

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

LIST E

S CI 2010

**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:

Allens Arthur Robinson
Lawyers
530 Collins Street
Melbourne VIC 3000

Solicitor code: 21455
DX 30999 Melbourne
Tel 9614 1011 Fax 9614 4661
Ref (mkwm:cchm:306250099)
Matthew.Whittle@aar.com.au
Clint.Hinchen@aar.com.au

This is the exhibit marked '**PWK16**' 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 'PWK16'

Memorandum of Lease dated 16
October 2003, being registered
lease L 9759033 between TOT RE
and AgriExchange

Orig. L 9759033



11:55 31-Dec-2003

3 of 5

Fees: \$0.00

LANDS TITLES REGISTRATION

OFFICE
SOUTH AUSTRALIA

MEMORANDUM OF LEASE

FORM APPROVED BY THE REGISTRAR GENERAL

BELOW THIS LINE FOR AGENT USE ONLY

CERTIFIED CORRECT FOR THE PURPOSES
OF THE REAL PROPERTY ACT 1886

Solicitor/Registered Conveyancer/Lessee

Terry Raymond

Lodged by:

TWSL

AGENT CODE

Correction to: JOHNSON WINTER & SLATTERY (JWSL)

TITLES, CROWN LEASES, DECLARATIONS ETC. LODGED WITH
INSTRUMENT (TO BE FILLED IN BY PERSON LODGING)

-
-
-
-
-

Assessor

PLEASE ISSUE NEW CERTIFICATES OF TITLE AS FOLLOWS

-
-
-

CORRECTION

2219
15.1.2004

PASSED

KS

REGISTERED

23 MAR 2004

pro



REGISTRAR-GENERAL

DELIVERY INSTRUCTIONS (Agent to complete)
PLEASE DELIVER THE FOLLOWING ITEM(S) TO THE
UNDERMENTIONED AGENT(S)

ITEM(S)	AGENT CODE
CT5097/567	JWSL 782
Lessors Copy	TOWN.
Lessees Copy	JWSL 782


CONSENTS OF MORTGAGEES AND SECTION 32 DEVELOPMENT ACT 1993 CERTIFICATION

This Lease does not contravene Section 32 of the Development Act 1993

DATED.....16 October 2003.....

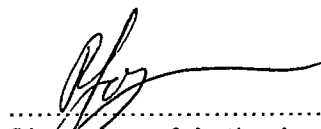
EXECUTION

EXECUTED by ORCHARD INVESTMENTS
MANAGEMENT LTD pursuant to Section
127(1) of the Corporations Act by authority of
the director(s):


.....
Signature of Authorised Person

DIRECTOR
.....
Office Held

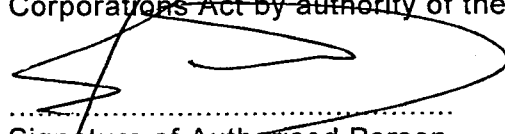
MICHAEL EMERY
.....
Name of Authorised Person


.....
Signature of Authorised Person

Director
.....
Office Held

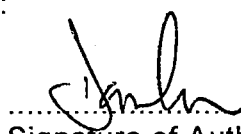
Richard J. O'Brien
.....
Name of Authorised Person

EXECUTED by KANGARA FOODS PTY LTD
pursuant to Section 127(1) of the
Corporations Act by authority of the director(s):


.....
Signature of Authorised Person

DIRECTOR
.....
Office Held

MANO BABIOLAKIS
.....
Name of Authorised Person


.....
Signature of Authorised Person

DIRECTOR
.....
Office Held

DAVID GREEN
.....
Name of Authorised Person

JOHNSON WINTER & SLATTERY

BARRISTERS & SOLICITORS

31 December 2003

Partner: Paul Turner 8239 7123
Email: paul.turner@jws.com.au
Conveyancer: Jenny Raymond 8239 7157
Email: jenny.raymond@jws.com.au
Our Ref: 30483

The Registrar General
Lands Titles Office
101 Grenfell Street
ADELAIDE SA 5000

Dear Sir

Lease over CT Volume 5097 Folio 567 between Orchard Investments Management Limited and Kangara Foods Pty Ltd

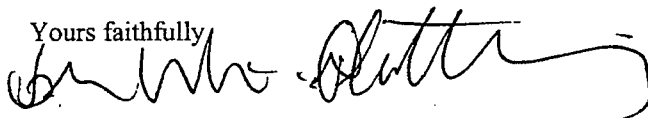
We act for Kangara Foods Pty Ltd, the lessee named in the attached Lease.

The attached Lease was collated and spiral bound by interstate solicitors and then executed by the parties. Upon receiving the executed Lease on 29 December 2003, we copied the Lease so that it is in registrable form but could not have the Lease re-executed as settlement as there was not adequate time to do that with settlement due on 31 December 2003. We would therefore appreciate it if you would accept the Lease for registration in its current form (i.e. with spiral holes in the execution page).

We are also aware that the proper lease plan has not been attached to the Lease. We are instructed that a surveyor has prepared a proper lease plan. However, the surveyor's office is closed over the Christmas/New Year period and our client has been unable to contact the surveyor to obtain a copy of the lease plan. The Contract of Sale between the abovenamed companies provided that the attached Lease must be lodged for registration immediately after the Transfer and in priority to any other documents. We have therefore been forced to lodge the Lease with an inappropriate plan and would appreciate it if you would requisition the Lease so that the proper lease plan can be attached or alternatively lodged in the General Register Office in the New Year (and we can then amend the Lease accordingly).

If you have any queries in regards to the above or if you require any further information, please telephone Jenny Raymond on 8239 7157.

Yours faithfully



DO NOT DETACH	
Doc. No.	9759033
Initials	KS
Date	23.3.2004

..ODMAGRPISEVWSDOMJWSPO1.Trans:35847.1

MEMORANDUM OF LEASE

CERTIFICATES OF TITLE BEING LEASED

Portion of the land comprised in Certificate of Title Register Book Volume 5097 Folio 567 being ~~more particularly described as " " in GRO Plan of 2003 (and delineated in the plan attached)~~ that portion marked "B" in GP 73 of 2004

ESTATE AND INTEREST

In fee simple

ENCUMBRANCES

Nil

LESSOR (Full Name and Address)

ORCHARD INVESTMENTS MANAGEMENT LIMITED ACN 105 684 231
of Level 2, 613 St Kilda Road Melbourne Vic 3000

RevenueSA - Stamp Duty - ABN 19 040 349 865 ©

RevNetID/PRA Bundle No.: 102051887

Orig/Copy 1 with 2 copies

Consideration/Value/Security: \$ 3075.00

SA Proportion (if applicable): \$

SD: \$ 0.00 LTO Fees: \$ 94.00

Int: \$ 0.00 Pen/Add Tax: \$ 0.00

Signature: [Signature] Date: 31/12/03

LESSEE (Full Name, Address and Mode of Holding)

KANGARA FOODS PTY LTD ACN 093 583 049
of Level 4, 691 Burke Road Camberwell Vic 3124

TERM OF LEASE

NINETY NINE (99) YEARS

COMMENCING ON THE 31st DAY OF December 2003EXPIRING ON THE 30th DAY OF December 2102

RENT AND MANNER OF PAYMENT (OR OTHER CONSIDERATION)

The rent and manner of payment will be as is set out in Item 4 of the Schedule to this Lease.

OPERATIVE CLAUSE ^(a) delete the inapplicable

The Lessor LEASES TO THE LESSEE the land ^(a) ABOVE / ~~HEREINAFTER~~ described and the LESSEE ACCEPTS THIS LEASE of the land for the term and at the rent stipulated, subject to the covenants and conditions expressed ^(a) herein / ~~in Memorandum No. _____~~ and to the powers and covenants implied by the Real Property Act 1886 (except to the extent that the same are modified or negated below).

DEFINE THE LAND BEING LEASED INCORPORATING THE REQUIRED EASEMENT(S) ETC.

Not applicable.

IT IS COVENANTED BY AND BETWEEN THE LESSOR AND THE LESSEE as follows:
(Covenants, where not deposited, to be set forth on insert sheet(s) and securely attached)

COVENANTS OF LEASE

1. Definitions and Interpretations

1.1. Definitions

In this Lease unless inconsistent with the context:

- 1.1.1. "**Building**" means all buildings and improvements now or in the future erected on the Premises and includes all plant, equipment, fixtures and fittings in the Building owned by the Lessor or installed at the request or with the consent of the Lessor and all conveniences, amenities and appurtenances of the Building including all air-conditioning, air handling, fire protection and lift plant machinery and equipment;
- 1.1.2. "**Commencement Date**" means the date specified in **Item 5** of the Schedule;
- 1.1.3. "**Common Area**" means those portions of the Premise dedicated by the Lessor from time to time for common use by the Lessee and other occupiers of the Land and their invitees and customers;
- 1.1.4. "**Default Interest Rate**" means the rate specified in **Item 9** of the Schedule;
- 1.1.5. "**GST**" has the same meaning as specified in A New Tax System (Goods and Services Tax) Act 1999;
- 1.1.6. "**Land**" means the whole of the land in Certificate of Title Register Book Volume 5097 Folio 567;
- 1.1.7. "**Lease Year**" means any period of 12 calendar months ending on the 30 June;
- 1.1.8. "**Lessee**" means the party named in **Item 2** of the Schedule to this Lease and that party's heirs, executors, administrators and permitted assigns and if that party is a body corporate its successors and permitted assigns;
- 1.1.9. "**Lessee's Proportion**" means that proportion specified in **Item 10** of the Schedule to this Lease;
- 1.1.10. "**Lessor**" means the party named in **Item 1** of the Schedule to this Lease and that party's heirs, executors, administrators and assigns and if that party is a body corporate its successors and assigns;
- 1.1.11. "**Outgoings**" means the total cost of all outgoings costs and expenses of the Lessor (not of a capital or structural nature unless the cost is attributable to the use of the Premises by the Lessee) now or hereafter properly assessed, charged or chargeable, paid or payable or otherwise incurred upon or in respect of the Land, the Building or any part thereof or upon the Lessor in relation thereto or in the conduct management security and maintenance of the Land or the Building including any car park and other facilities pertaining thereto (but excluding any outgoing cost or

expense which the Lessor is prohibited by law from requiring the Lessee to pay or reimburse the Lessor for), and in particular without limiting the generality of the foregoing includes all costs in respect of the leasing, maintenance, upkeep and replacement of the plants, gardens and landscaping including wages and overheads paid to gardening staff;

- 1.1.12. "**Permitted Use**" means the use described in **Item 8** of the Schedule to this Lease;
- 1.1.13. "**Premises**" means that portion of the Land described in **Item 3** of the Schedule and where the context so requires or allows includes all the Lessor's improvements, fixtures, fittings, plant and equipment and chattels installed in or on the Premises and the conveniences of, services to, amenities of and appurtenances to the Premises and any alterations, additions, improvements or modifications made to the Premises from time to time;
- 1.1.14. "**Rates and Taxes**" means all rates, taxes, charges, assessments, contributions, duties, impositions and fees (including emergency services levies and State Land Tax on a single holding basis);
- 1.1.15. "**Supply**" has the same meaning it does in the A New Tax System (Goods and Services Tax) Act 1999 and excludes any "GST free supplies" and "input taxed supplies" as those terms are defined in the A New Tax System (Goods and Services Tax) Act 1999.
- 1.1.16. "**Term of this Lease**" or "**Term**" means the initial term granted by the Lessor (unless sooner determined) and any extension of such initial term (if any);
- 1.1.17. "**Valuer**" means a Valuer appointed by the President, for the time being of the Australian Property Institute (South Australian Division) licensed to practice in the City of Adelaide and with not less than 5 years relevant experience, who will be deemed to act as an expert and not an arbitrator.

1.2. Interpretation

- 1.2.1. The panel form entitled "Memorandum of Lease" inside which these covenants are contained is incorporated in and forms part of this Lease.
- 1.2.2. Words importing the singular embrace the plural and words importing the masculine gender embrace the feminine and neuter genders and vice versa respectively.
- 1.2.3. Any reference to a person includes a corporate body and vice versa.
- 1.2.4. Where two or more persons are included in the designation the "Lessee" the Lessee's covenants in this Lease bind such persons and any two or greater number of them jointly and each of them severally and the expression the "Lessee" includes all or any one or more of such persons.

- 1.2.5. References to a statute include all amendments for the time being in force and any other statute enacted in substitution for it and the regulations, by-laws or other orders for the time being made under that statute.
- 1.2.6. All money payable by the Lessee to the Lessor is recoverable as a debt or as rent in arrear; if no date or time for payment is specified such money will be payable on demand.
- 1.2.7. Headings are for convenience of reference only and do not affect the construction or interpretation of the covenants of this Lease.
- 1.2.8. Where the Lessor's consent is required, that means the Lessor's prior written consent

2. Lessee's Covenants

The Lessee covenants with the Lessor as follows:

2.1. Rent

To pay the rent reserved by this Lease to the Lessor (if demanded) free from exchange, deduction or abatement as the Lessor requires either:

- 2.1.1. at the Lessor's address as specified in this Lease or as the Lessor from time to time directs; or
- 2.1.2. by direct bank transfer to the credit of a bank account nominated by the Lessor,

at the rate and at the times prescribed in **Item 4** of the Schedule to this Lease.

2.2. Rates and Taxes and Outgoings

- 2.2.1. To pay the whole of all Rates and Taxes which are now or may during the Term be or become separately assessed or charged in respect of the Premises or the proprietorship, use or occupancy of the Premises or the business conducted from the Premises. Such payments must be made by the Lessee to the body or authority demanding or requiring the same on or before their due date for payment unless the Lessor, at its option only, requires payment to be made to it.
- 2.2.2. Where not separately assessed or levied in respect of the Premises, to pay or reimburse as additional rent the Lessee's Proportion of all Rates and Taxes which may be or become payable or charged in respect of the Land in respect of each Lease Year or part of a Lease Year at the Lessor's Option either:-
 - (a) as and when the same fall due for payment; or
 - (b) on the basis of an estimate given by or on behalf of the Lessor payable to equal calendar monthly payments at the same time that

rent is payable under this Lease and in the manner set out in clause 2.2.4 herein.

2.2.3. In respect of each Lease Year or part of a Lease Year, to pay to the Lessor as additional rent the Lessee's Proportion of the Outgoings in respect of that Lease Year or part Lease Year at the Lessor's option either:

- (a) as and when the same fall due for payment; or
- (b) on the basis of an estimate given by or on behalf of the Lessor payable to equal calendar monthly payments at the same time that rent is payable under this Lease and in the manner set out in clause 2.2.4 herein.

2.2.4. If the Lessor elects to require the Lessee to pay monthly instalments towards the Lessee's Proportion of the Rates and Taxes and Outgoings payable by the Lessee for a particular Lease Year on the basis of a reasonable estimate provided by the Lessor:

- (a) the Lessor must notify the Lessee in writing prior to the execution of this Lease and afterwards on or before 30 June immediately preceding the commencement of each Lease Year of its reasonable estimate of those outgoings for the financial year; and
- (b) the Lessee will pay such monthly instalments at the same time as the monthly instalments of rent are payable under this Lease; and
- (c) the monthly instalments paid by the Lessee will be credited towards the Lessee's Proportion of those Rates and Taxes and Outgoings in respect of the relevant Lease Year; and
- (d) the Lessor will provide a statement within 3 months of the expiration of each Lease Year setting out all of the Lessor's expenditure in the relevant Lease Year towards which the Lessee was required to contribute in a form that facilitates comparison with the Lessor's reasonable estimate of the Rates and Taxes and Outgoings for the Lease Year in which such payments were made and any shortfall between total monthly instalments as estimated and the actual annual amount due will immediately be paid by the Lessee on receipt of a demand by or on behalf of the Lessor and if the Lessee has overpaid, the Lessor will immediately refund the excess to the Lessee; and
- (e) any period of less than a full Lease Year will be apportioned on a time basis.

2.2.5. A written notice given by or on behalf of the Lessor to the Lessee certifying estimated or actual amounts of the Lessee's Proportion of the Rates and Taxes and Outgoings, for any Lease Year or part of a Lease Year giving reasonable details of such proportion will be prima facie evidence of the matters stated in the notice.

2.3. Utilities

To pay all charges for electricity, gas, water and telephone and any other service supplied to, used or consumed in or in relation to the Premises and all other charges and impositions imposed by any public utility or authority or otherwise incurred for the supply of any service supplied to or used in or in respect of the Premises. Such payments must be made by the Lessee to the utility or authority requiring the same on or before the due date for payment of the same unless the Lessor, at its option only, requires payment to be made to it.

2.4. Cost of Lease

- 2.4.1. To pay all of the Lessee's own costs pertaining to the negotiation, drawing and engrossment of this Lease. The Lessor will bear its own costs pertaining to the negotiation, drawing, engrossment and execution of this Lease.
- 2.4.2. To pay all of the Lessor's reasonable costs of and incidental to negotiation, drawing and engrossment of any assignment or transfer of this Lease and of any guarantee of the obligations under this Lease and any other incidental documentation.
- 2.4.3. To pay all reasonable fees, costs and expenses of or in relation to stamping, registration, mortgagee consent, title production and preparation and registration of a lease plan in connection with this Lease.

2.5. GST

2.5.1. Mutual Understanding

The Lessor and the Lessee acknowledge and agree that:

- (a) all amounts payable for, or in connection with, any Supply (including, but not limited to the rent) made under or in accordance with this Lease do not include GST; and
- (b) in respect of any Supply referred to in paragraph (a), the recipient of the Supply must pay the supplier of the Supply an additional amount on account of GST equal to the amount payable by the recipient for the relevant Supply multiplied by the prevailing GST rate.

2.5.2. Timing

- (a) Any additional amount payable under paragraph 2.5.1(b) on account of GST is payable at the same time as when the amount for the relevant Supply is required to be paid by the recipient of the Supply.
- (b) Immediately on receipt of payment of both the amount for a Supply and the amount on account of GST, the supplier of the Supply must provide the recipient of the Supply with a tax invoice which is in an approved form for GST purposes.

2.5.3. Reimbursement

To the extent that the amount for a Supply consists of the reimbursement of costs and expenses incurred by the supplier of the Supply, in this Lease those costs and expenses are deemed to be exclusive of the amount of any refund or input tax credit of GST to which the Supplier is entitled as a result of incurring the cost or expense.

2.6. Lessee's use of Premises

2.6.1. Permitted Use

To use the Premises only for the Permitted Use and in a manner consistent with that in which a business of that nature is usually conducted.

2.6.2. Obtain consents

If the Permitted Use is permissible only with the consent of any authority under any act, ordinance, regulation, bylaw, planning control or restriction or interim order or other statutory enactment or order of court the Lessee will obtain such consent at its expense.

2.6.3. Keep clean

To cause the Premises to be cleaned regularly in a proper and workmanlike manner and kept clean and free from dirt and rubbish and to keep and maintain clean and in good order, repair and condition all of its fittings, plant, furnishings and equipment to the extent necessary to prevent any hazard to or deterioration in the condition of the Premises.

2.6.4. No nuisance or residential use

Not to use any part of the Premises nor allow any part of the Premises to be used for any illegal, immoral or objectionable purpose or for the conduct of any noxious, offensive or dangerous trade or practice or for any residential use nor to create any nuisance.

2.6.5. Notify defects

To immediately notify the Lessor of any accident or damage to or defect in any services or facilities installed in or about the Premises.

2.6.6. Dangerous substances

Not to keep or permit to be kept or used on the Premises any substances or compounds of a potentially dangerous or explosive nature or the keeping of which might contravene any Act of Parliament, ordinance, regulation or by-law without the prior written consent of the Lessor unless such goods or materials are stored, handled or sold in the normal course of the Lessee's business.

2.6.7. Use of Common Area

Not to obstruct any part of the Common Area, use the same for business or display purposes.

2.7. Maintain Premises

At the Lessee's cost, to maintain, replace, repair and keep the Premises in such repair and working order as is necessary to comply with any law applicable to the premises, damage by fair wear and tear and fire excepted. This sub-clause does not impose on the Lessee any obligation in respect of any structural maintenance, replacement or repair.

2.8. Alterations and fixtures

Not, without obtaining all necessary statutory approvals, to make or allow any alterations or additions to the Premises or to build new buildings in addition to or replacement for the Building or any part of the Building.

2.9. Statutory requirements

The Lessee will:-

- (a) comply at the Lessee's cost with all laws, statutes, ordinances, proclamations, orders, regulations or by-laws, present or future, whether municipal, State or Federal in force whether imposed on owners or occupiers and any obligation or notice issued affecting any part of the Premises including all requirements of the Public and Environmental Health Act, the Health Act, Local Government Act, the Occupational Health Welfare and Safety Act and Industrial Code or Acts in force in the State of South Australia; and
- (b) ensure the Premises do not become in an insanitary, unhealthy or unsafe condition; and
- (c) indemnify the Lessor from and against all actions, proceedings, claims, demands, charges, penalties and expenses arising from the non-performance or non-observance of any such duties and obligations or the non-compliance with any requirements in this clause and against all expenses chargeable by virtue of any such law, statute, ordinance, proclamation, order, regulation, obligation or notice issued on the Lessee, owner, tenant or occupier of the Premises or on the Premises;

PROVIDED THAT the covenants contained in this clause will not impose on the Lessee any obligation for any structural alterations, improvements, additions or repairs unless they are rendered necessary or desirable as a consequence of any act or omission of the Lessee or any servant, agent, contractor or sub-tenant of the Lessee or any person on the Premises or the Land by lawful licence of the Lessee or by the use of the Premises by the Lessee or by the number or sex of the persons employed in the Premises.

2.10. Signs

Not, without all necessary statutory approvals, to erect, display, exhibit in or affix to the Premises any sign, advertisement, name or notice.

2.11. Insurances and fire

- 2.11.1. To become and remain registered in accordance with the Workers Rehabilitation and Compensation Act 1986 (the "WR&C Act") and pay all monthly levies due in respect of its employees and:
- (a) to produce to the Lessor within 7 days of receipt of a request to do so a current certificate of registration as an employer under the WR&C Act;
 - (b) to ensure any insurance effected under this clause includes the interests of the Lessor and indemnifies the Lessor in respect of any action, claim, demand, suit or proceedings made by any such employee and is unlimited in all respects except as provided by statute; and
 - (c) to expend all money received under such insurance in satisfying any claim of an employee and, if such money is insufficient, to make good the deficiency out of the Lessee's own money.
- 2.11.2. Not to do or permit to be done on or near the Premises anything which may invalidate or vitiate the conditions of any insurance policy relating to the Premises or to the Building or which may render any increased premium-payable under any policy of insurance effected over the Premises or the Building.
- 2.11.3. To pay on demand any additional premium levied because of the Lessee's use of the Premises or any breach of its obligations under this Lease.
- 2.11.4. To take such precautions against fire in the Premises as are required under any statute now or in the future in force or which may be required by any authority (whether governmental, municipal, civic or other) having jurisdiction and also at the Lessee's own expense to do everything in relation to fire safety that is directed or required to be done (whether by the owner or occupier of the Premises) by any authority (whether governmental, municipal, civic or other) having jurisdiction under any statute now or in the future in force PROVIDED THAT this covenant will not impose on the Lessee any obligation in respect of any structural maintenance, replacement or repair unless it is rendered necessary by any act or omission by the Lessee or any servant, agent, contractor, sub-tenant, employee or invitee of the Lessee or by the use of the Premises by the Lessee (even though such use of the Premises is within the scope of the Permitted Use) or by the number or sex of persons employed by the Lessor in the Premises.
- 2.11.5. To insure the Premises against damage and the Lessor and the Lessee against liabilities arising from such activities as may be carried on at the premises to the extent that a prudent lessee would so insure.

2.12. Indemnities

To indemnify the Lessor against all actions, claims, demands, proceedings, suits, costs, liabilities, damages, fees, expenses and losses incurred by or which the Lessor may suffer as a result of or arising from

- 2.12.1. the death of or injury to any person or loss of or damage to the property of any person arising from or out of any occurrence in, on or about any part of the Building or the use of the Premises by the Lessee or by any employee, agent, contractor, visitor or customer of the Lessee or other person having business with the Lessee;
- 2.12.2. loss or damage to the Premises, the Building and any property in the Premises or the Building including that caused by the Lessee or by any employee, agent, contractor, visitor or customer of the Lessee or other person having business with the Lessee **and including** the use, misuse, waste or abuse of the Premises and all lifts and air-conditioning equipment, fire alarm and sprinkler systems, gas, water and other services, pipes, drains, sewers, electricity installations, water closets and cisterns or faulty fittings and fixtures in the Premises or the Building;
- 2.12.3. the exercise or attempted exercise of any of the rights, authorities, powers or remedies which are exercisable by the Lessor under this Lease;
- 2.12.4. any other conduct of the Lessee in or concerning the Premises which results in the Lessor having a liability to a third party or incurring a penalty under a statutory authority.

- 2.13. Release of Lessor

To occupy, use and keep the Premises at the risk of the Lessee and the Lessee agrees that the Lessor and its servants, employees, agents, contractors and invitees will have no responsibility or liability to the Lessee and the Lessor and its employees, agents, contractors and invitees are released to the full extent permitted by law from all responsibility or liability for:

- (a) any loss of or to the Lessee's property, effects, fixtures or fittings;
- (b) all claims, demands and damages of every kind resulting from any accident, damage or injury to or malfunction or failure of any plant, equipment, fittings or fixtures occurring in the Premises or in or about the Building, unless it derives from any structural defect in the Premises not caused or contributed to by the Lessee or from any wilful or negligent act or omission of the Lessor or the Lessor's servant, agent or contractor;
- (c) any damage, including consequential and economic loss, suffered as a result of any flooding of the Premises arising from any blockage or other defect in the sewerage or water connections of the Building or the Land or a fault in or failure of the electrical installations, air-conditioning, lifts or other apparatus or services, including the fire sprinkler and alarm systems, in the Building whether caused through the Lessor's negligence or the negligence of its servants, agents or workmen.

2.14. Lessor's entry on Premises

To permit the Lessor on giving reasonable notice, (except if there is an emergency, when no notice will be required) to enter the Premises with or without workmen, agents, tools, machines and materials and remain on the Premises to inspect, install, maintain, clean, repair, alter or replace any fittings, pipes, wires, drains, fixtures, plant, machinery or equipment situated on or installed in the Premises including the performance of the Lessee's obligations and the remedy of any breach of those provided that in so doing the Lessor must cause as little disturbance to the Lessee's use of the Premises as practicable in the circumstances but will not be liable to pay any compensation to the Lessee for any disturbance which might be caused;

2.15. Assign or sublet

The Lessee must not assign or transfer this Lease or its estate or interest in this Lease, without having first obtained the Lessor's written consent (which will not be withheld if the assignee or transferee agrees to be bound by the terms of the this Lease in favour of the Lessor).

3. Lessor's Covenants

The Lessor covenants with the Lessee that:

3.1. Quiet possession

As long as the Lessee pays the rent and observes and performs all of its covenants, agreements and conditions in this Lease and as long as the right of re-entry provided in this Lease has not arisen, it may peaceably and quietly hold and enjoy the Premises without any interruption or disturbance by the Lessor or any person claiming under or in trust for it, but always subject to the terms of this Lease.

3.2. Lessee's property

The Lessee may at or before the end of the Lease remove from the Premises all fixtures, fittings, plant, equipment, partitions and other articles on the Premises in the nature of trade or tenant's fixtures brought on the Premises by the Lessee, but the Lessee in removing such articles must not damage the Premises and must immediately repair any damage which the Lessee causes.

3.3. Use of Common Area

Not to obstruct any part of the Common Area or use the same for business or display purposes.

4. Mutual Covenants

It is agreed between the parties that:

4.1. Changes and the Premises

The Lessee may from time to time build additional buildings on the Premises or change existing buildings on the Premises. The Lessee must obtain all necessary statutory approvals before doing so. The Lessor shall execute such documents as

may be required in order for the Lessee to obtain such consent but shall only be required to do so at the cost and expense of the Lessee. The Lessee indemnifies the Lessor with respect to any liability arising out of the Lessor satisfying its obligations under this clause.

4.2. Right of Renewal

Intentionally Deleted.

4.3. Default

If:

- 4.3.1. there is any breach, non-performance or non-observance of any covenant, condition, provision, agreement or stipulation to be performed or observed by the Lessee which remains unremedied for a period of 28 days after written notice of such breach is provided by the Lessor to the Lessee; or
- 4.3.2. if the Lessee is a body corporate and an order is made or a resolution is effectively passed for its winding up (except for the purpose of re-construction or amalgamation with the Lessor's written consent, which must not be unreasonably withheld);

----- THEN the Lessor or any person duly authorised by the Lessor may re-enter on any part of the Premises to repossess them in the Lessor's name as its former estate and on that happening, this Lease will absolutely cease and determine and the Lessor will be freed and discharged from all liability and responsibility under this Lease or otherwise without prejudicing the rights of action which the Lessor may have before or at the time of such re-entry. It is agreed that if this Lease is determined by the Lessor as provided in this clause before the end of the Term of this Lease the Lessee will not be entitled to claim or receive from the Lessor any compensation or damages.

4.4. The Landlord and Tenant Act

If the Lessee breaches any covenant or condition of this Lease the notice to the Lessee to be given under Section 10 of the Landlord and Tenant Act will provide that the period of 28 days is the time within which the Lessee must remedy such breach or default if it is capable of remedy, or to make reasonable compensation in money to the Lessor's satisfaction. No period of notice will be required in respect of non-payment of rent.

4.5. Acknowledgments

The Lessee acknowledges and agrees that:

- 4.5.1. no promise, representation, warranty, assurance or undertaking has been given by the Lessor in respect of the suitability of the Premises for any purpose or use to be carried on in the Premises or to the fittings, finishes, facilities or amenities of the Premises otherwise than contained in this Lease;
- 4.5.2. the Lessor gives no warranty as to the use to which the Premises may legally be put and the onus is on the Lessee to make its own enquiries.

The Lessee accepts this Lease with full knowledge of and subject to any prohibitions or restrictions on the use of the Premises under any act, ordinance, regulation, bylaw, planning control, or restriction or interim order or other statutory enactment or order of court.

4.6. Notices

Any notice requiring to be served under this Lease will be:

- 4.6.1. deemed to be duly signed if it is signed by a director, the secretary, an officer or the solicitors of the party serving such notice; and
- 4.6.2. sufficiently served on the Lessee if left at the Premises addressed to the Lessee or at the Lessee's address appearing in this Lease or at the last known place of business of the Lessee or (if the Lessee is a corporate body) the registered office of the Lessee and will be sufficiently served on the Lessor if delivered or posted to it at its address above appearing or such other address as the Lessor may from time to time nominate. A notice sent by post will be deemed to be given at the time when in due course of post it would be delivered at the address to which it is sent.

If the Lessee constitutes more than one natural person or body corporate or a partnership, notice to one of the natural persons or bodies corporate constituting the Lessee will be regarded and accepted by the Lessee as notice to all the Lessee.

4.7. Compliance with laws

It is the parties' intention that no covenant, provision, term or implied term of this Lease will have the effect of or be interpreted or construed as having or attempting to have the effect of directly or indirectly defeating, evading, excluding, restricting, modifying or preventing the operation of any legislation which by law cannot be excluded, restricted or modified or the regulations or proclamations made under any such legislation and that the Lessor and the Lessee will continue to be subject to any such provisions which by law cannot be excluded, restricted or modified.

4.8. Entire agreement

The covenants, provisions, terms and agreements contained in this Lease expressly or by statutory implication cover and comprise the whole of the agreement between the parties and the Lessor and the Lessee mutually agree and declare that no further or other covenants, agreements, provisions or terms whether in respect of the Premises or otherwise will be deemed to be implied in this Lease or to arise between them by way of collateral or other agreement by reason of any promise, representation, warranty or undertaking given or made by either to the other on or prior to the execution of this Lease and the existence of any such implication or collateral or other agreement is negated.

4.9. Resumption

It is agreed between and declared by the parties that if the Lessor receives notice of any proposed resumption or acquisition of the Premises or any part of the Premises by any government (whether Federal State or local) public, statutory or other competent authority the Lessor will be entitled at any time after that to determine this Lease on giving at least 90 days' prior written notice the Lessee.

4.10. Severance

If any provision of this Lease is void, invalid, unlawful or unenforceable that provision will be capable of severance from this Lease without affecting the balance of this Lease unless the severance of such provision would affect the commercial bargain intended to exist between the Lessor and the Lessee at the commencement of the Term of this Lease. The Lessor and the Lessee will negotiate together to achieve agreement as to variations to this Lease which will place the Lessor in the same position as it would have been but for such invalidity, unlawfulness or unenforceability and failing mutual agreement within 30 days then the Lessor will be entitled to terminate this Lease on giving the Lessee 7 days written notice.

4.11. Surrender

The Lessee may surrender this Lease without cost or penalty upon giving six months notice in writing of its intention so to do to the Lessor. In the event that the Lessee exercises its right under this clause the Lessor shall execute such surrender of lease documentation as shall be reasonably required by the Lessee in order to give effect to its rights under this clause. Such surrender shall release the Lessee and Lessor from all future duties and obligations under the terms of this Lease as and from the date of surrender but shall not affect any right or entitlement which has accrued prior to the date of such surrender.

5 Right of First Refusal

5.1. Lessor to Offer Premises

- (a) The Lessor shall not at any time during the Term sell, transfer or otherwise grant any interest in the Premises (other than by way of mortgage) ("Deal") without first by notice in writing ("Offer Notice") offering to the Lessee the Premises at the same price and on the same terms and conditions as those upon which the Lessor proposes to Deal with the Premises.
- (b) The Lessor shall with an Offer Notice also deliver to the Lessee a form of contract of sale containing the terms and conditions on which the Lessor proposes to Deal with the Premises ("Contract").

5.2. Lessee to Accept or Reject

- (a) If the Lessee wishes to purchase the Premises on the terms and conditions offered pursuant to clause 5.1, the Lessee shall within thirty (30) days of the date of receipt of the Offer Notice execute the Contract and cause the executed Contract to be delivered to the Lessor accompanied by a bank cheque for the amount of the deposit specified in the Contract.
- (b) Upon the delivery by the Lessee to the Lessor of the executed contract and cheque in accordance with Clause 5.2(a), there shall be deemed to be in existence a contract of sale between the Lessor and the Lessee binding upon the Lessor and the Lessee, evidence of which shall be the Offer Notice and the executed Contract.
- (c) Notwithstanding, but without limiting Clause 5.2(b), the Lessor shall upon receiving the executed Contract and cheque in accordance with clause 5.2(a). execute the Contract and deliver to the Lessee an copy of the Contract executed by both the Lessor and Lessee.

5.3. Failure to Accept

If the Lessee does not within the period of thirty (30) days after the receipt of the Offer Notice deliver to the Lessor the executed Contract and cheque in accordance with clause 5.2(a), the Lessor shall be at liberty at any time thereafter to Deal with the Premises and the Land on either:-

- (a) the same terms and conditions as those offered to the Lessee; or
- (b) terms and conditions not more favourable to a third party than those offered to the Lessee.

5.4. Conditional Contract

For the removal of doubt, it is recorded that nothing in this clause 5 shall preclude the Lessor from entering into a contract of sale with a third party conditional upon the Lessee not exercising its rights under this clause 5.

5.5. Sale by Auction

If the Landlord intends to sell the Land by auction, the Landlord must at least 30 days before the auction:

- (a) give written notice to the Lessee of the date of the auction and of the proposed terms and conditions of the sale; and
- (b) deliver to the Lessee a signed Form 1 Statement pursuant to the Land and Business (Sale and Conveyancing) Act 1994 and a copy of the contract of sale for the Land.

~~The Landlord may not sell the Land either before, at or after auction to any person other than the highest bidder at the auction or on terms and conditions other than the terms and conditions offered publicly at the auction to the highest bidder without first complying with clauses 5.1 to 5.4 of this Lease.~~

SCHEDULE

ITEM 1 - LESSOR:	Orchard Investments Management Limited ACN 105 684 049 of Level 2, 613 St Kilda Road Melbourne Vic 3000
ITEM 2 - LESSEE:	Kangara Foods Pty Ltd ACN 093 583 049 of Level 4 691 Burke Road Camberwell Vic 3124
ITEM 3 - PREMISES:	That portion of the land comprised in Certificate of Title Register Book Volume 5097 Folio 567 which is more particularly marked " " in GRO Plan of 2003 and which is delineated on the plan attached.
ITEM 4 - RENT AND MANNER OF PAYMENT:	ONE DOLLAR (\$1.00) per annum if demanded by the Lessor payable on the 1 st day of January in each and every year of the Term.
ITEM 5 - COMMENCEMENT DATE:	The 31 st day of December 2003
ITEM 6 - TERM:	Ninety Nine (99) years Commencing on the Commencement Date Expiring on the 30 th day of December 2102
ITEM 7 - PUBLIC LIABILITY INSURANCE	\$20,000,000.00
ITEM 8 - PERMITTED USE:	Packaging and other Processing associated with fruit
ITEM 9 - DEFAULT INTEREST RATE:	The rate charged from time to time by the Lessor's Bankers on overdrafts in excess of \$100,000 increased by 2%
ITEM 10 - LESSEE'S PROPORTION	The proportion that the area of the Premises bears to the area of the Land

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NOTES:

- ① THIS IS AN ENLARGEMENT OF MAP 7029-7 THE PROPOSED PLAN OF SUBDIVISION FILED BY ALLIUS SURVEYORS ON
- ② THE SKETCH INDICATES APPROXIMATE POSITIONS OF THE AREA REQUIRED IN THE 99 YEAR LEASE INCLUDING ALL HOUSEHOLD FIXTURES AND ANCILLARY STRUCTURES/FEATURES.

ENLARGEMENT
NOT TO SCALE

INTERIM SKETCH/PLAN OF KONGARA PARKING SHED, WATER RECYCLING, PARKING AND MARSHALLING YARDS.
PORTION OF ALLOTMENT 54 OF DP 19611

DP19611

D/H

D/H

5.00 M
5.00 WIDE

PORTION OF ALLOTMENT 54
DP 19611

DP 19611

12

615.03

187.40

98.05

98.57

244.91

665.74

BEHERENDT ROAD

248.57

