

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

SACPI 2011 0103

BETWEEN:

GRAHAM GOLDENBERG & ORS (according to the Schedule)

Appellants

- and -

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


Respondents

EXHIBIT EG-11

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

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

Before me:



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

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

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

**Deed of amendment and
acknowledgment**

Graham Goldenberg & Others

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

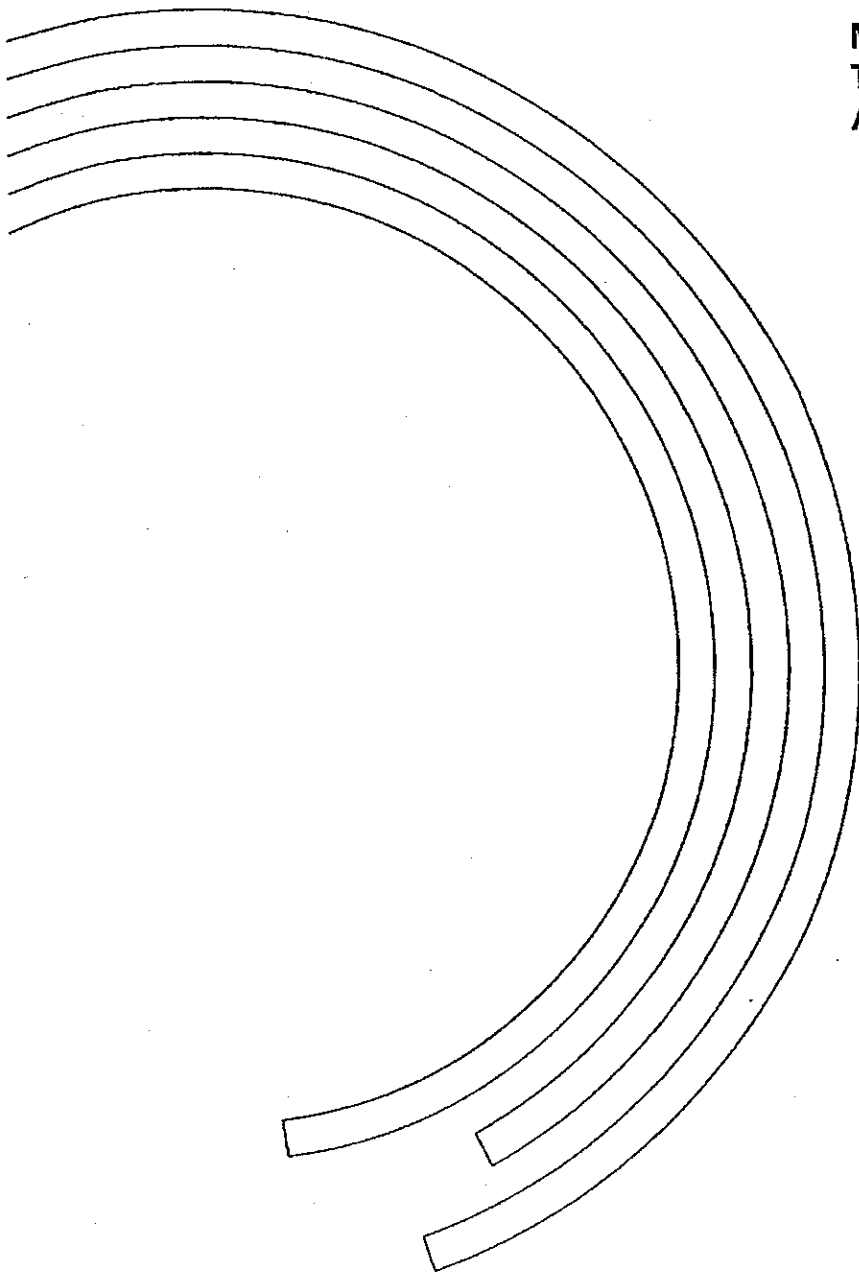


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Deed of amendment and acknowledgment

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

approval.

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

1 Definitions

In this deed:

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

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

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

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

Effective Date means 23 July 2012;

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

Parties means the parties to the Proceedings.

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

Proposed Clause means the following clause:

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

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

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

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

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

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

2 Further amendment to the Funding Agreement

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

2.1 Clause 1.1 (Court)

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

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

2.2 Clause 8(aa)

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

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

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

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

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

2.5 Clause 12(aa)

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

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

3 Confirmation

The Claimants confirm that:

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

4 Acknowledgment by Managers

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

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

5 Mutual acknowledgement

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

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

Executed as a deed

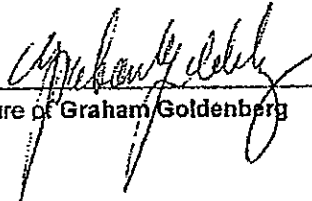
SIGNED SEALED and DELIVERED by
GRAHAM GOLDENBERG in the presence of:



Signature of witness

Tania Phillips

Name of witness (please print)



Signature of Graham Goldenberg

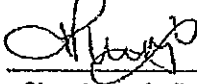
SIGNED SEALED and DELIVERED by
CHRIS MARK LITTLE in the presence of:

Signature of witness

Signature of Chris Little

Name of witness (please print)

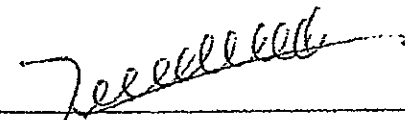
SIGNED SEALED and DELIVERED by
CONSTANTINE MOSHOPOULOS in the
presence of:



Signature of witness

Tania Phillips

Name of witness (please print)



Signature of Constantine Moshopoulos

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

Signature of witness

Signature of David Butterfield

Name of witness (please print)

Signing page

Executed as a deed

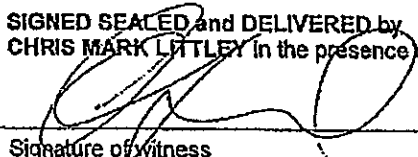
SIGNED SEALED and DELIVERED by
GRAHAM GOLDBERG in the presence of:

Signature of witness

Signature of Graham Goldenberg

Name of witness (please print)

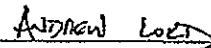
SIGNED SEALED and DELIVERED by
CHRIS MARK LITTLE in the presence of:



Signature of witness



Signature of Chris Little



Name of witness (please print)

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

Signature of witness

Signature of Constantine Moshopoulos

Name of witness (please print)

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

Signature of witness

Signature of David Butterfield

Name of witness (please print)

Executed as a deed

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

Signature of witness

Signature of **Graham Goldenberg**

Name of witness *(please print)*

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

Signature of witness

Signature of **Chris Littley**

Name of witness *(please print)*

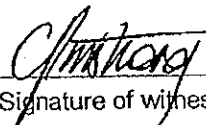
**SIGNED SEALED and DELIVERED by
CONSTANTINE MOSHOPOULOS in the
presence of:**

Signature of witness


Signature of **Constantine Moshopoulos**

Name of witness *(please print)*

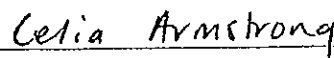
**SIGNED SEALED and DELIVERED by
DAVID BUTTERFIELD in the presence of:**



Signature of witness



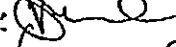
Signature of **David Butterfield**



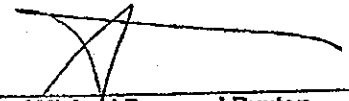
Name of witness *(please print)*

Stephen Buxton for and
on behalf of

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

Signature of witness: 

name of witness: VERONIKA JANUSZEWSKA


Signature of Michael Raymond Buxton
Stephen

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

Signature of Eli Goldfinger

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

Signature of Peter Ferrari

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


Signature of Michael Raymond Buxton

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



Signature of Eli Goldfinger

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



Signature of Peter Ferrari