

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

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IN THE MATTER OF TIMBERCORP SECURITIES LIMITED
(IN LIQUIDATION) (ACN 092 311 469)

TIMBERCORP SECURITIES LIMITED (IN LIQUIDATION) (ACN 092 311 469)
IN ITS CAPACITY AS RESPONSIBLE ENTITY OF THE 2004 TIMBERCORP CITRUS PROJECT
(ARSN 108 887 538) AND THE 2005 TIMBERCORP CITRUS PROJECT (ARSN 114 091 299)
AND ORS ACCORDING TO THE SCHEDULE

CERTIFICATE IDENTIFYING EXHIBIT

Date of document: 23 February 2011

Filed on behalf of: The Plaintiffs

Prepared by:

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This is the exhibit marked '**PWK15**' now produced and shown to PAUL WILLIAM KIRK at the time
of swearing his affidavit on 23 February 2011.

Before me



DANIELLE RUTH NAHUM
of 530 Collins Street, Melbourne
Victoria 3000
An Australian Legal Practitioner
within the meaning of the
Legal Profession Act 2004

Exhibit '**PWK15**'

Contract of Sale and Purchase of
Land between TOT RE and
AgriExchange dated 16 October
2003



The Law Society of South Australia

CONTRACT

FOR THE SALE AND PURCHASE OF LAND

Approved by The Law Society of South Australia for the use of its members
only

Reprinted November 2001

SCHEDULE

This Schedule is to be read in conjunction with the Contract Terms and Conditions.

The terms opposite the item numbers 1 to 22 have the respective meanings as detailed in the particulars in the Schedule.

THIS AGREEMENT IS MADE BETWEEN THE VENDOR AND THE PURCHASER NAMED AND DESCRIBED IN THE SCHEDULE.

THE VENDOR AND THE PURCHASER AGREE as follows:

Item	Term	Particulars
1.	Vendor (Name, address and description)	KANGARA FOODS PTY LTD ACN 093 583 049 of Level 4 691 Burke Road Camberwell Vic 3124 Name, address and description of owner of the Land: (required if the Land is vacant and subdivided)
2.	Purchaser (Name, address and description)	TEKTON ONE MANAGED INVESTMENTS LIMITED ACN 105 684 231 of [insert address]
3.	The Land (Description of the Land) (Clause 2)	An estate in fee simple in the whole of the land in Certificate of Title Register Book Volume 5171 Folio 743 (" the vacant land ") and Certificates of Title Volume 5097 Folios 564, 565, 566 and 567, Volume 5131 Folio 62 and Volume 5509 Folios 65 and 66 (" the improved land ") (together referred to as " the Land ")
4.	Included Property (Improvements fixtures)	The buildings and improvements erected on the Land and all fixtures and fittings affixed to the buildings and the Land as at the date of this Agreement including but not limited to the irrigation infrastructure to

	fittings and other property included in the sale) (Clause 3)	be installed by the Vendor prior to the Settlement Date.
5.	Included Chattels (Chattels sold and included in this sale) (Clause 4)	None
6.	Chattels on hire etc. (Chattels on hire, lease, mortgage or bill of sale to be taken over by Purchaser) (Clause 14)	None
7.	Excluded Property (Property excluded from the sale including chattels on hire, lease, mortgage or bill of sale) (Clause 4)	All the vendor's chattels, plant and equipment
8.	Exemptions and reservations (Clause 5)	None

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9.	Mortgages, encumbrances, etc (Mortgages, encumbrances, liens and interests) (Clause 5)	None
10.	Tenancies and other interests (Clause 5, 15)	The purchaser is to grant leases and licences back to the Vendor as agreed.
11.	Purchase Price (Clause 6)	Amount payable for the Land: \$32,500,000.00
		Amount payable for the included chattels: -
		Purchase Price: \$32,500,000.00
	GST (Clause 32)	GST (if applicable) : -
		Total \$32,500,000.00
12.	Deposit (including GST if applicable) (Clause 7)	Payable on the execution of this agreement \$3,250,000.00
13.	Balance (Clause 7)	\$29,250,000.00
14.	Deposit Holder (Clause 7)	JOHNSON WINTER & SLATTERY of Level 10, 211 Victoria Square Adelaide SA 5000 *who shall hold as stakeholder
15.	Settlement Day (Clause 8)	Refer to special condition 8 of Annexure A attached
16.	Provisions applying to mortgages, tenancies etc. (Provisions which apply to the mortgages, encumbrances, liens, charges, tenancies, licences and other interest referred to in Items 9 & 10) (Clause 8(6))	None

17.	Excess water allowance (Clause 10(4)(d))	None
18.	Notices and orders (Clause 13)	(i) Matters to be discharged by the Vendor: None (ii) Matters to be discharged by the Purchaser: None
19.	Consents (Consents to which this agreement is subject) (Clause 18)	(i) To be obtained by the Vendor: None Period within which to be obtained: None (ii) To be obtained by the Purchaser: None Period within which to be obtained: None
20.	Interest Rate (Interest rate on unpaid money if not in accordance with Clause 19)	In accordance with clause 19.
21.	Costs (Liability for costs if not in accordance with clause 26)	In accordance with clause 26.

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22.

Annexures
(Annexures
forming part
of this
agreement)
(Clause 27)

Annexure A – Special Conditions
Annexure B – Memorandum of Lease
Annexure C – Copy Water Licence No. 827

v

ANNEXURE "A"

SPECIAL CONDITIONS

1. DEFINITIONS

In this Agreement, unless the contrary intention appears:

"Agreement" means the Printed Conditions and the Schedule to which this Annexure A is attached and this Annexure A;

"Best Agricultural Practice" means agriculture practices generally recognised by agriculturalists as best practice in the area where the Land is situated;

"Business" means the fish farming business conducted on the Land by LEE MU TSAI INVESTMENTS PTY LTD;

"Certificates of Title" means the Certificates of Title for the Land referred to in Item 3 on Page 1 of the Schedule to this Agreement;

"Printed Conditions" means the standard Law Society of South Australia Contract printed conditions for the sale and purchase of land comprising clauses 1 to 32 attached to this Agreement;

"Property" means the Land and all buildings, improvements, fixtures and fittings situated on the Land;

"Settlement Date" and **"Settlement"** means the time for settlement specified in Item 15 of the Schedule of this Agreement or such other date as settlement of this Agreement may take place;

"Vendor of the Business" means LEE MU TSAI INVESTMENTS PTY LTD;

"Water Licence" means Water Licence issued to the Vendor by the Department for Water Resources under the Water Resources Act 1997 (a copy of which is annexed hereto and marked "Annexure C").

2. PURCHASER ACKNOWLEDGEMENTS

The Purchaser acknowledges and agrees with the Vendor as follows:

- 2.1. The Purchaser admits that the Property as offered for sale and inspected by the Purchaser is identical with that land described in the Certificates of Title and that the Purchaser shall not make any requisition or claim any compensation for any alleged misdescription of the Land or any deficiency in its area measurements or call on the Vendor to amend title or to bear all or any part of the costs of doing so.
- 2.2. No error omission or misdescription or improper or imperfect description in the particulars or in the advertisements circulars posters or at the time of sale in the description of the Land shall invalidate the sale contemplated by this Agreement or be made the subject of any claim for compensation and no abatement shall be made in the purchase price payable under this Agreement in respect of any such error misdescription or improper or imperfect description or statement.

- 2.3. The Purchaser buys subject to any restrictions imposed by and to the provisions of the Development Act 1993 or any supplementary development plan or any town planning legislation or schemes or development order. The Vendor makes no warranty as to any uses permitted on the Property and the Purchaser has made its own inquiries in relation to the use of the Property and as to the existence or otherwise of any requisite permits and as to the conditions (if any) contained in any such permits.
- 2.4. The Purchaser buys subject to any easements rights exceptions and reservations referred to in the Certificates of Title for the Land and any other easements or rights which may affect the Land (including any other easements or rights vested in or claimed by any statutory authorities).
- 2.5. The Purchaser has examined or has had the opportunity of examining the Property prior to the signing of this Agreement.
- 2.6. The Purchaser warrants and represents to the Vendor that it has made its own investigations and inquiries and is deemed to buy the Property with full knowledge of:
 - (a) the nature quality and condition of the Property including but not limited to any defects both latent and patent or any infestation or dilapidation; and
 - (b) the dimensions areas boundaries encroachments and deficiencies (if any) of the Property or any part of the Property.
- 2.7. No warranty, condition description or representation as to the nature quality condition fitness suitability dimensions areas boundaries or encroachments of the Property or any part of it or of the financial return or income to be derived from the Property is given or implied by or from this Agreement nor is it to be implied from anything said done or implied prior to this Agreement or by any statutory or other warranties conditions descriptions or representations expressed or implied as to the nature quality condition fitness suitability dimensions areas boundaries or encroachments of the Property or any part of it and such warranties conditions descriptions and representations are excluded.
- 2.8. In entering into this Agreement the Purchaser has not relied on any warranty assurance or representation made by or any other conduct engaged in by the Vendor or any person or body corporate on behalf of the Vendor except such as are expressly provided in this Agreement but has relied entirely on its own inquiries relating to and inspection of the Property.
- 2.9. The Purchaser may not make a claim or requisition, delay settlement, rescind or terminate because of anything in connection with:
 - (a) any of the matters referred to in this special condition 2;
 - (b) loss, damage, dilapidation, infestation, defect (latent or patent) or mechanical breakdown which may affect the Property between the date of this Agreement and the Settlement Date;
 - (c) the roof or surface water drainage from the Property being connected to a sewerage service;
 - (d) there being or not being an easement or other right in respect of any services connected to the Property;

- (e) the presence in or on the Property of asbestos or other hazardous substances; or
- (f) the condition or existence or non-existence of services.

3. EXAMINATION OF DOCUMENTATION

3.1. The Purchaser shall be deemed to have:

- (a) examined the conditions of sale and purchase of the Property set out in this Agreement and all documentation referred to and described in this Agreement and other information made available in writing by either the Vendor or the Vendor's agents to the Purchaser for the purposes of purchasing the Property and satisfied itself as to the correctness and sufficiency of such documentation and information; and
- (b) examined all information relevant to the risks contingencies and other circumstances having an effect on its purchase of the Property; and
- (c) satisfied itself as to all matters and things including defects both latent and patent in the Property comprising the Property; and
- (d) satisfied itself as to the nature and effect of any laws restricting the use of the Property and as to any laws relating to building on the Property.

3.2. The Purchaser will after Settlement indemnify and keep the Vendor indemnified against all liability, claims, actions, damages and expenses in relation to anything contained or referred to in this Agreement and or any information or documentation provided by the Vendor to the Purchaser.

4. AMENDMENTS TO THIS CONTRACT

- 4.1. The Vendor in its absolute discretion may agree to any amendments of this Agreement sought by a Purchaser and if the Vendor so agrees this Agreement shall be so amended.
- 4.2. Amendments to this Agreement may be drafted only by or with the written consent of the Vendor's Solicitors and no amendments otherwise drafted will be binding on the Vendor.
- 4.3. If the Purchaser finds any discrepancy error or omission in this Agreement, the Purchaser shall immediately notify the Vendor in writing.

5. ASSIGNMENT

The Purchaser agrees that it will not assign its rights and obligations under this Agreement without the express written consent of the Vendor.

6. PURCHASER'S NOMINEE

Notwithstanding that the Purchaser may nominate or may have nominated another person or corporation to complete the sale and purchase, the Purchaser will nevertheless remain fully liable as a principal for the due observance and performance of all obligations on its part contained in this Agreement.

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7. ADDITIONAL RIGHTS OF RESCISSION

7.1. If:

- (a) an application is made to a court for an order or an order is made that the Purchaser be wound up;
- (b) an application is made to a court for an order appointing a liquidator or provisional liquidator in respect of the Purchaser, or one of them is appointed, whether or not under an order;
- (c) except to reconstruct or amalgamate while solvent on terms approved by the Vendor, the Purchaser enters into, or resolves to enter into, a scheme of arrangement, deed of company arrangement, or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganization, moratorium or other administration involving any of them;
- (d) the Purchaser resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so, except to reconstruct or amalgamate while solvent on terms approved by the Vendor, or is otherwise wound up or dissolved;
- (e) the Purchaser is or states that it is insolvent;
- (f) as a result of the operation of section 459F(1) of the Corporations Act, the Purchaser is taken to have failed to comply with a statutory demand;
- (g) the Purchaser is, or makes a statement from which it may be reasonably deduced by the Vendor that it is, the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act;
- (h) the Purchaser takes any step to obtain protection or is granted protection from its creditors under any applicable legislation or an administrator is appointed to it; or
- (i) anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction,

then the Vendor may rescind this Agreement by giving written notice to the Purchaser.

8. SETTLEMENT

- 8.1. Clause 8 of the Printed Conditions will not apply to this Agreement.
- 8.2. Settlement of this Agreement and transfer of the title to the improved land will be effected no later than five (5) days after approval of this transaction by the Foreign Investment Review Board (FIRB) provided such approval is given on or before sixty (60) days from the date of acceptance by the Vendor, failing which this contract shall not proceed ("**Settlement Date**") at the Lands Titles Office at Adelaide or at any other place agreed between the Vendor and the Purchaser and the Purchaser will pay the Purchase Price pursuant to this Agreement for the land on the Settlement Date.
- 8.3. Not less than seven (7) days before the Settlement Date, or within such shorter period as the Vendor may allow, the Purchaser shall deliver to the Vendor or the Vendor's agent, for execution by the Vendor:-
 - (a) a memorandum of transfer of the improved land; and

- (b) a separate memorandum of transfer of the vacant land; and
- (c) any assignment or assignments required by the Purchaser.

The transfers prepared by the Purchaser shall be in a form registrable under the provisions of the Real Property Act 1886.

8.4. Failing due delivery of the transfers or assignments by the due dates referred to in special condition 8.3, the Vendor may at any time thereafter prepare the transfers at the expense in all things of the Purchaser, based upon the scale of fees provided in the Supreme Court Rules 1992.

8.5. Upon payment by the Purchaser of all moneys required to be paid by the Purchaser at or before the Settlement Date and upon compliance by the Purchaser in all other respects with the provisions of this Agreement to be complied with by the Purchaser at or before Settlement:-

(a) on the Settlement Date, the Vendor shall execute in favour of the Purchaser and deliver to the Purchaser:-

- (i) the memorandum of transfer of the improved land free of all mortgages, encumbrances, liens, charges, tenancies, licences and other interests except those referred to in clause 5 of the Printed Conditions; and
- (ii) such other assignments of the improved land as the Purchaser may reasonably require; and
- (iii) any declaration application or certificate which the Vendor may be required to make or give under any Act or Regulation in order to enable the memorandum of transfer of the improved land to be registered; and

the Vendor shall execute the memorandum of transfer for the vacant land and any assignments of the vacant land as the Purchaser may require and deliver the transfer of the vacant land and any assignments to the Purchaser for stamping purposes only. Once the transfer of the vacant land and assignments have been stamped by the Purchaser pursuant to the Stamp Duties Act 1923, the Purchaser will promptly deliver the transfer of the vacant land and the assignments of the vacant land to the Vendor to hold until the Vacant Land Transfer Date.

(b) on the Vacant Land Transfer Date the Vendor shall deliver to the Purchaser:-

- (i) the memorandum of transfer of the vacant land free of all mortgages, encumbrances, liens, charges, tenancies, licences and other interests except those referred to in clause 5 of the Printed Conditions; and
- (ii) such other assignments of the vacant land as the Purchaser may reasonably require; and
- (iii) any declaration application or certificate which the Vendor may be required to make or give under any Act or Regulation in order to enable the memorandum of transfer of the vacant land to be registered.

9. ADJUSTMENTS

9.1. Clause 10(1), (2) and (3) of the Printed Conditions will not apply to this Agreement.

9.2. All rates and taxes, including land tax, all other outgoings in respect of the Land will be adjusted to midnight of the day preceding the Settlement Date. Land Tax shall be

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adjusted on the basis that the land is the sole holding of the Vendor. After the Settlement Date, the Purchaser will pay all such rates, taxes and other outgoings and shall indemnify the Vendor in respect thereof.

- 9.3. The cost or charge for the consumption of water upon the improved land shall be adjusted on the Settlement Date between the Vendor and Purchaser pursuant to clause 10(4) of the Printed Conditions.
- 9.4. The cost or charge for the consumption of water upon the vacant land shall be adjusted between the Vendor and Purchaser pursuant to clause 10(4) of the Printed Conditions but with the adjustment occurring on the Vacant Land Transfer Date and not the Settlement Date.
- 9.5. Before the Settlement Date, the Vendor shall pay and discharge all land tax in respect of the improved land, including any differential land tax, which has or will become payable in respect of the improved land in the rating year in which settlement occurs and in all previous rating years. Such land tax will be paid whether or not the tax is then due and payable.

10. POSSESSION

- 10.1. Clause 9 of the Printed Conditions will not apply to this Agreement.
- 10.2. Vacant possession of the land and delivery of the included property and the included chattels shall be given and taken on the land settlement date subject to the tenancies and other interests referred to in Item 10.

11. LEASE BACK TO VENDOR

11.1. The Lease

The Purchaser grants and the Vendor accepts a lease of the Land ("**Leased Land**") commencing on the Settlement Date subject and on the terms and conditions contained in the form of Lease annexed in Annexure B ("**the Lease**") which shall be completed on the Settlement Date by the insertion of the date of commencement of the Lease being Settlement Date and the date of expiry of the Lease being six (6) months after the date of commencement. The Purchaser agrees that the Vendor shall be entitled to assign the Lease to the Vendor of the Business.

11.2. Preparation Stamping and Execution

- (a) Not less than ten (10) business days before the Settlement Date the Vendor or the Vendor's Solicitors shall deliver three (3) copies of the Lease to the Purchaser for execution and on receipt of the Lease the Purchaser shall promptly execute and return the three (3) copies of the Lease to the Vendor's solicitors not less than three (3) business days before the Settlement Date.
- (b) The Lease shall be prepared stamped and registered by the Vendor's solicitors and the costs of and incidental to the preparation engrossment and completion of the Lease shall be borne by the Vendor and the costs and expenses of and incidental to the stamping and registration of the Lease and the costs of preparation and registration of any requisite lease plan or plans shall be borne by the Vendor.

11.3. **Priority of Registration**

The Lease shall be registered immediately after the Memorandum of Transfer of the Land from the Vendor to the Purchaser and in priority to all other instruments unless the Lease is not completed by the Settlement Date by reason of the breach or default of the Vendor.

11.4. **Consents**

The Purchaser shall procure all necessary consents and approvals to the Lease from any mortgagee or other person having an estate or interest in the whole or any part of the Land whose consent or approval to the Lease is required either in terms of any mortgage encumbrance or charge over the Land or any part of it in order to procure the registration of the Lease.

12. **WATER ALLOCATION**

- 12.1. The Purchaser acknowledges that the Water Licence contains a water allocation;
- 12.2. The Vendor will transfer and/or assign to the Purchaser with effect as and from the Settlement Date the Vendor's interest in the taking irrigation water allocation granted under the Water Licence ("the Water Allocation") for no additional consideration.

13. **AGREEMENTS TO BE CONCLUDED BY PURCHASER**

- 13.1 It is a condition precedent to settlement of this Agreement that:
 - 13.1.1 the Purchaser shall enter into the Agreement with **LEE MU TSAI INVESTMENTS PTY LTD** contained in Annexure C for the sale and purchase of the business, the Settlement for which shall take place contemporaneously with the Settlement of the Land;
 - 13.1.2 the Purchaser shall grant the Lease contained in Annexure B to the Vendor or its nominee at Settlement of the Land.
 - 13.1.3 The Foreign Investment Review Board shall have approved on or before a date no later than sixty (60) days from the date of this Agreement:
 - 13.1.3.1 the Sale and Purchase of the Land the subject of this Agreement;
 - 13.1.3.2 the Sale and Purchase of the Business referred to in clause 13.1.1.

14. **GOVERNING LAW**

This Agreement will be governed by the law of South Australia and the Vendor and the Purchaser submit to the jurisdiction of the courts of that State.

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EXECUTION PAGE

Executed by the Purchaser on the day of 2003.

EXECUTED by
LEE MU TSAI INVESTMENTS PTY LTD
pursuant to Section 127(1) of the
Corporations Act by authority of
the director(s):

.....
Signature of Authorised Person

.....
Signature of Authorised Person

.....
Office Held

.....
Office Held

.....
Name of Authorised Person

.....
Name of Authorised Person