance or TSL direction to pay in relation to other distributions.

11 What is the Direction to Pay Form and do I need to complete one?

A Direction to Pay Form is a Grower's direction to TSL to use the Grower's entitlement to reduce the Grower's loan balances owing to Timbercorp Finance or to reduce the amounts owing by the Grower to TSL.

You will need to complete a new Almond Direction to Pay Form specifically relating to the Compromise, even if you have previously executed a Timbercorp Finance or TSL direction to pay in relation to other distributions.

Growers who have loans owing to Timbercorp Finance in relation to the Almond Projects do not have to complete an Almond Direction to Pay Form but if they do not, their entitlement will be held on trust, in an interest bearing account, pending determination of the competing claims of the Grower and Timbercorp Finance.

Growers can execute an Almond Direction to Pay Form, but direct that only part of their entitlement be used to reduce their loans owing to Timbercorp Finance in relation to the Almond Projects. If any amount remains owing to Timbercorp Finance, the rest of the Grower's entitlement will be held on trust, in an interest bearing account, pending determination of the competing claims of the Grower and Timbercorp Finance.

If you do not have a loan owing to Timbercorp Finance in relation to the Almond Projects but have amounts owing to TSL, and you do not complete an Almond Direction to Pay Form, you will still receive your entitlement.

12 What happens if I don't want to use my entitlement to pay Timbercorp Finance / TSL?

If you have loans owing to Timbercorp Finance in relation to the Almond Projects and you do not execute an Almond Direction to Pay Form, your entitlement will be held on trust, in an interest bearing account, pending a legal determination in relation to the competing claims of Growers and Timbercorp Finance to the entitlement.

If you have amounts owing to TSL but no loans owing to Timbercorp Finance and you do not execute an Almond Direction to Pay Form, your entitlement will be paid to you by direct deposit into your nominated bank account. If you have not previously provided TSL with a completed direct credit authorisation, you will need to nominate a bank account to receive your payment. You can obtain a Bank Account Nomination Form at any of:

www.clarendonlawyers.com.au

www.kordamentha.com/creditor-information/Australia/51

www.abl.com.au/timbercorp/compromises.htm

or by:

- calling the hotline on (03) 8615 1200 or
- emailing investorqueries@timbercorp.com.au.

If you do not use your entitlement to pay Timbercorp Finance or TSL, you will remain liable to pay the amounts owing (plus applicable interest) to them.

13 What happens if my entitlement does not pay Timbercorp Finance / TSL in full?

If you direct that your entitlement be used to pay Timbercorp Finance or TSL but your entitlement is not sufficient to pay the full amount you owe to Timbercorp Finance or TSL, you will remain liable to pay the balance owing (plus applicable interest) to them.

14 If I sign an Almond Direction to Pay Form, can I still dispute that Timbercorp Finance / TSL were entitled to be paid?

Yes, signing the Almond Direction to Pay Form and the use of your entitlement to pay Timbercorp Finance or TSL does not affect your right to dispute that Timbercorp Finance or TSL were entitled to be paid.

15 If I am a Grower in more than one Timbercorp Project and I want to use my entitlements from all of my Projects to pay Timbercorp Finance / TSL, do I need to sign a direction to pay form for each Project?

There is a separate direction to pay form for Timbercorp Olive Projects, Timbercorp Almond Projects and the 2005 Timbercorp Citrus Project.

If you are only a Grower in Olive Projects, you only need sign one Olive Direction to Pay Form, even if you are a Grower in several Olive Projects.

If you are only a Grower in Almond Projects, you only need sign one Almond Direction to Pay Form, even if you are a Grower in several Almond Projects.

If you are only a Grower in the 2005 Citrus Project, you only need sign one Citrus Direction to Pay Form.

If you are a Grower in Olive Projects and Almond Projects, you will have to sign an Olive Direction to Pay Form for the Olive Projects and a separate Almond Direction to Pay Form for the Almond Projects.

If you are a Grower in Olive Projects and the 2005 Citrus Project, you will have to sign an Olive Direction to Pay Form for the Olive Projects and a separate Citrus Direction to Pay Form for the 2005 Citrus Project.

If you are a Grower in Almond Projects and the 2005 Citrus Project, you will have to sign an Almond Direction to Pay Form for the Almond Projects and a separate Citrus Direction to Pay Form for the 2005 Citrus Project.

If you are a Grower in Olive Projects, Almond Projects and the 2005 Citrus Project, you will have to sign an Olive Direction to Pay Form for the Olive Projects and a separate Almond Direction to Pay Form for the Almond Projects and a separate Citrus Direction to Pay Form for the 2005 Citrus Project.

16 What is the Almond Land Rights Appeal Proceeding and how does it relate to me?

The Almond Land Rights Appeal Proceeding is a legal proceeding which is currently in the Supreme Court of Victoria Court of Appeal. It is an appeal of the judgment of Justice Davies of the Supreme Court of Victoria in the Almond Land Rights Proceeding.

The Almond Land Rights Proceeding was heard and determined in 2011. The purpose of the Almond Land Rights Proceeding was to determine who was entitled to the net proceeds of sale of the land and other assets which were used in the 2002 Timbercorp Almond Project (Private Offer No 1) and the 2002, 2005, 2006 and 2007 Timbercorp Almond Projects. The parties who were claiming an entitlement to the proceeds were:

- the secured creditors, BOSI Security Services Limited (as trustee for Australia and New Zealand Banking Group Limited (ANZ), BOS International (Australia) Limited and Westpac Banking Corporation), and ANZ in its own right, which had (among other security) a mortgage over the land and a charge over the other assets;
- the Growers in the 2002 Timbercorp Almond Project (Private Offer No 1) and the 2002, 2005, 2006 and 2007 Timbercorp Almond Projects; and

The Supreme Court found that the secured creditors were entitled to all of the net proceeds of sale and the Growers were not entitled to any of the net proceeds. The Growers have appealed this decision, in the Almond Land Rights Appeal Proceeding.

If the Compromise is approved by the Supreme Court or the Court of Appeal and the compromises in relation to the other Timbercorp Projects are also approved, the Almond Land Rights Appeal Proceeding will not continue and the Growers will receive a payment from the secured lenders in accordance with the Compromise. Growers will lose the right to argue for a different share of the net sale proceeds.

17 Who are the Representative Growers and what is their role?

The Representative Growers are representing all Growers in the Almond Land Rights Appeal Proceeding. There is a Representative Grower for each of the relevant Timbercorp Almond Projects. If the Compromise is not approved and the Almond Land

Rights Appeal Proceeding continues, the Representative Growers and their lawyers will appear in Court and try to prove that the Growers are entitled to a share of the net sale proceeds. It is unlikely that the appeal will be heard and determined by the Court of Appeal before mid 2013. The names of the Representative Growers are set out in the First Notice to Growers.

18 How were the Representative Growers chosen?

The Timbercorp Growers Group was asked to nominate Growers willing to act as Representative Growers. Some other Growers also wanted to be the Representative Growers. The Supreme Court of Victoria decided which of the Growers would be appointed as the Representative Growers. The names of the Representative Growers are set out in the First Notice to Growers.

19 Which lawyers are acting for Growers?

Clarendon Lawyers and barristers appointed by them. TSL has agreed to pay, from its own funds, the fees and costs of Clarendon Lawyers and those barristers in relation to the application for approval of the Compromise. These fees and costs will not be deducted from the sale proceeds of amounts payable to Growers.

20 Why have the Representative Growers agreed to the Compromise?

The Representative Growers have obtained legal advice in relation to the Compromise and have considered it and other matters such as the delays and uncertainty if it is necessary to proceed with a contested trial in the Court of Appeal to decide who is entitled to the net sale proceeds. The lawyers and barristers who gave the legal advice took into account (among other things) the decision in the Almond Land Rights Proceeding and the appeal of that decision. On the basis of the legal advice, the certainty of the payments to be made under the Compromise once approved by the Supreme Court (or Court of Appeal) and the cost and delay before the Almond Land Rights Appeal Proceeding would be finally heard and determined by the Court of Appeal, the Representative Growers consider that the Compromise is for the benefit of the Growers in the Almond Projects.

21 Can I have a copy of the advice given to the Responsible Growers?

A copy of the advice will be provided free of charge to any Grower who writes to Clarendon lawyers requesting a copy of the advice, or any lawyer for a Grower who writes to Clarendon Lawyers requesting the advice on behalf of any identified Grower, provided that the Grower or lawyer requesting the copy of the advice provides Clarendon Lawyers with a signed document acknowledging the common interest privilege and undertaking to treat the advice as strictly confidential. Written requests should be addressed to Clarendon Lawyers and emailed to investorqueries@timbercorp.com.au.

22 What is the Compromise reached by the parties to the Almond Land Rights Appeal Proceeding?

If the Compromise is approved by the Supreme Court (or Court of Appeal) and the other compromises in relation to the other Timbercorp Projects are also approved, Growers will be entitled, in total, to \$6,000,000 which is approximately 5% of the gross sale proceeds. This equates to \$186.57 per lot located on the land formerly owned by Almond Land. The remaining proceeds will be retained by the secured creditors. All parties, including all Growers, will release all other parties from the claims they may otherwise have had in relation to the sale proceeds.

23 How was the figure of \$6,000,000 reached?

The amount was reached by agreement between the secured creditors, the land owner and the Representative Growers.

24 Can I have a copy of the Compromise Deed?

The Compromise Deed is available online at any of:

www.clarendonlawyers.com.au

www.kordamentha.com/creditor-information/Australia/51

www.abl.com.au/timbercorp/compromises.htm

or by:

- calling the hotline on (03) 8615 1200 or
- emailing investorqueries@timbercorp.com.au.

25 What conditions have to be satisfied in order for the Compromise to proceed?

The Supreme Court (or Court of Appeal) must approve the Compromise and the similar compromises reached in relation to other Timbercorp Projects by 31 December 2012 or such later date as is agreed. The Supreme Court or Court of Appeal may approve the Compromise if it is satisfied that the Compromise is for the benefit of Growers.

26 What are the other compromises that require approval?

Similar compromises have been reached in relation to the proceedings which were commenced to determine how the net proceeds from the sales of assets used in the other Timbercorp Almond Projects, the Timbercorp Olive Projects and the 2005 Timbercorp Citrus Project. These compromises are also subject to Court approval. The other proceedings are:

- Supreme Court of Victoria Proceeding No S CI 2011 6604 (**Liparoo and Yungera Rights Proceeding**) which relates to the 2001, 2002, 2003, 2004 and 2005 Timbercorp Almond Projects and the 2002 Timbercorp Almond Project (Private Offer No 1)
- Supreme Court of Victoria Proceeding No S CI 2011 6606 (**Solara Rights Proceeding**) which relates to the 2005 Timbercorp Citrus Project
- Supreme Court of Victoria Proceeding No S CI 2011 6777 (**Fenceport Rights Proceeding**) which relates to the 2000 Timbercorp Olive Project (Private Offer) and the 2001, 2002, 2003 and 2004 Timbercorp Olive Projects and
- Supreme Court of Victoria Proceeding No S CI 2010 1354 (**BB Olives Rights Proceeding**) which relates to the 2006, 2007 and 2008 Timbercorp Olive Projects

The 2002 and 2005 Timbercorp Almond Projects and 2002 Timbercorp Almond Project (Private Offer No 1) were conducted on more than one almond plantation, which were sold in different sale transactions. Those Projects are therefore involved in both the Almond Land Rights Appeal Proceeding and the Liparoo and Yungera Rights Proceeding.

27 When will the Supreme Court of Victoria (or Court of Appeal) decide whether to approve the Compromise?

A date for the hearing has not yet been set. It will not be before October 2012. Once the date of the hearing has been determined, it will be posted on the following websites:

www.clarendonlawyers.com.au

www.kordamentha.com/creditor-information/Australia/51

www.abl.com.au/timbercorp/compromises.htm

The Court may take some time after the hearing to decide whether to approve the Compromise and the similar compromises in relation to the other Timbercorp Projects.

28 What happens if the Supreme Court of Victoria (or Court of Appeal) does not approve the Compromise?

If the Supreme Court (or Court of Appeal) does not approve the Compromise (or the other similar compromises), the Almond Land Rights Appeal Proceeding will continue. The Court of Appeal will determine who is entitled to the net sale proceeds. It is unlikely that the Almond Land Rights Appeal Proceeding would be heard and determined before mid 2013.

29 Are there tax consequences for me as a result of the Compromise?

There may be tax consequences for you, depending on your individual circumstances. You should ask your own financial or tax adviser.

30 Can I object to the Compromise?

Yes. You can object by email to investorqueries@timbercorp.com.au or by calling the hotline on (03) 8615 1200. If you object to the Compromise, you may raise your objection at the Supreme Court (or Court of Appeal) hearing of the application for approval of the Compromise. Growers may choose to appear in person or have their own lawyers represent them. You should seek your own legal advice if you wish to appear or have your lawyers appear on your behalf.

31 What happens if a Grower objects to the Compromise?

All objections received from Growers before 14 September 2012 will be disclosed to the Supreme Court (or Court of Appeal) at the hearing of the application for approval of the Compromise. If your objection is received after that time but before the hearing of the application, the Representative Growers will use their best efforts to ensure that it is also disclosed to the Supreme Court (or Court of Appeal). The Supreme Court (or Court of Appeal) will consider the objections received from Growers and disclosed to it when determining whether the Compromise is for the benefit of Growers.

32 Am I bound by the Compromise?

If the Compromise is approved by the Supreme Court (or Court of Appeal) and the other compromises are also approved, all Growers will be bound by the Compromise. Growers will lose the right to argue for a different share of the net sale proceeds.

33 Who can I talk to about the Compromise if I have a comment, question or objection?

You can call the hotline on (03) 8615 1200. If the hotline staff cannot answer your question, they will refer it to Clarendon Lawyers, who are acting for the Representative Growers. Someone from Clarendon Lawyers will then respond to you.

34 How much are the Growers in the other schemes getting?

Timbercorp Olive Project	Fenceport Compromise entitlement per lot	BB Olives Compromise entitlement per lot	Total entitlement per lot
2000 Olive (Private Offer)	\$163.81	-	\$163.81
2001 Olive	\$163.81	-	\$163.81
2002 Olive	\$163.81	-	\$163.81
2003 Olive	\$163.81	-	\$163.81
2004 Olive	\$163.81	-	\$163.81
2006 Olive	-	\$92.43	\$92.43
2007 Olive	-	\$92.43	\$92.43
2008 Olive	-	\$92.43	\$92.43

Timbercorp Almond Project	Almond Land Compromise Grower entitlement per lot (subject to claim by the Litigation Funders)	Liparoo & Yungera Compromise Grower entitlement per lot	Tree purchase per lot	Total Grower entitlement per lot
2001 Almond	-	\$521.31	\$2000	\$2521.31
2002 Almond (Private Offer No 1)	\$53.46	\$371.93	-	\$425.39
2002 Almond	\$54.89	\$367.93	-	\$422.82
2003 Almond	-	\$521.31	-	\$521.31
2004 Almond	-	\$521.31	-	\$521.31
2005 Almond	\$121.24	\$182.54	-	\$303.78
2006 Almond	\$186.57	-	-	\$186.57
2007 Almond	\$186.57	-	-	\$186.57

Timbercorp Citrus Project	Solara Compromise entitlement per lot	Total entitlement per lot
2005 Citrus	\$316.80	\$316.80

Some land used in the 2002 and 2005 Timbercorp Almond Projects and the 2002 Timbercorp Almond Project (Private Offer No. 1) was sold in the Almond Land sale

transaction and the remainder in the Liparoo and Yungera sale transaction. Growers in those Projects therefore have an entitlement under both compromises. The amount set aside for Growers from each compromise is determined by the number of lots in that Project that were on the relevant land. These amounts are then allocated to Growers on the basis of the total number of lots in the Project. This results in the amount per lot being reduced in proportion to the percentage of lots in that Project that were located on the relevant land.

The Growers' Appeal of the decision in the Almond Land Rights Proceeding has been funded by Litigation Funders. Those Litigation Funders have indicated that they intend to seek a payment from the Growers' entitlement under the compromise of the Almond Land Rights Appeal Proceeding. If they are successful in this claim (in whole or in part), the amounts that Growers in the 2002, 2005, 2006 and 2007 Timbercorp Almond Project and the 2002 Timbercorp Almond Project (Private Offer No. 1) receive will be reduced accordingly.

If the Supreme Court is not prepared to hear and determine the Litigation Funders' claim until after the hearing of the application for approval of the compromise of the Almond Land Rights Appeal Proceeding, the Supreme Court may require that the Growers' entitlement under the compromise of the Almond Land Rights Appeal Proceeding be held on trust, in an interest-bearing account, until the Litigation Funders' claim is heard and determined. This will not affect the distribution of Growers' entitlements under any other compromise.

35 Why are some Growers getting more than others?

Approximately 5% of the gross proceeds of each sale transaction are being set aside for Growers. The sale proceeds differed between the sale transactions depending on how much the relevant buyers were prepared to pay. This varied depending on the location and value of the land, the age of the trees and other factors.

The amount set aside for Growers from each sale transaction is then divided by the number of lots in the relevant Projects.

Unlike the other Timbercorp Projects, Growers in the 2001 Timbercorp Almond Project, owned the trees on their lot. The governing documents for the 2001 Timbercorp Almond Project provide that Growers are entitled to \$2,000 per lot for the trees on their lot when the trees were sold. Those Growers are therefore entitled to an additional \$2,000 per lot. The governing documents for the other Timbercorp Projects do not have the same provisions.

Some land used in the 2002 and 2005 Timbercorp Almond Projects and the 2002 Timbercorp Almond Project (Private Offer No. 1) was sold in the Almond Land sale transaction and the remainder in the Liparoo and Yungera sale transaction. Growers in those Projects therefore have an entitlement under both compromises. The amount set aside for Growers from each compromise is determined by the number of lots in that Project that were on the relevant land. These amounts are then allocated to Growers on the basis of the total number of lots in the Project. This results in the amount per lot being reduced in proportion to the percentage of lots in that Project that were located on the relevant land.

36 Where can I get a copy of the governing documents for my Project?

The governing documents for the Almond Projects, such as the constitution, licence and joint venture agreement or lease and management agreement are available on line at www.abl.com.au/timbercorp/compromise.htm.

37 Why aren't Growers in the Table Grape or 2004 Citrus Projects getting anything?

A compromise agreement has not been reached between the Growers in these Projects and the other interested parties. The net sale proceeds are being held on trust until an agreement is reached or a Court decides who is entitled to the net sale proceeds.

38 What happened in the Almond Land Rights Proceeding?

The Almond Land Rights proceeding was heard by Justice Davies of the Supreme Court of Victoria in 2011. Her Honour determined that the Growers were not entitled to any of the net sale proceeds. Instead, the secured creditors were entitled to all of the net sale proceeds.

The Growers have appealed this decision but the appeal has not yet been heard.

39 What is happening with the appeal of the decision in the Almond Land Rights Proceeding?

The parties have completed all the necessary preliminary steps required before the Court of Appeal will set a date for the hearing of the appeal, however the date for the hearing has not yet been set.

If the Compromises are not approved by the Supreme Court, the appeal will continue. It is not expected to be heard before mid 2013.

40 Why are Litigation Funders claiming part of the amount that is being set aside for Growers under the Compromise?

In order to pursue the Appeal of the decision in the Almond Land Rights Proceeding, the Representative Growers entered into an arrangement with third parties, Litigation Funders, to fund the Appeal proceeding. Under the terms of the Litigation Funding Agreement, in return for the Litigation Funders accepting the risk associated with the Appeal proceeding, the Litigation Funders are entitled to be reimbursed for the amounts they have paid to fund the appeal proceeding and are also entitled to be paid up to 25% of any amount payable to Growers if the Appeal is successful or the Growers receive a payment to settle the Appeal. The Litigation Funders will only receive a payment if the Court approves the payment.

In accordance with the Litigation Funding Agreement, the Litigation Funders have indicated that they intend to seek a payment from the amount that Growers receive under the compromise of the Almond Land Rights Proceeding. The names of the Litigation Funders are set out in the First Notice to Growers.

41 How much are the Litigation Funders claiming?

The Litigation Funders are seeking to be reimbursed for the amounts they have paid to fund the Appeal, currently estimated to be \$180,000 and are seeking to be paid an additional \$1,500,000 (being 25% of the amount being paid to Growers under the Compromise). These payments are subject to Court approval.