

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

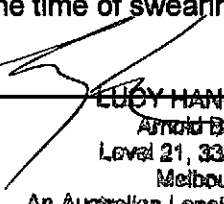
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Lucy Kirwan [lkirwan@abl.com.au](mailto:lkirwan@abl.com.au))

This is the exhibit marked '**MAK-43**' 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 2004

**Exhibit 'MAK-43'**

**Copy of Syndicate of Deed of Priority**



Dated 30 December 2008

## Syndicate Deed of Priority

### Parties

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

**Timbercorp Limited**  
ABN 87 055 185 067

**Almonds Australia Pty Ltd**  
ABN 48 094 429 419

**BB Olives Pty Ltd**  
ABN 86 083 992 367

**Australia and New Zealand Banking Group Limited**  
ABN 11 005 357 522

**BOSI Security Services Limited**  
ABN 63 009 413 852

### Contact

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Partner  
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Email: [gillad.dalal@deacons.com.au](mailto:gillad.dalal@deacons.com.au)  
Website: [www.deacons.com.au](http://www.deacons.com.au)  
Our Ref: 2666783

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**Deed** dated 30 December 2008

**Parties**

**Almond Land Pty Ltd** ABN 65 091 460 392  
of Level 8, 461 Bourke Street, Melbourne, Victoria 3000

**Timbercorp Limited** ABN 87 055 185 067  
of Level 8, 451 Bourke Street, Melbourne, Victoria 3000

**Almonds Australia Pty Ltd** ABN 48 094 429 419  
of Level 8, 451 Bourke Street, Melbourne, Victoria 3000

**BB Olives Pty Ltd** ABN 86 083 992 367  
of Level 8, 451 Bourke Street, Melbourne, Victoria 3000

(together the **Security Providers**)

**BOSI Security Services Limited** ABN 63 009 413 852  
of Level 27, 45 Clarence Street, Sydney, New South Wales 2000  
(**First Security Holder**)

**Australia and New Zealand Banking Group Limited** ABN 11 005 357 522  
of Level 3, 100 Queen Street, Melbourne, Victoria 3000  
(**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 Providers 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 Providers 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 each 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.

**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 First 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.

**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 First 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 First 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 First Security Holder for,  
  
any amount that would otherwise be payable by the First Security Holder under, or as a result of a breach of, this Deed, except to the extent that:
    - (c) the First 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 First 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 First 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 First Security Holder;
  - (b) have a receiver or receiver and manager appointed to the First Security Holder or any of its property, except in relation to the assets of the Timbercorp Security Trust;
  - (c) have the First Security Holder wound up, or to prove in the winding up of the First Security Holder;
  - (d) carry out any distress or execution on any property of the First 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 First 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 First Security Holder for which the First Security Holder is liable under paragraph (1); or
  - (b) obtain an injunction, restraining order or declaration concerning the First Security Holder, the assets of the Timbercorp Security Trust or the First Security Holder's obligations under this Deed.
- (4) If the First 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 First Security Holder was so replaced as if the replacement trustee had executed this Deed, and any reference to the First 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 \$200,000,000 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 a 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.

## **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 a 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 a Security Provider;
  - (b) grant to a Security Provider any future financial accommodation; or
  - (c) do anything which may cause money to become owing by a 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 a 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**

Each Security Holder:

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

**3.2 Undertaking**

The Security Providers undertake to provide the Second Security Holder with the Second Security on or before 30 January 2008.

**3.3 Assignment**

Except for a replacement of the First 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.

**3.4 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 a 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.

### 3.5 Documents of title

If a 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.

### 3.6 Other persons having priority

- (1) Subject to clause 3.6(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.

### 3.7 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**

Each 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 a 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 a 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.

### 5.3 Disclosure

- (1) The Security Holders may disclose to each other any information about a 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 a 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 Providers 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 a 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 Providers 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 Providers 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) Each 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) Each 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 a 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**

Each 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.

#### 7.5 Survival of indemnities

(1) The indemnities in this Deed are continuing obligations of each 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 27, 45 Clarence Street, Sydney, New South Wales, 2000

Attention: [ ]

Facsimile No: [ ]

to the Second Security Holder:

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

Attention: Mark Phoon

Facsimile No: 03 9273 4978

to the Security Providers:

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

Attention: the Company Secretary

Facsimile No: 03 9670 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**

Each 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**

Each 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.

**The Security Providers**

Executed by Almond Land Pty Ltd ABN  
65 091 460 392 in accordance with  
section 127 of the Corporations Act 2001:

  
Director/company secretary

**Gideon Meltzer**

Name of director/company secretary  
(BLOCK LETTERS)



Director

**Sol Charles Rabinowicz**

Name of director  
(BLOCK LETTERS)

Executed by Timbercorp Limited ABN  
87 055 185 067 in accordance with  
section 127 of the Corporations Act 2001:

  
Director/company secretary

**Gideon Meltzer**

Name of director/company secretary  
(BLOCK LETTERS)



Director

**Sol Charles Rabinowicz**

Name of director  
(BLOCK LETTERS)

Executed by Almonds Australia Pty Ltd  
ABN 48 094 429 419 in accordance with  
section 127 of the Corporations Act 2001:

  
Director/company secretary

**Gideon Meltzer**

Name of director/company secretary  
(BLOCK LETTERS)



Director

**Sol Charles Rabinowicz**

Name of director  
(BLOCK LETTERS)

Executed by BB Olives Pty Ltd ABN 86  
083 992 367 in accordance with  
section 127 of the Corporations Act 2001:

  
Director/company secretary

**Gideon Meltzer**

Name of director/company secretary  
(BLOCK LETTERS)



Director

**Sol Charles Rabinowicz**

Name of director  
(BLOCK LETTERS)

**First Security Holder**

Signed for and on behalf of

~~Executed by BOSI Security Services~~


Limited ABN 63 009 413 852 in


accordance with section 127 of the

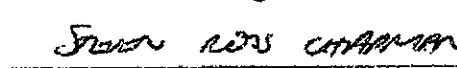
~~Corporations Act 2001~~

By a duly appointed Attorney in the presence of:

  
Director/Company Secretary witness

  
Name of director/Company Secretary  
(BLOCK LETTERS) witness

  
Director Attorney

  
Name of director Attorney  
(BLOCK LETTERS)

**Second Security Holder**

Signed for and on behalf of Australia and

New Zealand Banking Group Limited

ABN 11 005 357 522 by a duly appointed  
attorney in the presence of:

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

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

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

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

**First Security Holder**

Executed by **BOSI Security Services Limited** ABN 63 009 413 852 in accordance with section 127 of the *Corporations Act 2001*:

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

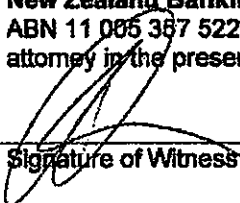
\_\_\_\_\_  
Director


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

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

**Second Security Holder**

Signed for and on behalf of **Australia and New Zealand Banking Group Limited** ABN 11 005 367 522 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)

N-vanderlaak  
\_\_\_\_\_  
Name of Witness (please print)

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

**Annexure A**  
**The First Security**

1. First Ranking Featherweight Fixed and Floating Charge given by Timbercorp Limited
2. First Ranking Share Mortgage over shares in Almonds Australia Pty Ltd given by Timbercorp Limited
3. First Ranking Share Mortgage over shares in Timbercorp Properties Ltd given by Timbercorp Limited
4. First Ranking Share Mortgage over shares in Almond Land Pty Ltd given by Almonds Australia Pty Ltd
5. First Ranking Share Mortgage over shares in B B Olives Pty Ltd given by Timbercorp Limited
6. First Ranking Unit Mortgage over units in the Timbercorp Primary Infrastructure Fund given by Timbercorp Limited and the related CHESS Sponsorship Agreement
7. First Ranking Unit Mortgage over units in the Timbercorp Orchard Trust given by Timbercorp Limited
8. First Ranking Mortgage over shares in, and contractual rights under joint venture agreements in relation to, Plantation Pulpwood Terminals Pty Ltd given by Timbercorp Limited
9. First Ranking Share Mortgage over shares in Costa Exchange Holdings Pty Ltd to be given by Timbercorp Limited
10. First Ranking Real Property Mortgage to be given by Almond Land Pty Ltd over the following:

Carina Block 13 and Carina West Almonds	Vol 10710 Fol 237 (Lot 5 on Plan of Subdivision 502688J)
	Vol 10874 Fol 092 (Lot 1 on Plan of Subdivision 537290T)
	Vol 10874 Fol 093 (Lot 2 on Plan of Subdivision 537290T)
Westmores	Vol 10371 Fol 548 (Lot 1 on Plan of Subdivision 345122L)
	Vol 10371 Fol 549 (Lot 2 on Plan of Subdivision 345122L)
	Vol 08228 Fol 204 (Lot 13 on Plan of Subdivision 032772)
	Vol 09520 Fol 746 (Lot 1 on Plan of Subdivision 143381)
	Vol 09520 Fol 747 (Lot 2 on Plan of Subdivision 143381)

Mitchells	Vol 11079 Fol 601 (Lot 5 on Plan of Subdivision 547174P)
	Vol 09661 Fol 440 (Lot 1 on Title Plan 603267J)
	Vol 11079 Fol 455 (Lot 3 on Plan of Subdivision 547173R)
Menegazzo	Vol 10950 Fol 378 (CA 44,45 Piamble)
	Vol 10960 Fol 119 (CA 52A Piamble)
	Vol 07420 Fol 813 (CA 15 Piamble)
	Vol 07678 Fol 095 (CA 19 Piamble)
	Vol 08454 Fol 067 (CA 16B Piamble)
	Vol 09193 Fol 257 (Lot 1 on Title Plan 748175D)
	Vol 09210 Fol 031 (CA 43 Piamble)
	Vol 09421 Fol 203 (Lot 1 on Title Plan 213130M)
	Vol 09491 Fol 231 (CA 17 Piamble)
	Vol 09746 Fol 465 (Lot 1 on Title Plan 648705H)
	Vol 08560 Fol 458 (CA 14 Parish of Narrung)
	Vol 08581 Fol 939 (CA 13 Parish of Narrung)
Annuello	Vol 09150 Fol 580 (CA 22 Parish of Wemen)
	Vol 09071 Fol 270 (CA 21 Parish of Wemen)

11. First Ranking Real Property Mortgage to be given by B B Olives Pty Ltd over the following:

All Boundary Bend Olive Groves	Vol 10707 Fol 612 (Lot 5 on Plan of subdivision 442841K)
	Vol 10707 Fol 613 (Lot 6 on Plan of Subdivision 442841K)
	Vol 10707 Fol 614 (Lot 7 on Plan of Subdivision 442841K)
	Vol 10707 Fol 615 (Lot 8 on Plan of Subdivision 442841K)
	Vol 10193 Fol 951 (CA 49 Koorkab)
	Vol 10193 Fol 952 (CA 50 Koorkab)
	Vol 08876 Fol 208 (CA 47 Koorkab)
	Vol 10674 Fol 758 (CA 15 Liparoo)
	Vol 10674 Fol 759 (CA 16 Liparoo)
	Vol 10674 Fol 760 (CA 41 Gayfield)
	Vol 10674 Fol 761 (CA 42 Gayfield)

12. First Ranking Mortgage of Water Shares to be given by Almond Land Pty Ltd over the following:

Carina Block 13 and Carina West Almonds	Vol 10710 Fol 237 (Lot 5 on Plan of Subdivision 502688J)	WEE017757 WEE036850
	Vol 10874 Fol 092 (Lot 1 on Plan of Subdivision 537290T)	WEE018180
	Vol 10874 Fol 093 (Lot 2 on Plan of Subdivision 537290T)	
Westmores	Vol 10371 Fol 548 (Lot 1 on Plan of Subdivision 345122L)	WEE018246 WEE018619
	Vol 10371 Fol 549 (Lot 2 on Plan of Subdivision 345122L)	
	Vol 08228 Fol 204 (Lot 13 on Plan of Subdivision 032772)	
	Vol 09520 Fol 746 (Lot 1 on Plan of Subdivision 143381)	
	Vol 09520 Fol 747 (Lot 2 on Plan of Subdivision 143381)	
Mitchells	Vol 11079 Fol 601 (Lot 5 on Plan of Subdivision 547174P)	WEE029317 WEE035481
	Vol 09661 Fol 440 (Lot 1 on Title Plan 603267J)	WEE035763 WEE035947
	Vol 11079 Fol 455 (Lot 3 on Plan of Subdivision 547173R)	WEE038056 WEE038514 WEE039032 WEE042733 WEE020658 WEE042899
Menegazzo	Vol 10950 Fol 378 (CA 44,45 Piambie)	WEE001013
	Vol 10960 Fol 119 (CA 52A Piambie)	WEE020825
	Vol 07420 Fol 813 (CA 15 Piambie)	WEE024276
	Vol 07678 Fol 095 (CA 19 Piambie)	WEE024278
	Vol 08454 Fol 067 (CA 16B Piambie)	WEE026711
	Vol 09193 Fol 257 (Lot 1 on Title Plan 748175D)	WEE035297
	Vol 09210 Fol 031 (CA 43 Piambie)	WEE035298 [WEE037096]
	Vol 09421 Fol 203 (Lot 1 on Title Plan 213130M)	WEE042699
	Vol 09491 Fol 231 (CA 17 Piambie)	WEE044128
	Vol 09746 Fol 465 (Lot 1 on Title Plan 648705H)	WEE004373
	Vol 08560 Fol 458 (CA 14 Parish of Narrung)	WEE006486 WEE004374 WEE043704

	Vol 08581 Fol 939 (CA 13 Parish of Narrung)	WEE035507 WEE035559
	Vol 09429 Fol 973 (CAs 39 and 40 Parish of Piamble)	WEE035570 WEE035625 WEE036148 WEE037082 WEE037264 WEE038055 WEE039177 WEE035504 WEE039173
Annuello	Vol 09150 Fol 580 (CA 22 Parish of Wemen)	WEE001036 WEE004175
	Vol 09071 Fol 270 (CA 21 Parish of Wemen)	WEE025911 WEE034879 WEE035392 WEE035531 WEE035561 WEE035789 WEE035810 WEE035812 WEE035814 WEE035837 WEE036045 WEE036047 WEE036049 WEE036082 WEE036271 WEE037101 WEE036274 WEE036377 WEE036722 WEE036773 WEE037122 WEE042904

13. First Ranking Mortgage of Water Shares to be given by B B Olives Pty Ltd over the following:

Ali Boundary Bend Olive Groves	Vol 10707 Fol 612 (Lot 5 on Plan of subdivision 442841K)	WEE018318 WEE035721
	Vol 10707 Fol 613 (Lot 6 on Plan of Subdivision 442841K)	WEE035530 WEE035747
	Vol 10707 Fol 614 (Lot 7 on Plan of Subdivision 442841K)	WEE037487

	Vol 10707 Fol 615 (Lot 8 on Plan of Subdivision 442841K)	WEE042816
	Vol 10193 Fol 951 (CA 49 Koorkab)	
	Vol 10193 Fol 952 (CA 50 Koorkab)	
	Vol 08876 Fol 208 (CA 47 Koorkab)	
	Vol 10674 Fol 758 (CA 15 Liparoo)	WEE015733
	Vol 10674 Fol 759 (CA 16 Liparoo)	WEE035862
	Vol 10674 Fol 760 (CA 41 Gayfield)	WEE035966
	Vol 10674 Fol 761 (CA 42 Gayfield)	WEE036124
		WEE038953

## **Annexure B**

### **The Second Security**

1. Second Ranking Featherweight Fixed and Floating Charge given by Timbercorp Limited
2. Second Ranking Share Mortgage over shares in Almonds Australia Pty Ltd given by Timbercorp Limited
3. Second Ranking Share Mortgage over shares in Timbercorp Properties Ltd given by Timbercorp Limited
4. Second Ranking Share Mortgage over shares in Almond Land Pty Ltd given by Almonds Australia Pty Ltd
5. Second Ranking Share Mortgage over shares in B B Olives Pty Ltd given by Timbercorp Limited
6. Second Ranking Unit Mortgage over units in the Timbercorp Primary Infrastructure Fund given by Timbercorp Limited and the related CHESS Sponsorship Agreement
7. Second Ranking Unit Mortgage over units in the Timbercorp Orchard Trust given by Timbercorp Limited
8. Second Ranking Mortgage over shares in, and contractual rights under joint venture agreements in relation to, Plantation Pulpwood Terminals Pty Ltd given by Timbercorp Limited
9. Second Ranking Share Mortgage over shares in Costa Exchange Holdings Pty Ltd to be given by Timbercorp Limited
10. Second Ranking Real Property Mortgage to be given by Almond Land Pty Ltd over the following:

Carina Block 13 and Carina West Almonds	Vol 10710 Fol 237 (Lot 5 on Plan of Subdivision 502688J)
	Vol 10874 Fol 092 (Lot 1 on Plan of Subdivision 537290T)
	Vol 10874 Fol 093 (Lot 2 on Plan of Subdivision 537290T)
Westmores	Vol 10371 Fol 548 (Lot 1 on Plan of Subdivision 345122L)
	Vol 10371 Fol 549 (Lot 2 on Plan of Subdivision 345122L)
	Vol 08228 Fol 204 (Lot 13 on Plan of Subdivision 032772)
	Vol 09520 Fol 746 (Lot 1 on Plan of Subdivision 143381)
	Vol 09520 Fol 747 (Lot 2 on Plan of Subdivision 143381)

Mitchells	Vol 11079 Fol 601 (Lot 5 on Plan of Subdivision 547174P)
	Vol 09661 Fol 440 (Lot 1 on Title Plan 603267J)
	Vol 11079 Fol 455 (Lot 3 on Plan of Subdivision 547173R)
Menegazzo	Vol 10950 Fol 378 (CA 44,45 Piambie)
	Vol 10960 Fol 119 (CA 52A Piambie)
	Vol 07420 Fol 813 (CA 15 Piambie)
	Vol 07678 Fol 095 (CA 19 Piambie)
	Vol 08454 Fol 067 (CA 16B Piambie)
	Vol 09193 Fol 257 (Lot 1 on Title Plan 748175D)
	Vol 09210 Fol 031 (CA 43 Piambie)
	Vol 09421 Fol 203 (Lot 1 on Title Plan 213130M)
	Vol 09491 Fol 231 (CA 17 Piambie)
	Vol 09746 Fol 465 (Lot 1 on Title Plan 648705H)
	Vol 08560 Fol 458 (CA 14 Parish of Narrung)
	Vol 08581 Fol 939 (CA 13 Parish of Narrung)
Annuello	Vol 09429 Fol 973 (CAs 39 and 40 Parish of Piambie)
	Vol 09150 Fol 580 (CA 22 Parish of Wemen)
	Vol 09071 Fol 270 (CA 21 Parish of Wemen)

11. Second Ranking Real Property Mortgage to be given by B B Olives Pty Ltd over the following:

All Boundary Bend Olive Groves	Vol 10707 Fol 612 (Lot 5 on Plan of subdivision 442841K)
	Vol 10707 Fol 613 (Lot 6 on Plan of Subdivision 442841K)
	Vol 10707 Fol 614 (Lot 7 on Plan of Subdivision 442841K)
	Vol 10707 Fol 615 (Lot 8 on Plan of Subdivision 442841K)
	Vol 10193 Fol 951 (CA 49 Koorkab)
	Vol 10193 Fol 952 (CA 50 Koorkab)
	Vol 08876 Fol 208 (CA 47 Koorkab)
	Vol 10674 Fol 758 (CA 15 Liparoo)
	Vol 10674 Fol 759 (CA 16 Liparoo)
	Vol 10674 Fol 760 (CA 41 Gayfield)
	Vol 10674 Fol 761 (CA 42 Gayfield)

12. Second Ranking Mortgage of Water Shares to be given by Almond Land Pty Ltd over the following:

All Boundary Bend Olive Groves	Vol 10707 Fol 612 (Lot 5 on Plan of subdivision 442841K)	
	Vol 10707 Fol 613 (Lot 6 on Plan of Subdivision 442841K)	WEE018318
	Vol 10707 Fol 614 (Lot 7 on Plan of Subdivision 442841K)	WEE035721
	Vol 10707 Fol 615 (Lot 8 on Plan of Subdivision 442841K)	WEE035530
	Vol 10193 Fol 951 (CA 49 Koorkab)	WEE035747
	Vol 10193 Fol 952 (CA 50 Koorkab)	WEE037487
	Vol 08876 Fol 208 (CA 47 Koorkab)	WEE042816
	Vol 10674 Fol 758 (CA 15 Liparoo)	WEE015733
	Vol 10674 Fol 759 (CA 16 Liparoo)	WEE035862
	Vol 10674 Fol 760 (CA 41 Gayfield)	WEE035966
	Vol 10674 Fol 761 (CA 42 Gayfield)	WEE036124
		WEE038953

13. Second Ranking Mortgage of Water Shares to be given by B B Olives Pty Ltd over the following:

All Boundary Bend Olive Groves	Vol 10707 Fol 612 (Lot 5 on Plan of subdivision 442841K)	
	Vol 10707 Fol 613 (Lot 6 on Plan of Subdivision 442841K)	WEE018318
	Vol 10707 Fol 614 (Lot 7 on Plan of Subdivision 442841K)	WEE035721
	Vol 10707 Fol 615 (Lot 8 on Plan of Subdivision 442841K)	WEE035530
	Vol 10193 Fol 951 (CA 49 Koorkab)	WEE035747
	Vol 10193 Fol 952 (CA 50 Koorkab)	WEE037487
	Vol 08876 Fol 208 (CA 47 Koorkab)	WEE042816
	Vol 10674 Fol 758 (CA 15 Liparoo)	WEE015733
	Vol 10674 Fol 759 (CA 16 Liparoo)	WEE035862
	Vol 10674 Fol 760 (CA 41 Gayfield)	WEE035966
	Vol 10674 Fol 761 (CA 42 Gayfield)	WEE036124
		WEE038953

# **Amendment Deed**

**Syndicate Deed of Priority**

---

**Almond Land Pty Ltd**

ABN 65 091 460 392

**Timbercorp Limited**

ABN 87 055 185 067

**Almonds Australia Pty Ltd**

ABN 48 094 429 419

**BB Olives Pty Ltd**

ABN 86 083 992 367

**BOSI Security Services Limited**

ABN 63 009 413 852

**Australia and New Zealand Banking  
Group Limited**

ABN 11 005 357 522

## **Blake Dawson**

Level 28  
181 William Street  
Melbourne VIC 3000  
Australia  
T 61 3 8679 8000  
F 61 3 8679 3111

Reference  
RWM CHFE 03 2002 6856  
©Blake Dawson 2009

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# **Amendment Deed Syndicate Deed of Priority**

**DATE** ~~16 July 2009~~ *11 August 2009*

## **PARTIES**

**Almond Land Pty Ltd** (liquidators appointed)  
ABN 65 091 460 392

**Timbercorp Limited** (liquidators appointed)  
ABN 87 055 185 067

**Almonds Australia Pty Ltd** (liquidators appointed)  
ABN 48 094 429 419

**BB Olives Pty Ltd** (liquidators appointed)  
ABN 86 083 992 367

(together the **Security Providers**)

**BOSI Security Services Limited**  
ABN 63 009 413 852 (**First Security Holder**)

**Australia and New Zealand Banking Group Limited**  
ABN 11 005 357 52 (**Second Security Holder**)

## **RECITALS**

- A. The parties listed above are parties to the document entitled "Syndicate Deed of Priority" dated on 30 December 2008, as amended from time to time (**Priority Deed**).
- B. Mark Anthony Korda and Leanne Kylie Chesser were appointed as administrators of Almond Land Pty Ltd, Almonds Australia Pty Ltd and Timbercorp Limited on 23 April 2009.
- C. Mark Anthony Korda and Mark Mentha were appointed as administrators of BB Olives Pty Ltd on 23 April 2009.
- D. Mark Anthony Korda and Leanne Kylie Chesser were appointed as liquidators of Almond Land Pty Ltd, Almonds Australia Pty Ltd and Timbercorp Limited on 29 June 2009. At that time their appointment as administrators of those entities ceased.
- E. Mark Anthony Korda and Mark Mentha were appointed as liquidators of BB Olives Pty Ltd on 29 June 2009. At that time their appointment as administrators of that entity ceased.
- F. Entry into this Deed by the Security Providers 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 Providers.

## OPERATIVE PROVISIONS

### 1. INTERPRETATION

#### Definitions

Clause 1 of the Priority Deed is incorporated as if set out in full in this Deed, with any necessary changes.

### 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.

- (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* (Cth)."
- (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 \$200,000,000 shall be deleted and replaced with the following text:  
  
"\$201,656,960 (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 beneficiaries of the Timbercorp Security Trust 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 (i)" 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 a Security Provider (or an Administrator or Liquidator appointed to a 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:
  - (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.

### **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 Providers, 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 Providers 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.

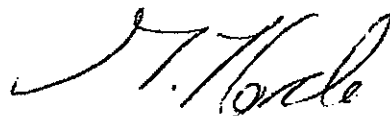
**EXECUTED as a deed.**

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

**Security Provider**


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

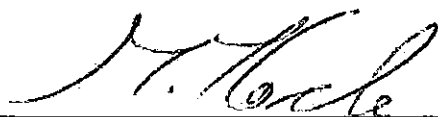
  
\_\_\_\_\_  
Signature of witness

  
\_\_\_\_\_  
Mark Korda, liquidator

CRAG SHEPARD  
\_\_\_\_\_  
Name of witness (print)

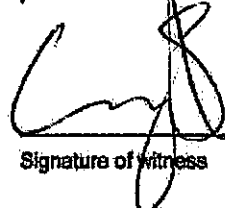
**EXECUTED by Timbercorp Limited (in liquidation) by its liquidators in the presence of:**


  
\_\_\_\_\_  
Signature of witness

  
\_\_\_\_\_  
Mark Korda, liquidator

CRAG SHEPARD  
\_\_\_\_\_  
Name of witness (print)

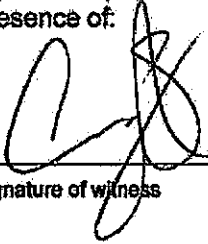
**EXECUTED by Almonds Australia Pty Ltd (in liquidation) by its liquidators in the presence of:**

  
\_\_\_\_\_  
Signature of witness

  
\_\_\_\_\_  
Mark Korda, liquidator

CRAG SHEPARD  
\_\_\_\_\_  
Name of witness (print)

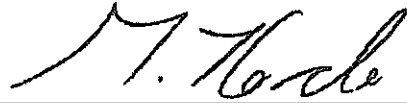
EXECUTED by BB Olives Pty Ltd (in  
liquidation) by its liquidators in the  
presence of:



Signature of witness

CRAIG SEWARD

Name of witness (print)



Mark Korda, liquidator

**FIRST SECURITY HOLDER**

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

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

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

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

**SECOND SECURITY HOLDER**

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

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

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

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

October 2009

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

**Syndicate Deed of Priority**

---

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

**Timbercorp Limited**  
ABN 87 055 185 067

**Almonds Australia Pty Ltd**  
ABN 48 094 429 419

**BB Olives Pty Ltd**  
ABN 86 083 992 367

**BOSI Security Services Limited**  
ABN 63 009 413 852

**Australia and New Zealand Banking  
Group Limited**  
ABN 11 005 357 522

## **Blake Dawson**

Level 28  
181 William Street  
Melbourne VIC 3000  
Australia  
T 61 3 9879 3000  
F 61 3 9879 3111

**Reference**  
RWM CHFE 03 2002 6858  
©Blake Dawson 2009

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# Notice, Agreement, Acknowledgement and Amendment Deed Syndicate Deed of Priority

DATE

~~October 2009~~

10 November 2009  
David

PARTIES

**Almond Land Pty Ltd** (liquidators appointed)  
ABN 65 091 460 392 (**Almond Land**)

**Timbercorp Limited** (liquidators appointed)  
ABN 87 055 185 067

**Almonds Australia Pty Ltd** (liquidators appointed)  
ABN 48 094 429 419

**BB Olives Pty Ltd** (liquidators appointed)  
ABN 86 083 992 367

(together the **Security Providers**)

**BOSI Security Services Limited**  
ABN 63 009 413 852 (**First Security Holder**)

**Australia and New Zealand Banking Group Limited**  
ABN 11 005 357 52 (**Second Security Holder**)

## RECITALS

- A. The parties listed above are parties to the document entitled "Syndicate Deed of Priority" dated on 30 December 2008, as amended (**Priority Deed**).
- B. Mark Anthony Korda and Leanne Kylie Chesser were appointed as administrators of Almond Land Pty Ltd, Almonds Australia Pty Ltd and Timbercorp Limited on 23 April 2009.
- C. Mark Anthony Korda and Leanne Kylie Chesser were appointed as liquidators of Almond Land Pty Ltd, Almonds Australia Pty Ltd and Timbercorp Limited on 29 June 2009. At that time their appointment as administrators of those entities ceased.
- D. Entry into this Deed by the Security Provider is a condition precedent to the provision of bee funding to Almond Land pursuant to the **Bee Funding Agreement (Syndicate)**.

## OPERATIVE PROVISIONS

### 1. INTERPRETATION

#### Definitions

Clause 1 of the Priority Deed is incorporated as if set out in full in this Deed, with any necessary changes.

**2. NOTICE**

---

Pursuant to clause 2.1(1)(a) of the Priority Deed the First Security Holder provides notice to the Second Security Holder and the other parties to this Deed that the amount of \$201,656,960 set out in clause 2.1(1)(a) shall be amended to be \$202,556,960 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, and acknowledges that the amount of \$201,656,960 set out in clause 2.1(1)(a) of the Priority Deed, shall be amended to be \$202,556,960 on and from the date of this Deed.
- (b) The Security Providers and TSL acknowledge that the amount of \$201,656,960 set out in clause 2.1(1)(a) of the Priority Deed, shall be amended to be \$202,556,960 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 by inserting, in clause 2.1(1)(a), the word "other" between the words "notified to the" and "parties".

**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.

**6. GENERAL**

---

**6.1 Counterparts**

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

**6.2 Attorney**

Each attorney executing this Deed 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 Providers, 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 Providers 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:

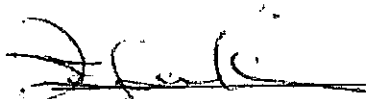
- (a) submit to the non-exclusive jurisdiction of the courts of Victoria; and
- (b) waive, without limitation, any claim or objection based on absence of jurisdiction or inconvenient forum.

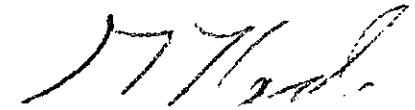
EXECUTED as a deed.

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


**SECURITY PROVIDERS**


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

  
\_\_\_\_\_  
Signature of witness

  
\_\_\_\_\_  
Mark Korda, liquidator

JANIE LAFFERTY  
\_\_\_\_\_  
Name of witness (print)


  
\_\_\_\_\_  
Leanne Chesser, liquidator

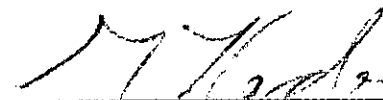
  
\_\_\_\_\_  
Signature of witness

JANIE LAFFERTY  
\_\_\_\_\_  
Name of witness (print)

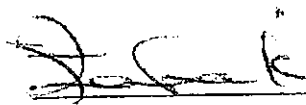
EXECUTED UNDER POWER OF  
ATTORNEY DATED 25 OCTOBER 2007


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

  
Signature of witness

  
Mark Korda, liquidator

Jeanne ZAFIRAKIS  
Name of witness (print)


  
Signature of witness

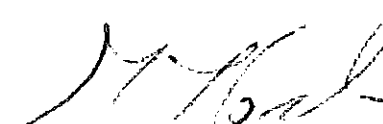
  
Leanne Chessier, liquidator

EXECUTED UNDER POWER OF ATTORNEY  
DATED 25 OCTOBER 2007

Jeanne ZAFIRAKIS  
Name of witness (print)


EXECUTED by Almonds Australia Pty Ltd (in liquidation) by its liquidators in the presence of:

  
Signature of witness

  
Mark Korda, liquidator

Jeanne ZAFIRAKIS  
Name of witness (print)


  
Signature of witness


  
Leanne Chessier, liquidator

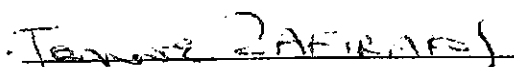
EXECUTED UNDER POWER OF ATTORNEY  
DATED 25 OCTOBER 2007


Jeanne ZAFIRAKIS  
Name of witness (print)

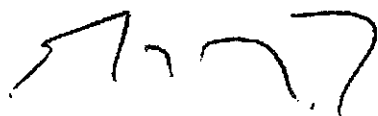
EXECUTED by BB Olives Pty Ltd (in liquidation) by its liquidators in the presence of:

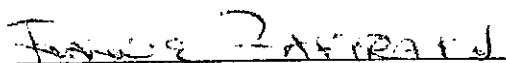
  
Signature of witness

  
Mark Korda, liquidator

  
Name of witness (print)

  
Signature of witness

  
Mark Mentha, liquidator

  
Name of witness (print)


**FIRST 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

**SECOND SECURITY HOLDER**


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



Witness Signature



Attorney Signature



Print Name



Print Name