



ASSET SALE AGREEMENT

Parties:

PORTGAGE LOGISTICS LIMITED PARTNERSHIP

and

THE PURCHASER

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Melbourne, Victoria 3000
GPO Box 1660

Melbourne Victoria 3001

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Sydney

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ASSET SALE AGREEMENT made the date in **Item 1** of the Schedule.

BETWEEN

PORTGATE LOGISTICS LIMITED PARTNERSHIP A.B.N. 38 082 014 774 of W5, "Osprey Estate", Osprey Drive, Port of Brisbane, in the State of Queensland.

"Vendor"

AND

The party detailed in **Item 2** of the Schedule.

"Purchaser"

together "The Parties"

RECITALS

- A. The Vendor has a valid lien pursuant to section 3 of the *Storage Liens Act 1983* (Qld) over the Assets and has authority to sell the Assets by public auction pursuant to section 6 of the *Storage Liens Act 1983* (Qld).
- B. Consent Orders were made in the Supreme Court of Queensland by Mr Justice Applegarth on the 23rd June 2017 authorising the sale of the Assets.
- C. The Seller has held an Auction on the Auction Date to sell the Assets.
- D. The Purchaser is the successful tenderer to purchase the whole or that part of the Assets by successful public auction bid as detailed in **Item 3** of the Schedule ("**Goods**").
- E. This Agreement sets out the terms of the purchase of the whole or that part of the Assets by the Purchaser from the Vendor.

OPERATIVE PROVISIONS

1 INTERPRETATION

1.1. Definitions

In this agreement unless the context otherwise requires:

- 1.1.1. "**Adjustment Date**" means the earlier of the giving of possession to the Purchaser or completion;
- 1.1.2. "**As Is – Where Is**" means that the Vendor is selling, and the Purchaser is buying the Goods or the Assets in whatever condition it presently exists, and that the Purchaser is accepting the item "with all faults", whether or not immediately apparent. It is the Purchasers responsibility to get the Goods or the Assets from the location where it is at the time of sale to the location where the Purchaser wants it. The Purchaser is responsible for all cost of collection, shipping and insurance.
- 1.1.3. "**Assets**" means those assets of the Vendor described as being 85 shipping containers measuring approximately 40 feet in length and being packed with tyres and other products unknown to the Vendor;
- 1.1.4. "**Auction**" means the event held by the Vendor at it premises to sell the whole or part of the Assets by way of an public auction;
- 1.1.5. "**Auction Date**" mean the 5th September 2017;

- 1.1.6. **“Auction Venue and Entry”** means “Osprey Estate”, Osprey Drive, Port of Brisbane, Qld. All persons entering this auction site do so in the own risk. The vendor or agent accepts any liability for injury or damage caused by any party.
- 1.1.7. **“Business day”** means any day on which banks are open for trading in Queensland;
- 1.1.8. **“Buyers Premium”** is a percentage (11%) additional charge on the hammer price (winning bid at auction) of the Goods or the Assets that must be paid by the Purchaser to the “Auctioneer” “Vendor Agent” to cover administrative expenses.
- 1.1.9. **“Completion”** means completion of the sale and purchase of the Assets under clause 3;
- 1.1.10. **“Completion Date”** means any date on or before fourteen (14) days after the Auction Date.
- 1.1.11. **“Corporations Act”** means the *Corporations Act 2001* (Cth);
- 1.1.12. **“Goods”** means the whole of or that part of the Assets that the Purchaser has successfully bid and won upon at the Auction and as detailed in **Item 3** of the Schedule;
- 1.1.13. **“GST Law”** means the same as “GST law” in the *A New Tax System (Goods & Services Tax) Act 1999* (Cth); and
- 1.1.14. **“Purchase Price”** means the price detailed in **Item 4** of the Schedule GST inclusive);
- 1.1.15. **“Vendor’s Agent”** means Global Business Auctioneers and Valuers Pty Ltd A.C.N 058 491 964

1.2. General

In this agreement unless the context otherwise requires:

- 1.2.1. a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinate legislation issued under, that legislation or legislative provision;
- 1.2.2. a reference to a recital, clause, schedule, annexure or exhibit is to a recital, clause, schedule, annexure or exhibit of or to this agreement;
- 1.2.3. where an expression is defined anywhere in this agreement it has the same meaning throughout;
- 1.2.4. a reference to “dollars” or “\$” is to an amount in Australian currency; and
- 1.2.5. words and expressions defined in the GST law have the same meaning in clauses concerning GST.

1.3. Headings

In this agreement headings are for convenience of reference only and do not affect interpretation.

2 AGREEMENT TO SELL AND PURCHASE THE ASSETS

2.1. Sale and Purchase

The Vendor through their Agent sells to the Purchaser, and the Purchaser purchases from the Vendor all its right, title and interest in the Goods or the Assets as the case may be, on the terms and conditions of this Agreement.

2.2. Title, Property and Risk

The title to the Assets passes to the Purchaser on Completion.

2.3. Vendor Warranties

2.3.1. The Vendor warrants that:

- (a) the Vendor has a valid lien pursuant to section 3 of the *Storage Liens Act 1973* (Qld), capacity and authority to enter into this Agreement to sell the Goods or Assets included in the sale pursuant to section 6 of the *Storage Liens Act 1973* (Qld);
- (b) the Vendor has obtained an Order from the Supreme of Queensland dated the 23rd June 2017 authorising the sale of the Assets a copy of which is annexed hereto as Schedule 1;
- (c) the Purchaser will acquire good title to the Goods and or Assets pursuant to section 11 of the of the *Storage Liens Act 1973* (Qld);
- (d) the Goods or Assets included in this sale will not on Completion be subject to any Encumbrance which would attach to the Goods or Assets included in this sale.

2.3.2. The Vendor does not give the Purchaser any other covenant or warranty about the Goods or Assets.

2.3.3. To the extent permitted by law, the parties exclude from this Agreement any implied or statutory warranties relating to the sale of the Assets which apply under any legislation, including under the *Fair Trading Act 1989* (Qld) *Sale of Goods Act 1896* (Qld) , *Sale of Goods Act 1923* (NSW), the *Fair Trading Act 1987* (NSW), the former *Trade Practices Act 1974* (Cth) and / or the *Competition and Consumer Act 2010* (Cth) but to the extent that any legislation implies warranties or imposes conditions on the Vendor relating to the sale of the Assets that cannot be excluded, restricted or modified, or cannot be excluded, restricted or modified except to a limited extent, then this Agreement must be read subject to any such provision in legislation.

2.4. Purchase Price following Completion

The Purchaser must pay the Purchase Price and the Buyers Premium to the Vendor's Agent as stakeholder pending clearance of the funds following which the funds will be released to the Vendor, immediately after the conclusion of the Auction.

3 COMPLETION

3.1. Time and Place of Completion

Completion is to occur on the Completion Date at the Auction Venue, or such other place as shall be agreed by the Parties.

3.2. Obligations of Vendor at Completion

3.2.1. At Completion the Vendor must allow the Purchaser to take title to and possession and control of each of the Goods or the Assets included in the sale provided the provisions of clause 11 have been complied with by the Purchaser.

3.2.2. On or before Completion the Vendor will deliver to the Purchaser, in addition to any other documents or records expressly agreed in this Agreement:

- (a) the documents and certificates establishing or providing evidence of title and ownership to the Assets; and EPA Waste Transportation Certificates supplied to the transporter of the goods as required under legislation for

transporting waste materials being rubber tyre contents of the containers and

- (b) such assignments or transfers of each Asset included in the sale as the Purchaser reasonably requires including this Agreement.

3.3. Obligations of Purchaser at Completion

At Completion the Purchaser must:

- 3.3.1. take possession of the Goods or the Assets;
- 3.3.2. do and execute all other acts and documents that this agreement requires the Purchase to do or execute at Completion; and
- 3.3.3. pay all of the Purchase Price on invoice date to the Vendors Agent (Global) as detailed in clause 2.4 hereof by way of EFT or Bank Cheque or any other form that the Parties agree in writing within 2 business days after the auction date..

- 3.4. The Parties must complete by the Completion Date, and, if they do not, a party can serve a Notice to Complete if that party is otherwise entitled to do so.

- 3.5. If completion of this Agreement has not taken place by the Completion Date either party (not its self being in default under this contract) may serve a Notice to Complete on the other party requiring completion. It is expressly agreed that a period of fourteen (14) days specified in such Notice to Complete shall be and be deemed to be sufficient and reasonable PROVIDED ALWAYS that the Vendor shall be at liberty at any time to withdraw the said Notice without prejudice to its continuing right to give any further such notice.

- 3.6. If Completion does not take place within the time prescribed herein for any reason other than delay or default on the part of the Vendor then the Purchaser shall pay to the Vendor interest upon the balance of Purchase Price then owing at a rate 10% per annum. Such interest shall commence to run from the date fixed for completion and shall continue to run:

- 3.6.1. in the event of the Agreement being completed then up to and including the Completion Date; or
- 3.6.2. in the even that the Agreement is lawfully terminated by the Vendor (as distinct from being rescinded), then up to and including the date of such termination.

The Parties further agree that such interest is to compensate the Vendor for damage suffered by them as a result of the Purchaser default or delay and is not a penalty.

3.7. Purchaser's Default

If the Purchaser does not comply with this contract (or a notice under or relating to it) in an essential respect, the Vendor can terminate by serving a notice and after the termination:

- 3.7.1. hold any money paid by the purchaser under this contract as security for anything recoverable under this clause:
 - (a) for 12 months after the termination; or
 - (b) if the Vendor commences proceedings under this clause within 12 months, until those proceedings are concluded; and
- 3.7.2. sue the Purchaser either:
 - (a) where the Vendor has resold the assets under a contract made within 12 months after the termination, to recover:
 - (i) the deficiency on resale (with credit for any of the money kept or recovered and after allowance for any capital gains tax and

goods and services tax payable on anything recovered under this clause); and

- (ii) the reasonable costs and expenses arising out of the Purchaser's non-compliance with this Agreement or the notice and of resale and any attempted resale; or

(b) to recover damages for breach of this Agreement.

4 COSTS AND STAMP DUTY

4.1. Costs generally

Except to the extent specified in this clause each party must bear and is responsible for its own costs in connection with the preparation, execution, completion and carrying into effect of this Agreement.

4.2. Stamp duty generally

The Purchaser must bear and is responsible for all stamp duty on or in respect of:

- 4.2.1. this Agreement;
- 4.2.2. the sale, purchase, assignment or transfer of any of the Goods or the Assets under this Agreement; and
- 4.2.3. any instrument or transaction contemplated by this Agreement.

5 NOTICES

5.1. Method of giving notices

A notice, consent, approval or other communication (each a "notice") under this Agreement must be in writing, signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:

- 5.1.1. delivered to that person's address;
- 5.1.2. sent by pre-paid mail to that person's postal address; or
- 5.1.3. sent by facsimile to that person's fax number.

5.2. Time of receipt

A notice given to a party in accordance with the clause is treated as having been given and received:

- 5.2.1. if delivered to a person's address, on the day of delivery if a business day, otherwise on the next business day;
- 5.2.2. if sent by pre-paid mail, on the third business day after posting; or
- 5.2.3. if sent by facsimile, on the same day if an "OK" transmission report is received by the sender during business hours, otherwise on the next business day.

5.3. Address of parties

For the purposes of this clause, the address of a person is the address set out at the head of this agreement or such other address which one party gives to the other.

6 GENERAL

6.1. Amendment

This Agreement may only be amended or supplemented in writing, signed by the Parties.

6.2. Waiver

The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of any power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the party to be bound by the waiver.

6.3. Entire agreement

This Agreement is the entire agreement of the Parties on the subject matter. The only enforceable obligations and liabilities of the Parties in relation to the subject matter are those that arise out of the provisions contained in this Agreement. All prior representations, prior communications and prior agreements in relation to the subject matter are merged in and superseded by this Agreement. The Purchaser acknowledges it has no rights or claim against the Vendor as a result of any representation made prior to this Agreement. The Purchaser acknowledges that it enters into this Agreement based on its own enquiries and due diligence.

6.4. Severability

Any provision in this agreement which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable, and is otherwise capable of being severed to the extent of the invalidity or unenforceability, without affecting the validity or enforceability of that provision in any other jurisdiction.

6.5. No merger

No provision of this Agreement:

6.5.1. merges on or by virtue of completion, or

6.5.2. is in any way modified, discharged or prejudiced by reason of any investigations made or information acquired by or on behalf of the Purchaser.

6.6. Further assurance

Each party must do, sign, execute and deliver and must ensure that each of its employees and agents does, signs, executes and delivers, all deeds, documents, instruments and acts reasonably required of it or them by notice from another party effectively to carry out and give full effect to this agreement and the rights and obligations of the parties under it, both before and after completion.

6.7. Counterparts

This agreement may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument.

6.8. Confidentiality

Each party must treat the existence and terms of this agreement confidentially, save as is necessary for each party to complete this agreement and the transactions contemplated by it, or for the Liquidator to properly carry out his duties to report to third parties.

6.9. GST

The Purchase Price is inclusive of GST.

7 LAW AND JURISDICTION

7.1. Governing law

This Agreement is governed by the law in force in Queensland.

7.2. Submission to jurisdiction

The Parties submit to the exclusive jurisdiction of the courts of Queensland and any courts which may hear appeals from those courts in respect of any proceedings in connection with this Agreement.

8 LIQUIDATION

8.1.1. The parties agree that prior to the Completion Date should the Vendor be placed into liquidation and/or should a Liquidator be appointed by the Vendor, then the Purchaser shall not be entitled to rescind or terminate the Agreement.

8.1.2. The parties agree that the Purchaser cannot make any requisitions, objections, claims for compensation or delay completion of this Agreement in respect of any such matter relating to the Vendor's liquidation and/or a Liquidator being appointed to the Vendor.

9 WARRANTY AND ACKNOWLEDGMENT

Except as expressly set out in this Agreement, the Purchaser warrants, confirms and acknowledges that the Vendor has made no warranty or representation whatsoever in connection with the Assets and that the Purchaser has relied entirely upon the investigations of the Purchaser in connection with the Assets.

10 LIMITATION OF LIABILITY

10.1.1. The Vendor is not liable to the Purchaser for any liability arising from or relating to any settlement, representation, warranty, promise, undertaking or agreement in connection with the Assets unless the same is specified in this Agreement.

10.1.2. To the fullest extent permitted by law, the Vendor shall under no circumstances be liable in any way whatsoever to the Purchaser, nor shall the Purchaser have any remedy, in respect of any claim for any form of damages, losses, costs, injury or harm sustained or incurred in consequence of or resulting directly or indirectly out of the supply, performance or the use of the Assets.

10.1.3. The terms and conditions of this Agreement which exclude or limit the liability or the Vendor shall apply only to the extent permitted by law. Provisions of the *Trade Practice Act 1974 (Cth)* (as amended), and other statutes from time to time in force in Australia may apply to warranties or impose obligations upon the Vendor which cannot be excluded, restricted or modified or cannot be excluded, restricted or modified except to a limited extent. This Agreement shall be read and construed subject to any such statutory provisions.

10.1.4. The Purchaser acknowledges that no warranties with respect to this Agreement, the Assets, are given by the firm SLF Lawyers or their employees, agents or representatives. The Purchaser further acknowledges that any conditions, representations or terms implied by law which cannot be excluded by law are given by the Vendor only.

10.1.5. This clause does not merge on completion.

11 AS IS WHERE IS

11.1.1. The Purchaser acknowledges and accepts that the Goods or the Assets are purchased on the basis that they are on an As Is - Where Is basis.

- 11.1.2. Notwithstanding the provisions of clause 11.1.1, the Vendor shall provide free of cost the machinery and labour required to load the Goods or the Assets as the case may be onto the transport trucks provided by the Purchaser on a no liability basis to the Purchaser. The Purchaser does hereby indemnify the Vendor in respect of all claims that may arise or be incurred as a result of the loading by the Vendor onto the Purchasers trucks and the Purchaser must ensure that it has all necessary insurances in place to protect it in respect of this loading by the Vendor.
- 11.1.3. The Purchaser must arrange transportation from an Authorised Waste Transporter of trackable waste in accordance with the *Environmental Protection Regulation 2008*.
- 11.1.4. The Purchaser must complete a Waste Transport Certificate and lodge it with the Department of Environment and Heritage Protection ("DEHP") within three days of the Auction Date.
- 11.1.5. All Goods and or the Assets must be removed from the Auction Venue within fourteen (14) days from:
- (a) the date of approval from the DEHP, or
 - (b) from the Auction Date;
- whichever is the earlier.
- Nothing in this clause prevents the Parties from agreeing to any other timeframe as may be agreed between the Seller and the Purchaser.
- 11.1.6. The Sellers will not be held responsible for any damage or loss that may take place after the fall of the hammer to the Goods or the Assets. The Goods and or the Assets as the case may be become the responsibility of the Purchaser from that time.

12 ENTRY TO PREMISES

The entry onto the Premises by the Purchaser its employees, officers, associates servants or agents is at the sole risk of the Purchaser. The Purchaser hereby indemnifies and saves harmless the Vendor against all and any claims, damages or injuries that may be suffered or sustained by the Purchaser its employees, officers, associates servants or agents while on the Premises or undertaking the loading of the Goods or the Assets.

SCHEDULE

ITEM NO	DETAILS	DESCRIPTION
1.	Date of the Agreement	Theday of September 2017
2.	Name and Address of the Purchaser.
3.	Details of the Goods X 40' Containers described as:
4.	Purchase Price	\$.....
5.	Buyers Premium	11% of the Purchase Price
6.	Total Price payable by Purchaser to Vendors Agent	\$.....

Duplicate

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane
NUMBER: 5145/17

Applicant: PORTGATE LOGISTICS LP (ABN 38 082 014 774)
AND
First Respondent: S.C.F. GROUP PTY LTD (ACN 065 732 078)
AND
Second Respondent: ACE RECYCLING (QLD) PTY LTD (IN LIQUIDATION) (ACN 600 821 065)

ORDER

Before: Justice Applegarth
Date: 23 June 2017
Initiating document: Application filed 23 May 2017

BY CONSENT, THE ORDER OF THE COURT IS THAT:

- 1. Pursuant to s.10 of the *Civil Proceedings Act 2001 (Qld)*, or alternatively, the inherent jurisdiction of the Court, it is declared that:
 - (a) the Applicant has a valid lien pursuant to s. 3 of the *Storage Liens Act 1973 (Qld)* over the 85 shipping containers measuring approximately 40 feet in length that are owned by the First Respondent (as identified in Part 3 of the Form 1 Notice of Storage Lien referred to in the affidavit of Arthur Tzaneros dated 19 May 2017); and
 - (b) the lien referred to in subparagraph (a) secures repayment of all amounts claimed by the Applicant pursuant to s. 4 of the *Storage Liens Act 1973 (Qld)*.
- 2. There be no order as to costs.

Signed:  Deputy Registrar

FINAL ORDER

ORDER	Name:	Thomson Geer Lawyers
Filed on Behalf of the First Respondent	Address:	Level 16 Waterfront Place
Form 59, Version 1		1 Eagle Street
Uniform Civil Procedure Rules 1999		BRISBANE QLD 4000
Rule 661	Phone No:	(07) 3338 7500
	Fax No:	(07) 3338 7599

Legal/48767406_2

EXECUTED AS AN AGREEMENT

Company Purchaser

<p>SIGNED by the Purchaser pursuant to the provisions of the <i>Corporations Act</i> 2001 by its duly authorised Director:</p>]]]]	<p>..... Company Director</p>
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Individual Purchaser

<p>SIGNED by the Purchaser in the presence of:</p> <p>..... Witness</p> <p>..... Full name of Witness</p>]]]]]]]]	<p>..... Individual Purchaser</p>
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<p>SIGNED by the Vendor pursuant to the provisions of the <i>Corporations Act</i> 2001 by its duly authorised Agent Steven Tzaneros:</p>]]]]]]]	<p>..... Vendors Authorised Agent</p>
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