

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

LIST E

SCI 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  
(ACN 007 457 141)**

Plaintiff

and

**AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED  
(ACN 005 357 522) & ORS (according to the attached Schedule)**

Defendants

**CERTIFICATE IDENTIFYING EXHIBIT**

Date of document: 3 March 2010  
Filed on behalf of: the Second, Third and Fourth Defendants

Prepared by:  
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This is the exhibit marked '**MAK-42**' now produced and shown to MARK ANTHONY  
KORDA at the time of swearing this affidavit on 3 March 2010.

Before me:

  
**LUCY HANNAH KIRWAN**

Arnold Bloch Leibler  
Level 21, 333 Collins Street  
Melbourne 3000

An Australian Legal Practitioner within the  
meaning of the Legal Profession Act 2000

**Exhibit 'MAK-42'**

**Copy of Nenandie Deed of Priority**



**Deacons**

Dated

## **Nenandie Deed of Priority**

Parties

**Timbercorp Securities Limited**  
ABN 12 092 311 469

**Almond Land Pty Ltd**  
ABN 65 091 460 392

**Australia and New Zealand Banking Group Limited**  
ABN 11 006 357 622

**BOSI Security Services Limited**  
ABN 63 008 413 852

**Contact**

**Gillad Dalal**

Partner

385 Bourke Street, Melbourne VIC 3000

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Website: [www.deacons.com.au](http://www.deacons.com.au)

Our Ref: 2666783

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**Deed dated**

**Parties**      **Timbercorp Securities Limited** ABN 12 092 311 469  
Level 8, 461 Bourke Street, Melbourne, Victoria 3000  
(TSL)

**Almond Land Pty Ltd** ABN 65 091 460 392  
of Level 8, 461 Bourke Street, Melbourne, Victoria  
(Security Provider)

**Australia and New Zealand Banking Group Limited** ABN 11 005 357 522  
of Level 3, 100 Queen Street, Melbourne, Vic, 3000  
(First Security Holder)

**BOSI Security Services Limited** ABN 63 009 413 852  
of Level 27, 45 Clarence Street, Sydney, NSW, 2000  
(Second Security Holder)

## **Introduction**

- A.    The First Security Holder holds or is to become the holder of the security granted or to be granted by the Security Provider as specified in Annexure A.
- B.    The Second Security Holder holds or is to become the holder of the security granted or to be granted by the Security Provider as specified in Annexure B.
- C.    The parties have agreed to enter into this Deed for the purposes of establishing and recording the order of priority between the First Security Holder and the Second Security Holder.

## **It is agreed**

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### **1.    Definitions and Interpretation**

#### **1.1    Definitions**

In this Deed, unless the context requires another meaning:

**Administrator** has the same meaning as "administrator" in the *Corporations Act 2001*.

**Authorised Officer** means, for a Security Holder, a director or a secretary of that Security Holder or any employee of that Security Holder whose title includes the word "Manager" or "Director" or "Associate Director", and includes a person acting in any of those capacities or any other person nominated by that Security Holder by notice to the Security Provider and the other Security Holder to be an Authorised Officer.

**Business Day** means a day on which banks are open for business in Melbourne other than a Saturday, a Sunday or a public holiday.

**Controller** has the meaning given to "controller" in section 9 of the *Corporations Act 2001*.

**First Security** means the documents specified in Annexure A entered into by any person to secure the First Security Holder's Secured Obligations or any part of them.

**Government Agency** means:

- (1) a government, whether foreign, federal, state, territorial or local;
- (2) a department, office or minister of a government acting in that capacity; or
- (3) a commission, delegate, instrumentality, agency, board, or other government, semi-government, judicial, administrative, monetary or fiscal authority, whether statutory or not.

**Nonandla Property** means the property described in certificates of title volume 10857 folio 468, volume 10867 folio 472, volume 10867 folio 473, volume 10867 folio 482, volume 10867 folio 484, volume 10867 folio 485, volume 10923 folio 772, volume 10923 folio 773, volume 10867 folio 482, volume 10867 folio 486, volume 10867 folio 457, volume 10867 folio 458, volume 10867 folio 463, volume 10867 folio 484, volume 10867 folio 485, volume 10867 folio 486 and volume 10867 folio 487 and any other interest (including water rights) relating to that property. X

**Order of Priorities** means the order of priorities between the First Security Holder and the Second Security Holder set out in clause 2.1.

**Second Security** means the documents specified in Annexure B entered into by any person to secure the Second Security Holder's Secured Obligations or any part of them.

**Secured Obligations** means, for a Security Holder, all money, obligations and liabilities (actual or contingent) of any nature secured by that Security Holder's Security or owing or which may become owing to that Security Holder (or, in the case of the Second Security Holder, any other beneficiary of the Timbercorp Security Trust) under its Security.

**Secured Property** means the property subject to the Securities, and includes any part of that property.

**Security Holders** means the First Security Holder and the Second Security Holder and **Security Holder** means either of them.

**Securities** means the First Security and the Second Security and "**Security**" means either of them.

**Syndicate Deed of Priority** means the Syndicate Deed of Priority to be entered into by the First Security Holder, the Second Security Holder and others on or about the date of this Deed.

**Tax** means a tax, levy, charge, impost, deduction, withholding or duty of any nature (including stamp and transaction duty) at any time:

- (1) imposed or levied by any Government Agency; or
- (2) required to be remitted to, or collected, withheld or assessed by, any Government Agency;

and any related interest, expense, fine, penalty or other charge but does not include a tax imposed on the overall net income of a Security Holder.

## 1.2 Interpretation

- (1) In this Deed, unless the context requires another meaning, a reference:
- (a) to the singular includes the plural and vice versa;
  - (b) to a gender includes all genders;
  - (c) to a document (including this Deed) is a reference to that document (including any Schedules and Annexures) as amended, consolidated, supplemented, novated or replaced;
  - (d) to an agreement includes any undertaking, representation, deed, agreement or legally enforceable arrangement or understanding whether written or not;
  - (e) to a party means a party to this Deed;
  - (f) to an item, Recital, clause, Schedule or Annexure is to an item, Recital, clause, Schedule or Annexure of or to this Deed;
  - (g) to a notice means a notice, approval, demand, request, nomination or other communication given by one party to another under or in connection with this Deed;
  - (h) to a person (including a party) includes:
    - (i) an individual, company, other body corporate, association, partnership, firm, joint venture, trust or Government Agency; and
    - (ii) the person's successors, permitted assigns, substitutes, executors and administrators;
  - (i) to a law:
    - (i) includes a reference to any legislation, treaty, judgment, rule of common law or equity or rule of any applicable stock exchange; and
    - (ii) is a reference to that law as amended, consolidated, supplemented or replaced; and
    - (iii) includes a reference to any regulation, rule, statutory instrument, by-law or other subordinate legislation;
  - (j) to proceedings includes litigation, arbitration and investigation;
  - (k) to a judgment includes an order, injunction, decree, determination or award of any court or tribunal;
  - (l) to time is to Melbourne time; and
  - (m) to the word "including" or "includes" means "including, but not limited to," or "includes, without limitation".
- (2) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.

- (3) Headings are for convenience only and do not affect interpretation of this Deed.
- (4) This Deed may not be interpreted adversely to a party only because that party was responsible for preparing it.

### 1.3 Limitation of liability

- (1) The Second Security Holder enters into this Deed, and acts and incurs liabilities in connection with this Deed, only in its capacity as trustee of the Timbercorp Security Trust. Despite any other provision of this Deed:
  - (a) the Second Security Holder is not liable to any person party to this Deed or any person claiming through any such party for; and
  - (b) no person party to this Deed or claiming through any such party has any recourse to the Second Security Holder for,  
  
any amount that would otherwise be payable by the Second Security Holder under, or as a result of a breach of, this Deed, except to the extent that:
    - (c) the Second Security Holder obtains final reimbursement from the assets of the Timbercorp Security Trust for the amount; or
    - (d) the amount is payable as a result of the Second Security Holder's fraud, wilful default or gross negligence.
- (2) Subject to paragraph (1), no party to this Deed (or claiming through any such party) may take any step to recover an amount that is payable under, or as a result of a breach of, this Deed by or from the Second Security Holder, its directors, officers, authorised representatives, employees, agents and/or attorneys, including by taking any step to:
  - (a) have an administrator appointed to the Second Security Holder;
  - (b) have a receiver or receiver and manager appointed to the Second Security Holder or any of its property, except in relation to the assets of the Timbercorp Security Trust;
  - (c) have the Second Security Holder wound up, or to prove in the winding up of the Second Security Holder;
  - (d) carry out any distress or execution on any property of the Second Security Holder, other than the assets of the Timbercorp Security Trust; or
  - (e) exercise any:
    - (i) right of set-off;
    - (ii) right to combine or consolidate accounts; or
    - (iii) banker's lien,
 against the Second Security Holder or any of its property, except in relation to the assets of the Timbercorp Security Trust.

- (3) Paragraph (2) does not affect a persons rights to:
- (a) take steps to recover amounts from the Second Security Holder for which the Second Security Holder is liable under paragraph (1); or
  - (b) obtain an injunction, restraining order or declaration concerning the Second Security Holder, the assets of the Timbercorp Security Trust or the Second Security Holder's obligations under this Deed.
- (4) If the Second Security Holder is replaced as trustee of the Timbercorp Security Trust:
- (a) this Deed is to be construed and is to take effect from the date on which the Second Security Holder was so replaced as if the replacement trustee had executed this Deed, and any reference to the Second Security Holder in this Deed will be from that date a reference to the replacement trustee to the exclusion of the party which has been replaced; and
  - (b) the parties must enter into such documentation, and take such other steps, as any party reasonably requires to give full effect to this.

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## 2. Priorities

### 2.1 Order of Priorities

The Security Holders agree that the Securities rank in the following order of priority:

- (1) the First Security ranks first for payment of the First Security Holder's Secured Obligations to the extent that those Secured Obligations are:
- (a) principal owing actually or contingently at any time not exceeding in total \$48,000,000 reduced by the proceeds (net of usual selling and discharge costs incurred by the First Security Holder) received by the First Security Holder on any partial discharge of the First Security;
  - (b) interest which accrues on any part of the principal amount referred to in subparagraph (i) and fees, costs and charges owing actually or contingently at any time in connection with that principal amount;
  - (c) an amount owing by way of indemnity or other provision which has the effect of compensating the First Security Holder for yield losses it suffers because any of its Secured Obligations are paid earlier than the term applying to those Secured Obligations, whether under a right of prepayment or redemption or as a result of a default; and
  - (d) costs of exercising any power or right under or in connection with the First Security as a result of a default by the Security Provider; and
- (2) after payment or satisfaction of the First Security Holder's Secured Obligations, the Second Security ranks second for payment of the Second Security Holder's Secured Obligations.

(a) ??

?



## **2.2 Ranking**

The Second Security Holder agrees that the Second Security:

- (1) is subject to and ranks subsequent in priority for all purposes to the First Security;  
and
  - (2) is postponed to the rights of the First Security Holder under the First Security;
- in respect of all the Secured Property secured under the First Security.

## **2.3 Continuation of priority**

The Order of Priorities continues to apply until either:

- (1) the First Security Holder's Secured Obligations have been paid or satisfied and the First Security released or discharged in full; or
- (2) this Deed is terminated by agreement in writing between the Security Holders.

## **2.4 Priorities prevail**

The Order of Priorities applies despite:

- (1) the order of execution, registration or production for registration of the Securities;
- (2) the order in which money comprising any Secured Obligations is advanced or readvanced or becomes owing or payable or liabilities or obligations comprising any Secured Obligations are incurred to a Security Holder;
- (3) anything contained in any Security;
- (4) any Security Holder having notice of any other Security Holder's Security;
- (5) any payment, credit or settlement of account which may be received or allowed by a Security Holder from the Security Provider or any other person in respect of its Secured Obligations;
- (6) the amount of any Secured Obligations fluctuating from time to time;
- (7) the lending or advance of additional money or the furnishing of additional accommodation secured under a Security;
- (8) that a Security Holder may be obliged to:
  - (a) make any future advance to or at the request or for the benefit of the Security Provider;
  - (b) grant to the Security Provider any future financial accommodation; or
  - (c) do anything which may cause money to become owing by the Security Provider to it;
- (9) any Secured Obligations being at any time owing but not then presently payable or contingently owing;

- (10) the insolvency or the appointment of a liquidator, Controller, Administrator or other similar officer to the Security Provider or any of its property or undertaking;
- (11) any rule or provision of any law to the contrary, including any priorities conferred by the *Corporations Act 2001*; or
- (12) any other act, matter or thing.

## **2.5 Payments held on trust**

- (1) If any money is received or recovered by a Security Holder and:
  - (a) that receipt or recovery is not permitted by this Deed; or
  - (b) the amount received or recovered exceeds the amount the Security Holder is entitled to under clause 2.1;
 that Security Holder must:
  - (c) hold that amount on trust for the benefit of the other Security Holder for application in accordance with the Order of Priorities;
  - (d) promptly notify the other Security Holder of that receipt or recovery; and
  - (e) pay to the other Security Holder the amount necessary to give effect to clause 2.1 within five Business Days after the date of receipt or recovery of the amount.
- (2) All money received or recovered by a Controller, agent or attorney appointed by a Security Holder under a Security must be applied in accordance with this clause 2.
- (3) Any trust created by the operation of this Deed is for a term starting on the date of this Deed and ending on the day before the 80th anniversary of the date of this Deed.

## **2.6 Satisfaction of First Security Holder's Secured Obligations**

For the purposes of this Deed, the First Security Holder's Secured Obligations are not to be considered paid or satisfied until the First Security Holder is satisfied that there is no reasonable possibility that:

- (1) any money received or recovered by the First Security Holder and applied in satisfaction of the First Security Holder's Secured Obligations; or
- (2) any settlement, conveyance, transfer or other transaction made in satisfaction of the First Security Holder's Secured Obligations,

must be repaid or may be avoided under any law, including a law relating to preferences, bankruptcy, insolvency or the winding up of companies.

## **2.7 Security released or invalid**

If any of the Security in favour of a Security Holder is released in respect of any property or is wholly or partly invalid or unenforceable, that Security Holder:

- (1) bears any resulting loss; and

- (2) is not entitled to share in any money received or recovered from the enforcement or realisation of Security over Secured Property over which it has no effective security.

The Security Holders agree that they will not challenge the validity or enforceability of any of the Security.

**2.8 No obligation to marshal**

Except as provided in this Deed, a Security Holder is not obliged to marshal its Security in favour of the other Security Holder.

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**3. Consents and agreements**

**3.1 Consents to Securities**

**(1) The First Security Holder:**

- (a) consents to the creation and execution by the Security Provider of the Security in favour of the Second Security Holder provided that the Syndicate Deed of Priority is duly executed by all parties and delivered to the First Security Holder; and
- (b) agrees that, subject to clause 3.1(1)(a), the creation or existence of that Security does not constitute a breach by the Security Provider of any covenant or condition of the Security in its own favour.

*Syndicate Deed of Priority*

*"Security in favour of" is a defined term*

*add - why relevant? not in it? is for now complete*

**(2) The Second Security Holder:**

- (a) consents to the creation and execution by the Security Provider of the Security in favour of the First Security Holder; and
- (b) agrees that the creation or existence of that Security does not constitute a breach by the Security Provider of any covenant or condition of the Security in its own favour.

**3.2 Assignment**

Except for a replacement of the Second Security Holder as trustee of the Timbercorp Security Trust where the replacement trustee assumes all rights and liabilities of the trustee of the Timbercorp Security Trust, a Security Holder must not assign or transfer or otherwise deal with any of its interests under the Security to which it is a party, unless:

- (1) the assignment, transfer or dealing is expressly made subject to the terms of this Deed; and
- (2) the assignee or transferee has entered into a deed by which it is bound by the provisions of this Deed in the same manner as that Security Holder is bound under this Deed.

The prohibitions contained in this clause do not apply to any dealing which represents or results from the enforcement of a Security.

### **3.3 Release of Second Security Holder's Security**

The Second Security Holder will release its Security in the event that the property the subject of that Security is sold by the Security Provider. Any amount received by the First Security Holder as a result of the sale must be distributed so as to give effect to the Order of Priorities.

### **3.4 Documents of title**

If the Security Provider is required under the terms of any Security to deposit any deeds and documents of title, insurance policies or other documents or property with any Security Holder, the Security Provider will be considered to have complied with that obligation if those documents or property are deposited with the First Security Holder. If:

- (1) the First Security Holder's Secured Obligations are paid or satisfied and the First Security is released or discharged in full; and
- (2) the Second Security has not then been released or discharged;

the First Security Holder must promptly deliver to the Second Security Holder all documents and property held by it in relation to the property secured by the Securities.

### **3.5 Other persons having priority**

- (1) Subject to clause 3.5(2), if any person other than a Security Holder has a claim to the Secured Property that ranks in priority to the claims of any Security Holder:
  - (a) payment of that claim may be made by any of the Security Holders; and
  - (b) that payment does not reduce the extent of the respective priorities of the Security Holders under clause 2.1.
- (2) If:
  - (a) a person has a claim to the Secured Property that ranks in priority to the claims of the First Security Holder; and
  - (b) the Second Security Holder has a claim to the Secured Property that ranks in priority to the claims of that other person;

the Second Security Holder must enforce its priority claim against that other person. Any amount received by the Second Security Holder as a result must be distributed so as to give effect to the Order of Priorities.

### **3.6 Insurance**

- (1) The First Security Holder may exercise any power under a Security to make, enforce, settle or compromise any claim in respect of insurance or for compensation, or to sue for or give discharges for all insurance claims and money, to the exclusion of the Second Security Holder.
- (2) Any money received or recovered under a claim involving the Secured Property, which is not required under the terms of a reinstatement policy to be paid to another person under a contract for reinstatement, must be applied:
  - (a) towards satisfaction of the First Security Holder's Secured Obligations; or

- (b) to the extent necessary, to repair, replace or reinstate the Secured Property or otherwise for the purpose for which the relevant insurance policy was maintained;

at the option of the First Security Holder.

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#### **4. Enforcement of Securities**

##### **4.1 Notice of default**

The Second Security Holder agrees to notify the First Security Holder on the occurrence of:

- (1) any monetary default under its Security; and
- (2) any other default of which it becomes aware.

Failure to give notice in accordance with this clause 4.1 does not affect any of the rights, remedies or powers of a Security Holder under this Deed.

##### **4.2 Enforcement of Securities**

- (1) The Second Security Holder must not enforce the Second Security without first obtaining the written consent of the First Security Holder.
- (2) The First Security Holder is not required to obtain the consent or approval of the Second Security Holder before enforcing or attempting to enforce the First Security.

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#### **5. Acknowledgments**

##### **5.1 Security Provider's acknowledgment**

The Security Provider acknowledges the provisions of this Deed and agrees for the benefit of the Security Holders that:

- (1) if an event occurs under any Security as a result of which the money, obligations and liabilities secured by that Security become immediately due and payable, all money, obligations and liabilities secured under each other Security will also become due and payable without the need for any demand;
- (2) no Security Holder is liable to the Security Provider for the distribution of any money made in accordance with this Deed; and
- (3) the rights, powers and remedies of the Security Holders under their respective Securities, the amounts recoverable under their respective Securities, and the validity and enforceability of their respective Securities as against the Security Provider, are not prejudiced by this Deed.

##### **5.2 Discretion as to application of payments**

If:

- (1) a Security Holder's Security becomes enforceable; and
- (2) its Secured Obligations are made up of a number of debts, liabilities or obligations;

it may, subject to this Deed, determine in its absolute discretion the manner in which it will apportion the priority conferred on its Secured Obligations by this Deed between each of those debts, liabilities and obligations.

### **6.3 Disclosure**

- (1) The Security Holders may disclose to each other any information about the Security Provider and the Securities as they consider appropriate.
- (2) No Security Holder is under any obligation to give notice to the other of any advance or accommodation which it makes or provides to the Security Provider, or the incurring of any obligation or liability that comprises Secured Obligations.

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## **6. Expenses**

### **6.1 Expenses**

- (1) The Security Provider must pay to or reimburse each Security Holder on demand for:
  - (a) all costs and expenses incurred or payable by the Security Holder for:
    - (i) the negotiation, preparation, execution, completion, stamping and registration of this Deed;
    - (ii) any attendance, inspection, calculation, approval, consent, waiver, variation, release or discharge made or given by the Security Holder under this Deed; and
    - (iii) any enquiry by any Government Agency concerning the Security Provider or any transaction contemplated by this Deed; and
  - (b) all costs and expenses incurred or payable by the Security Holder for any contemplated or actual enforcement of this Deed or the preservation of its rights, powers and remedies under this Deed.
- (2) The costs and expenses of a Security Holder to be paid or reimbursed by the Security Provider under clause 6.1(1) include:
  - (a) costs of time spent by any personnel of the Security Holder, at the daily or hourly rate reasonably determined by the Security Holder, costs and expenses of any person engaged by the Security Holder, and all administration costs, internal and external legal fees and disbursements on a full indemnity basis; and
  - (b) any expenses incurred in retaining an independent consultant or other person to evaluate any matter of concern.

### **6.2 Costs**

The Security Provider must bear the cost of doing or refraining from doing any act, matter or thing which it is required to do or refrain from doing under or in connection with this Deed.

### **6.3 Taxes**

- (1) The Security Provider must pay all Tax in relation to the execution, delivery, registration, performance, release, discharge, variation, enforcement or attempted enforcement of or otherwise in respect of this Deed.
- (2) The Security Provider indemnifies the Security Holders against all claims, costs, damages, debts, expenses, liabilities, losses, allegations, suits, actions, demands, causes of action or proceedings in respect of any amount payable under clause 6.1(1).

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## **7. Preservation of rights**

### **7.1 Moratorium legislation**

To the extent permitted by law, a provision of a law is excluded if it does or may, directly or indirectly:

- (1) lessen or vary in any other way a party's obligations under this Deed; or
- (2) delay, curtail or prevent or adversely affect in any other way the exercise by a Security Holder or a Controller appointed by a Security Holder of any of its rights, remedies or powers under this Deed.

### **7.2 Waiver and exercise of rights**

- (1) A waiver by a Security Holder of a provision of or of a right under this Deed is binding on the Security Holder only if it is given in writing and is signed by the Security Holder or an Authorised Officer of the Security Holder.
- (2) A waiver is effective only in the specific instance and for the specific purpose for which it is given.
- (3) A single or partial exercise of a right by a Security Holder does not preclude another exercise or attempted exercise of that right or the exercise of another right.
- (4) Failure by a Security Holder to exercise or delay in exercising a right does not prevent its exercise or operate as a waiver.
- (5) The Security Holders are not liable for any loss, cost or expense of the Security Provider caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

### **7.3 Rights cumulative**

The rights, remedies and powers of the Security Holders under this Deed are cumulative and do not exclude any other rights, remedies or powers.

### **7.4 Further assurances**

The Security Provider must, at its own expense, whenever requested by a Security Holder, promptly do or cause to be done, anything which the Security Holder considers necessary or desirable to:

- (1) give full effect to this Deed; or

- (2) more fully secure the rights, remedies and powers of the Security Holder under this Deed;
- (3) perfect or complete any transfer or assignment of any Security and this Deed in accordance with clause 3.2 of this Deed;
- (4) to enable this Deed and the Securities to be duly registered in all appropriate registers in accordance with any appropriate statutes; or
- (5) bind its successors and permitted assigns to this Deed;

including signing and delivering documents.

#### **7.6 Survival of indemnities**

- (1) The indemnities in this Deed are continuing obligations of the Security Provider, separate and independent from the other obligations of the Security Provider and survive the termination of this Deed.
- (2) It is not necessary for a Security Holder to incur expense or make payment before enforcing a right of indemnity under this Deed.

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### **8. Notices**

#### **8.1 Requirements**

All notices must be:

- (1) in legible writing and in English;
- (2) addressed to the recipient at the address or facsimile number set out below or to any other address or facsimile number that a party may notify to the others:

to the First Security Holder:

Address: Level 3, 100 Queen Street, Melbourne, Victoria, 3000

Attention: Mark Phoon

Facsimile No: 03 6273 4976

to the Second Security Holder:

Address: Level 27, 45 Clarence Street, Sydney, New South Wales, 2000

Attention: [ ]

Facsimile No: [ ]

to the Security Provider:

Address: Level 8, 461 Bourke Street, Melbourne, Victoria 3000

Attention: the Company Secretary

Facsimile No: 03 6670 4271



- (3) signed by the party, or where the sender is a company, by an Authorised Officer or under the common seal of the sender; and
- (4) sent to the recipient by hand, prepaid post (airmail if to or from a place outside Australia) or facsimile.

## **8.2 Receipt**

Without limiting any other means by which a party may be able to prove that a notice has been received by another party, a notice will be considered to have been received:

- (1) if sent by hand, when left at the address of the recipient;
- (2) if sent by pre-paid post, 3 days (if posted within Australia to an address in Australia) or 10 days (if posted from one country to another) after the date of posting; or
- (3) if sent by facsimile, on receipt by the sender of an acknowledgment or transmission report generated by the sender's machine indicating that the whole facsimile was sent to the recipient's facsimile number;

but if a notice is served by hand, or is received by the recipient's facsimile, on a day that is not a Business Day, or after 5:00pm (local time) on a Business Day, the notice will be considered to have been received by the recipient at 9:00 am on the next Business Day.

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## **9. General provisions**

### **9.1 Invalid or unenforceable provisions**

If a provision of this Deed is invalid or unenforceable in a jurisdiction:

- (1) it is to be read down or severed in that jurisdiction to the extent of the invalidity or unenforceability; and
- (2) that fact does not affect the validity or enforceability of:
  - (a) that provision in another jurisdiction; or
  - (b) the remaining provisions.

### **9.2 Consents and approvals**

- (1) The First Security Holder may give its approval or consent conditionally or unconditionally or withhold its approval or consent in its absolute discretion unless this Deed expressly provides otherwise.
- (2) If, under this Deed, the First Security Holder must or may form an opinion or hold a considered view, that opinion may be formed or view held in its absolute discretion on its behalf by its board of directors or an Authorised Officer of the First Security Holder.
- (3) The First Security Holder may give reasons in respect of a matter described in clause 9.2(1) or 9.2(2) but is not obliged to do so.

**9.3 Security Holder's certificate**

A certificate signed by an Authorised Officer of a Security Holder stating an amount due, owing or payable or a rate or any other matter for the purposes of this Deed or a Security is, in the absence of manifest error, conclusive and binding on the other parties.

**9.4 Amendment**

This Deed may be amended only by a document in writing signed by all parties.

**9.5 Counterparts**

This Deed may be signed in counterparts and all counterparts taken together constitute one document.

**9.6 Successors and assigns**

This Deed is binding on and has effect for the benefit of the parties and their respective successors and permitted assigns.

---

**10. Governing Law and Jurisdiction**

**10.1 Governing law**

This Deed is governed by the laws of Victoria.

**10.2 Jurisdiction**

The Security Provider and the Security Holders each irrevocably and unconditionally:

- (1) submit to the non-exclusive jurisdiction of the courts of Victoria and the Commonwealth of Australia;
- (2) waive, without limitation, any claim or objection based on absence of jurisdiction or inconvenient forum.

**10.3 Service of process**

The Security Provider and the Security Holders each agree that a document required to be served in proceedings about this Deed may be served:

- (1) by being delivered to or left at its address for service of notices under clause 8.1; or
- (2) in any other way permitted by law.

**EXECUTED** as a deed.

**TSL**

Executed by Timbercorp Securities  
Limited ABN 12 082 311 468 in  
accordance with section 127 of the  
*Corporations Act 2001*;

\_\_\_\_\_  
Director/company secretary

\_\_\_\_\_  
Director

\_\_\_\_\_  
Name of director/company secretary  
(BLOCK LETTERS)

\_\_\_\_\_  
Name of director  
(BLOCK LETTERS)

**The Security Provider**

Executed by Almond Land Pty Ltd ABN  
65 081 480 392 in accordance with  
section 127 of the *Corporations Act 2001*;

\_\_\_\_\_  
Director/company secretary

\_\_\_\_\_  
Director

\_\_\_\_\_  
Name of director/company secretary  
(BLOCK LETTERS)

\_\_\_\_\_  
Name of director  
(BLOCK LETTERS)

**First Security Holder**

Signed for and on behalf of Australia and  
New Zealand Banking Group Limited  
ABN 11 006 357 522 by a duly appointed  
attorney in the presence of:

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Signature of Attorney (I have no notice of  
revocation of the power of attorney under  
which I sign this document)

\_\_\_\_\_  
Name of Witness (please print)

\_\_\_\_\_  
Name of Attorney (please print)

**Second Security Holder**

Signed for and on behalf of BOSI  
Security Services Limited ABN 63 009  
413 852 by a duly appointed attorney in  
the presence of:

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Signature of Attorney (I have no notice of  
revocation of the power of attorney under  
which I sign this document)

\_\_\_\_\_  
Name of Witness (please print)

\_\_\_\_\_  
Name of Attorney (please print)



---

## **Annexure A**

### **The First Security**

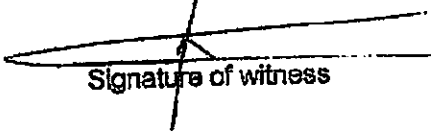
1. First ranking real property mortgage from the Security Provider over the Nenandla Property including security over any rights to carbon credits and any water rights attached to the Nenandla Property.
2. First ranking mortgage of water shares from the Security Provider over the water shares attaching to the Nenandla Property.

---

**Annexure B**  
**The Second Security**


1. Second ranking real property mortgage from the Security Provider over the Nenandla Property including security over any rights to carbon credits and any water rights attached to the Nenandla Property.
2. Second ranking mortgage of water shares from the Security Provider over the water shares attaching to the Nenandla Property.

Signed for and on behalf of  
**Timbercorp Securities Limited** by a  
duly appointed attorney in the  
presence of:

  
Signature of witness

John Stuart Murray

Name of witness (BLOCK LETTERS)

  
Signature of attorney (I have no notice  
of revocation of the power of attorney  
under which I sign this document)

Mark Pryn

Name of Attorney (BLOCK LETTERS)

## **Amendment Deed Nenandie Deed of Priority**

**Almond Land Pty Ltd**

**Timbercorp Securities Limited**

**BOSI Security Services Limited**

**Australia and New Zealand Banking Group Limited**

**Alens Arthur Robinson  
530 Collins Street  
Melbourne VIC 3000  
Tel 61 3 9614 1011  
Fax 61 3 9614 4661  
[www.aar.com.au](http://www.aar.com.au)**



# Amendment Deed

## Nenandie Deed of Priority

Allens Arthur Robinson



<b>Date</b>	2009
<b>Parties</b>	
1.	<b>Almond Land Pty Ltd</b> (liquidators appointed) (ABN 65 091 460 392) of Level 8, 461 Bourke Street, Melbourne, Victoria 3000 (the <i>Security Provider</i> ).
2.	<b>Timbercorp Securities Limited</b> (liquidators appointed) (ABN 12 092 311 469) of Level 8, 461 Bourke Street, Melbourne, Victoria 3000 ( <i>TSL</i> ).
3.	<b>Australia and New Zealand Banking Group Limited</b> (ABN 11 005 357 522) of Level 3, 100 Queen Street, Melbourne, Victoria 3000 ( <i>First Security Holder</i> ).
4.	<b>BOSI Security Services Limited</b> (ABN 63 009 413 852) of Level 27, 45 Clarence Street, Sydney, New South Wales 2000 ( <i>Second Security Holder</i> ).
<b>Recitals</b>	
A	The parties listed above are parties to the document entitled 'Nenandie Deed of Priority' dated on or about 22 December 2008 (the <i>Priority Deed</i> ).
B	Mark Anthony Korda and Leanne Kylie Chessser were appointed as administrators of each of the Security Provider and TSL on 23 April 2009.
C	Mark Anthony Korda and Leanne Kylie Chessser were appointed as liquidators of each of the Security Provider and TSL on 29 June 2009. At that time their appointment as Administrators of the Security Provider and TSL ceased.
D	Entry into this Deed by the Security Provider and TSL is a condition precedent to the provision by the First Security Holder of asset realisation funding to members of the Timbercorp group of companies including, among others, the Security Provider and TSL.

It is agreed as follows.

### 1. Definitions and Interpretation

The provisions of clause 1 of the Priority Deed form part of this Deed as if set out in this Deed.

### 2. Amendment and Restatement of Priority Deed

The parties agree that, on and from the date of this Deed, the Priority Deed shall be amended as follows.

# Amendment Deed

## Nenandie Deed of Priority

Allens Arthur Robinson



- (a) In clause 1.1 a new definition shall be inserted after the definition of 'Government Agency' to read:
- 'Liquidator has the meaning given to "liquidator" in section 9 of the Corporations Act 2001.'*
- (b) Clause 1.2(1)(f) shall be deleted and replaced with the following wording:
- 'to an item, Recital, clause, Schedule, Annexure or paragraph is to an item, Recital, clause, Schedule, Annexure or paragraph of or to this Deed.'*
- (c) In clause 2.1(1)(a) the amount of \$45,000,000 shall be deleted and replaced with the following text:
- '\$47,244,000 (or such other amount notified to the parties by the First Security Holder from time to time (and agreed in writing by the Second Security Holder, such agreement not to be unreasonably withheld) where such amount shall be the total amount borrowed from the First Security Holder by the Security Provider which is secured by the First Security).'*
- (d) Insert a new clause 2.1(1)(b) as follows and renumber existing clauses 2.1(1)(b), (c) and (d):
- 'interest which accrues on any part of the principal amount referred to in subparagraph (a) which is capitalised and becomes principal;*
- (e) In clause 2.1(1)(c) (previously clause 2.1(1)(b)), the words and figures 'subparagraph (f)' shall be deleted and replaced with the words and figures 'subparagraphs (a) and (b)'.
- (f) In clause 2.1(1)(e) (previously clause 2.1(1)(d)) insert at the end of the second line after the words 'Security Provider' the words:
- '(including, without limitation, the fees of professional advisors such as legal advisors and accountants).'*
- (g) In clause 2.5, insert a new subclause as clause 2.5(4):
- 'If TSL or the Security Provider (or an Administrator or Liquidator appointed to TSL or the Security Provider) receives or recovers any money in respect of the Securities:*
- (a) that money must be held on trust for the Security Holders by the recipient of that money;
- (b) the recipient of that money shall promptly notify the Security Holders of that receipt or recovery of money; and
- (c) the recipient of that money shall pay the money to the First Security Holder within five Business Days of the date of that receipt or recovery of money for application in accordance with the Order of Priorities.'
- (h) Insert the following text as new clause 9.7:
- 'Liquidator and Administrator limitation of liability*
- The Security Holders:*
- (a) agree that:

# Amendment Deed

## Nenandie Deed of Priority

Allens Arthur Robinson



- (i) neither the Liquidators nor the Administrators are personally liable for any claim, action or suit, loss, damage, cost or expense suffered or incurred by any person (including a party) arising out of this deed or any of the documents referred to in this deed;
  - (ii) for the purpose of any acknowledgements or agreements as to, or provisions of, limitations of the liability of the Administrators and the Liquidators in this deed, references to the Administrators and the Liquidators where the context so permits shall mean and include their present and future firm or firms, partners and employees, and any legal entity or partnership using in its name the word, any successor or merged firm and the partners, shareholders, officers and employees of any such entity or partnership;
  - (iii) these limitations of the liability of the Administrators and the Liquidators shall continue notwithstanding the Administrators and/or the Liquidators ceasing to act as administrators and liquidators (as applicable) of the Security Provider and TSL and shall operate as waivers of any claims in tort and restitution as well as under the law of contract; and
  - (iv) these limitations shall be in addition to, and not in substitution for, any right of indemnity or relief otherwise available to the Security Provider, TSL, the Administrators or the Liquidators and shall continue notwithstanding repayment or satisfaction of the Secured Obligations;
- (b) release the Administrators and the Liquidators personally from all liabilities, claims, demands, suits, causes of action, damages, debts, verdicts and judgments whatsoever whether at law or in equity or under any statute which they have or which but for this deed could, would or might at any time hereafter have or have had against the Administrators or the Liquidators personally arising out of this deed or any of the documents referred to in this deed; and
- (c) covenant not to sue the Administrators or the Liquidators personally in respect of any liabilities, claims, demands, suits, causes of action, damages, debts, verdicts and judgments whatsoever whether at law or in equity or under any statute which they have or which but for this deed could, would or might at any time hereafter have or have had against the Administrators or the Liquidators personally arising out of this deed or any of the documents referred to in this deed.'

### 3. Remaining Provisions Unaffected

- (a) Except as specifically amended by this Agreement the provisions of the Priority Deed remain in full force and effect.
- (b) If the terms of this Deed conflict with the terms of the Priority Deed then the terms of this Deed shall prevail.

# Amendment Deed

## Nenandie Deed of Priority

Allens Arthur Robinson 

---

### 4. General

---

#### 4.1 Counterparts

This Agreement may consist of a number of counterparts and the counterparts taken together constitute one document.

#### 4.2 Attorney

Each attorney executing this Agreement states that he or she has no notice of revocation or suspension of his or her power of attorney.

#### 4.3 Further assurances

Each party must promptly, at the cost of the Security Provider, do all things (including executing and if necessary delivering all documents) necessary or desirable to give full effect to this Deed.

#### 4.4 Variation

An amendment or variation to this Deed is not effective unless it is in writing and is executed by all parties to this Deed.

#### 4.5 Stamp duty

The Security Provider must pay all stamp, transaction and other similar duties and charges in relation to this Deed and any transaction under it.

---

### 5. Governing law and jurisdiction

---

#### 5.1 Governing Law

This deed is governed by the laws of Victoria.

#### 5.2 Jurisdiction

The parties to this Deed irrevocably and unconditionally:

- (a) submit to the non-exclusive jurisdiction of the courts of Victoria; and
- (b) waive, without limitation, any claim or objection based on absence of jurisdiction or inconvenient forum.

### Executed and delivered as a deed.

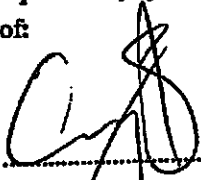

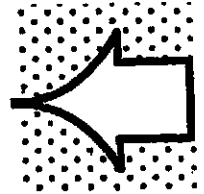
Each attorney executing this Deed states that he or she has no notice of revocation or suspension of his or her power of attorney.

# Amendment Deed Nenandie Deed of Priority

Allens Arthur Robinson

## The Security Provider

Executed by Almond Land Pty Ltd (in  
liquidation) by its liquidators in the presence  
of:

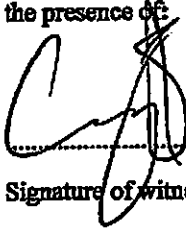
  
.....  
Signature of witness  
.....  
Mark Korda, liquidator  
.....  
Name of witness (print)

# Amendment Deed Nenandie Deed of Priority

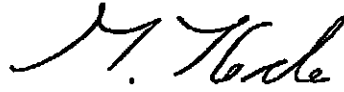
Allens Arthur Robinson

TSL

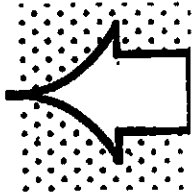
Executed by Timbercorp Securities )  
Limited (in liquidation) by its liquidators in )  
the presence of



Signature of witness



Mark Korda, liquidator



CRAIG SHEPARD

Name of witness (print)

# Amendment Deed Nenandie Deed of Priority.

Allens Arthur Robinson

## Second Security Holder

Signed for BOSI Security Services Limited by  
its attorney in the presence of:

Witness Signature

Matt Taylor

Print Name

Attorney Signature

Michael Dawkins


Print Name

# Amendment Deed Nenandie Deed of Priority


Allens Arthur Robinson 

## First Security Holder

Signed for Australia and New Zealand  
Banking Group Limited by its attorney in the  
presence of:

  
\_\_\_\_\_  
Witness Signature

N. van der Laak  
\_\_\_\_\_  
Print Name

  
\_\_\_\_\_  
Attorney Signature

Andrew Slattery  
\_\_\_\_\_  
Print Name



**Notice, Agreement,  
Acknowledgement and  
Amendment Deed**

**Nenandie Deed of Priority**

Almond Land Pty Ltd

Timbercorp Securities Limited

BOSI Security Services Limited

Australia and New Zealand Banking Group Limited

Allens Arthur Robinson  
530 Collins Street  
Melbourne VIC 3000  
Tel 61 3 9614 1011  
Fax 61 3 9614 4661  
[www.aar.com.au](http://www.aar.com.au)

Notice, Agreement, Acknowledgement and Amendment  
Deed  
Nenandie Deed of Priority

Date	10 November 2009
Parties	
1.	Almond Land Pty Ltd (liquidators appointed) (ABN 65 091 460 392) of Level 8, 461 Bourke Street, Melbourne, Victoria 3000 (the <i>Security Provider</i> );
2.	Timbercorp Securities Limited (liquidators appointed) (ABN 12 092 311 469) of Level 8, 461 Bourke Street, Melbourne, Victoria 3000 ( <i>TSL</i> );
3.	Australia and New Zealand Banking Group Limited (ABN 11 005 357 522) of Level 3, 100 Queen Street, Melbourne, Victoria 3000 ( <i>First Security Holder</i> );
4.	BOSI Security Services Limited (ABN 63 009 413 852) of Level 27, 45 Clarence Street, Sydney, New South Wales 2000 ( <i>Second Security Holder</i> ).
Recitals	
A	The parties listed above are parties to the document entitled 'Nenandie Deed of Priority' dated on or about 22 December 2008 (the <i>Priority Deed</i> ) as amended by the document entitled 'Amendment Deed – Nenandie Deed of Priority' (the <i>Nenandie Amendment Deed</i> ) dated 11 August 2009. The parties listed above are also parties to the Nenandie Amendment Deed.
B	Mark Anthony Korda and Leanne Kylie Chesser were appointed as liquidators of each of the Security Provider and TSL on 29 June 2009.
C	Pursuant to the Nenandie Amendment Deed, the amount of \$45,000,000 set out in clause 2.1(1)(a) of the Priority Deed was amended to be \$47,244,000 or such other amount notified to the parties by the First Security Holder from time to time, and agreed to in writing by the Second Security Holder, such agreement not to be unreasonably withheld.
D	Pursuant to a bee funding agreement (the <i>Bee Funding Agreement (ANZ)</i> ), the First Security Holder will advance a further sum of \$2,800,000 to the Security Provider. This sum will be secured by the First Security and the amount set out in clause 2.1(1)(a) of the Priority Deed will therefore be increased. Pursuant to the Priority Deed the First Security Holder will advise the other parties of the increase and the Second Security Holder will advise the First Security Holder if it agrees to the increase.
E	Agreement to the increase by the Second Security Holder is a condition precedent to the provision by the First Security Holder of funding to the Security Provider under the Bee Funding Agreement (ANZ).

It is agreed as follows.

## **1. Definitions and Interpretation**

---

The provisions of clause 1 of the Priority Deed form part of this Deed as if set out in this Deed.

## **2. Notice**

---

Pursuant to clause 2.1(1)(a) of the Priority Deed (as amended by the Nenandie Amendment Deed), the First Security Holder provides notice to the Second Security Holder, the Security Provider and TSL that the amount of \$47,244,000 set out in clause 2.1(1)(a) shall be amended to be \$50,044,000 on and from the date of this Deed.

## **3. Agreement and acknowledgement**

---

- (a) The Second Security Holder agrees, for the purposes of clause 2.1(1)(a) of the Priority Deed (as amended by the Nenandie Amendment Deed), and acknowledges that the amount of \$47,244,000 set out in clause 2.1(1)(a) of the Priority Deed (as amended by the Nenandie Amendment Deed), shall be amended to be \$50,044,000 on and from the date of this Deed.
- (b) The Security Provider and TSL acknowledge that the amount of \$47,244,000 set out in clause 2.1(1)(a) of the Priority Deed (as amended by the Nenandie Amendment Deed), shall be amended to be \$50,044,000 on and from the date of this Deed.

## **4. Amendment of Priority Deed**

---

The parties agree that, on and from the date of this Deed, the Priority Deed shall be amended as follows:

- (a) in clause 2.1(1)(a) the word "other" shall be inserted between the words "notified to the" and "parties"; and
- (b) in clause 2.1(1)(a) the full stop falling after "the First Security)" and before the word "reduced" shall be deleted.

## **5. Remaining Provisions Unaffected**

---

- (a) Except as specifically amended by this Agreement the provisions of the Priority Deed remain in full force and effect.
- (b) If the terms of this Deed conflict with the terms of the Priority Deed then the terms of this Deed shall prevail.

Notice, Agreement, Acknowledgement and Amendment  
Deed  
Nenandie Deed of Priority

---

**6. General**

---

**6.1 Counterparts**

This Agreement may consist of a number of counterparts and the counterparts taken together constitute one document.

**6.2 Attorney**

Each attorney executing this Agreement states that he or she has no notice of revocation or suspension of his or her power of attorney.

**6.3 Further assurances**

Each party must promptly, at the cost of the Security Provider, do all things (including executing and if necessary delivering all documents) necessary or desirable to give full effect to this Deed.

**6.4 Variation**

An amendment or variation to this Deed is not effective unless it is in writing and is executed by all parties to this Deed.

**6.5 Stamp duty**

The Security Provider must pay all stamp, transaction and other similar duties and charges in relation to this Deed and any transaction under it.

**7. Governing law and jurisdiction**

---

**7.1 Governing Law**

This Deed is governed by the laws of Victoria.

**7.2 Jurisdiction**

The parties to this Deed irrevocably and unconditionally:

- (a) submit to the non-exclusive jurisdiction of the courts of Victoria; and
- (b) waive, without limitation, any claim or objection based on absence of jurisdiction or inconvenient forum.

**Executed and delivered as a deed.**


Each attorney executing this Deed states that he or she has no notice of revocation or suspension of his or her power of attorney.

Notice, Agreement, Acknowledgement and Amendment  
Deed  
Nenandie Deed of Priority

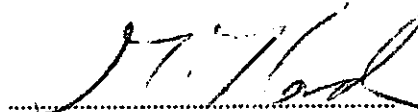
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**The Security Provider**

Executed by Almond Land Pty Ltd (in )  
liquidation) by its liquidators in the presence )  
of:



Signature of witness



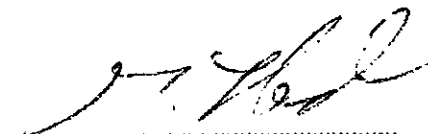
Mark Korda, liquidator

FRANK ZAFARSKI

Name of witness (print)



Signature of witness



Leanne Chesser, liquidator

FRANK ZAFARSKI

Name of witness (print)

EXECUTED UNDER POWER OF  
ATTORNEY DATED 25 OCTOBER 2007

Notice, Agreement, Acknowledgement and Amendment  
Deed  
Nenandie Deed of Priority

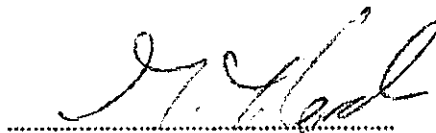
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TSL

Executed by Timbercorp Securities )  
Limited (in liquidation) by its liquidators in )  
the presence of:



Signature of witness



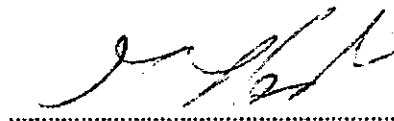
Mark Korda, liquidator

JENNIE ZAFIRAKIS

Name of witness (print)



Signature of witness



Leanne Chesser, liquidator

JENNIE ZAFIRAKIS

Name of witness (print)

EXECUTED UNDER POWER OF  
ATTORNEY DATED 25 OCTOBER 2007

Notice, Agreement, Acknowledgement and Amendment  
Deed  
Nenandie Deed of Priority

---

**Second Security Holder**

Signed for BOSI Security Services Limited by  
its attorney in the presence of:

Witness Signature

MATT TAYLOR

Print Name

Attorney Signature

MICHAEL DAWKINS

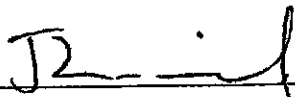
Print Name

Notice, Agreement, Acknowledgement and Amendment  
Deed  
Nenandie Deed of Priority


---

**First Security Holder**


Signed for Australia and New Zealand  
Banking Group Limited by its attorney in the  
presence of:



Witness Signature



Print Name



Attorney Signature



Print Name