

ASSET SALE AND PURCHASE AGREEMENT

BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF GHANA

Represented BY

DIVESTITURE IMPLEMENTATION COMMITTEE and

SUBRI INDUSTRIAL PLANTATION LIMITED

And

SOCFINAF S.A.

**(For the Sale and Purchase of the Assets of Subri Industrial Plantation
Limited, Daboase, Western Region, Ghana)**

This ASSET SALE AND PURCHASE AGREEMENT (“this Agreement”) is made and entered into this 4 day of February, 2015

By and Amongst:

The GOVERNMENT OF THE REPUBLIC OF GHANA (GoG), represented by the DIVESTITURE IMPLEMENTATION COMMITTEE (“DIC”), a statutory body with headquarters at F35/5 Ring Road East, North Labone, Accra, Ghana acting for and on behalf of GoG;

And

SUBRI INDUSTRIAL PLANTATION LIMITED (hereinafter referred to as “SIPL”) of P. O. Box 848, Takoradi, with its primary offices located at Daboase in the Western Region of the Republic of Ghana all of the one part (hereinafter referred to as “Sellers”)

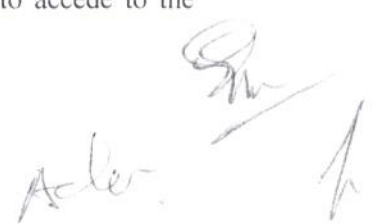
And

SOCFINAF S.A. of 4, Avenue Guillaume L-1650, Luxembourg (hereinafter referred to as the “Buyer”); and Plantations SOCFINAF Ghana Limited, (hereinafter referred to as “PSGL”) a subsidiary of the Buyer, of P. O. Box TD1429, Takoradi (all of the other part)

each of whom shall be referred to as a Party and all of whom shall be referred to as the Parties.

WHEREAS:

- A. DIC, pursuant to the Law, is the agency of GoG responsible for the implementation of GoG’s divestiture policies.
- B. Sellers have the right, power and authority to sell the assets of SIPL to the Buyer.
- C. SIPL has been on the list of public corporate and other bodies to be divested to the private sector in furtherance of GoG divestiture of State’s assets policy, and following due diligence on the assets of SIPL, DIC recommended to GoG to carry out this sale for the price stated, which recommendation has been officially approved in accordance with the Law.
- D. Sellers have agreed to sell and the Buyer has agreed to purchase the Asset on the terms and conditions set out below.
- E. It is understood by the Parties that Buyer is purchasing the Asset to develop it into a rubber and oil palm plantation and to provide local employment, among other things.
- F. DIC, on behalf of Sellers, acknowledges that a portion of the Sale Price in the amount of US\$5,000,000.00 (Five million US Dollars) has already been duly paid by Buyer and received by Sellers as of June 22, 2012.
- G. SIPL has obtained the approval of all of its shareholders, to the sale of the Asset.
- H. Pursuant to the offer of the Asset to the Buyer and the acceptance by the Buyer of the offer for sale of the Asset, the Buyer incorporated in Ghana PSGL to accede to the



rights, title and interest of the Buyer in the Asset and to develop the Premises into a rubber and oil palm plantation in accordance with the terms and conditions herein

NOW THEREFORE for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

I. DEFINITIONS AND INTERPRETATION

In this Agreement unless inconsistent with the context or otherwise specified the capitalized words and expressions herein shall have the following meanings:

- (a) **“Agreement”** means this agreement and any schedule attached to it
- (b) **“Asset”** means Subri Industrial Plantation Limited’s rights, title and interest in the Premises and all its tangible and intangible properties appurtenant thereto and held as at the date of the grant of Possession by the Seller to the Buyer.
- (c) **“Business Plan & Proposals”** means the business plan of Buyer that has been approved by the Sellers for the development of the premises into a rubber and oil palm plantation, which is attached hereto as Schedule 2 and made an integral part of this Agreement.
- (d) **“Completion”** means completion of the sale and purchase of the Asset in accordance with clause 4;
- (e) **“Designated Account”** means Sellers’ account identified in writing to Buyer into which Buyer shall pay the Purchase Price or any outstanding payments due to Sellers as and when due;
- (f) **“Forestry Commission”** means the Forestry Commission established under the Forestry Commission Act, 1999 (Act 571)
- (g) **“Globally Significant Biodiversity Area”** means any site identified nationally using globally standardised criteria and thresholds, that contributes significantly to the global persistence of biodiversity and representing the most important sites for biodiversity conservation worldwide.
- (h) **“GoG”** means the Government of the Republic of Ghana;
- (i) **“Law”** means the Divestiture of State Interests (Implementation) Act, 1993 (PNDCL 326);
- (j) **“Offer”** means the offer made to Buyer by Seller in the Offer Letter for the sale and purchase of the Asset
- (k) **“Offer Letter”** means the DIC letter dated 12 April 2012 whereby the Asset was offered to Buyer for purchase, attached hereto as Schedule 3, and made an integral part of this Agreement
- (l) **“Possession”** means vacant possession and ownership of the Asset, including the Premises, by Buyer



- (m) **“Premises”** means the real estate of SIPL that is sold as part of the Asset, being the land and the improvements on it be it a building or other designated structure, more particularly described in Schedule 1.
- (n) **“Purchase Price”** means the price for the Asset stated in Clause 3.1;
- (o) **“Sellers”** means GoG, represented by DIC and SIPL
- (p) **“Working Day”** means any week day from Monday to Friday, except a public holiday;

- 1.2 References to clauses and schedules are to the clauses and schedules of this Agreement;
- 1.3 Words importing gender include either gender;
- 1.4 References to persons include bodies corporate, firms and unincorporated associations;
- 1.5 The singular includes the plural and vice versa;
- 1.6 Clause headings are included for convenience only and do not affect its interpretation;
- 1.7 Each schedule attached to this Agreement shall be made an integral part of this Agreement.

2 SALE & PURCHASE OF THE ASSET

- 2.1 Upon and subject to the terms in this Agreement and for consideration given hereunder, Sellers agrees to sell, convey, and assign to Buyer and Buyer agrees to purchase and accept from Seller the Asset identified herein as more fully described herein in Schedule 1, free from any charges, liens, encumbrances and claims of any kind thereon.
- 2.2 Sellers sell and transfer to Buyer only the legal and equitable rights that SIPL possessed in the Asset as at the date of the Offer Letter.

3 PURCHASE PRICE AND PAYMENT

- 3.1 The Purchase Price for the Asset (“Purchase Price”) is US\$10,000,000.00 (Ten million United States dollars); payment of which is as follows:
 - (a) The Parties acknowledge and agree that US\$1,000,000.00 (One million United States Dollars) (the “Commitment Fee”) being 10% of the Purchase Price, was paid by Buyer by bankers draft and received by DIC on 9 May 2012.
 - (b) The Parties acknowledge and agree that US\$4,000,000.00 (Four million United States dollars) of the balance of the Purchase Price was paid by Buyer by bankers draft and received by DIC on or about June 22, 2012;
 - (c) US\$1,000,000.00 (One million United States dollars) of the remaining balance of the Purchase Price shall be paid within ten (10) working days of signing of this Agreement; and



- (d) US\$4,000,000.00 (Four million United States dollars) being the final payment shall be paid no later than twenty(20) Working Days after the transfer of the Asset to the Buyer as stipulated in Clause 4.

3.2 Buyer shall pay any outstanding portion of the Purchase Price as and when due directly into the Designated Account. Payment shall be completed upon confirmation by the bank of receipt of the payment.

4. COMPLETION

4.1 This Agreement shall be completed on the date that it is signed by all Parties (the "Effective Date").

4.2 Completion shall take place at the offices of the DIC at such time and date as shall be mutually agreed between DIC and Buyer.

4.3 Completion process

(a) Sellers' Completion Documents

On or before Completion, Sellers shall execute if applicable, and deliver to Buyer the following:

- i. Transfer Deed of all the Sellers rights title and interest in the Asset to PSGS; and
- ii. Bill of Sale.
- iii. Shareholders resolution of the shareholders of SIPL authorizing the sale of the Asset

(b) Buyer's Completion Documents

- i. Buyer's Resolutions evidencing that Buyer has the requisite power and authority to enter into and perform this Agreement and execute Sellers' Completion Documents to be signed by it.

5. POSSESSION

The Asset, including all the Premises, shall be delivered to Buyer upon Completion, it being acknowledged by the Parties that Sellers have granted right of entry to Buyer since December 2012 and Buyer has since been in possession of the Asset and has made improvements to the Asset.

6. POST COMPLETION MATTERS

The Parties agree that the following activities will extend beyond Completion and will be completed after Completion:

6.1 Gmelina plantation

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- (a) The parties recognize and agree that subject to Forestry Commission rules and regulations, the gmelina plantation on the Premises shall only be harvested by a licensed logger appointed by the Forestry Commission
- (b) The Parties agree that the proceeds from any harvested gmelina trees from the plantation shall be equitably shared and apportioned as follows:
 - i. Forestry Commission - 10%
 - ii. Royalty - 06%
 - iii. Buyer - 20%
 - iv. Seller - 49%
 - v. Logger - 15%
- (c) Upon receipt of the proceeds by the Forestry Commission from the Logger, the Forestry Commission shall pay the amount due to each of the beneficiaries listed in clause 6.1(b) above not later than fifteen days after the end of each month. The amounts shall be paid directly into accounts designated by each beneficiary for that purpose.

6.2 Seller's obligation

Delivery of Possession

The Parties acknowledge and agree that Sellers granted right of entry to the Premises to PSGL in December 2012 and PSGL currently has vacant and unencumbered possession of the Asset subject to any tenancies and other rights of residual ownership and occupation in existence at the date of grant of Possession.

6.3 Buyer's obligation

- (a) PSGL shall be Buyer's representative in Ghana and shall oversee the development of the Premises in accordance with the Business Plan.

PSGL shall be the main contact of Seller prior to and after the signing and Completion of this Agreement

7. WARRANTIES, REPRESENTATIONS AND ACKNOWLEDGMENTS

7.1 Sellers warranties, representations and acknowledgments

Sellers warrant and represent as follows:

- (a) Sellers have full power and authority to enter into and perform this Agreement in accordance with its terms.
- (b) The individuals executing this Agreement on behalf of Sellers are authorized to do so and, upon execution hereof, this Agreement shall be binding upon and enforceable against Sellers.
- (c) Sellers have no actual knowledge of any impending lawsuits with respect to the Asset.

Act

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- (d) Sellers covenant and agree that until the Completion they shall not:
- i. sell, convey, assign, lease, or otherwise transfer all or any part of the Asset, or voluntarily encumber the Asset or any part thereof; and
 - ii. materially alter the physical condition of the Premises.
- (e) The Premises is sold subject to all laws and policies of the Republic of Ghana including in particular, The Concessions Act 1962 (Act 124); The Forest Ordinance (Cap 157) of 1927, The Forestry Commission Act, The Forest and Wildlife Policy, 1994, the Environmental Protection Agency Act and all other Legislative and Executive Instruments relating to the protection of forest lands and the environment and also the development of forest resources.

7.2 Buyer's warranties, representations and acknowledgments

Buyer warrants and represents as follows:

- (a) Buyer has full power and authority to enter into and perform this Agreement in accordance with its terms; and
- (b) The individual executing this Agreement on behalf of Buyer is authorized to do so, and upon execution hereof, this Agreement shall be binding upon and enforceable against Buyer.

8. UNDERTAKINGS

8.1 Sellers' undertakings

- (a) Sellers undertake that all debts, claims, liabilities and obligations of any kind of SIPL in connection with the Premises incurred or arising before the grant of Possession are paid, satisfied and discharged, and further undertake to be solely liable to pay any such debts, claims, liabilities, compensation and obligations of SIPL of any kind that may arise after Completion.
- (b) Sellers shall keep Buyer indemnified against and held harmless from all actions, proceedings, costs, expenses, loss and damage whatsoever arising out of or in connection with any failure by Sellers to comply with their undertakings under Clause 7.1.

8.2 Buyer's undertakings

Buyer undertakes to Sellers that upon taking possession of the Asset it shall at all times:

- (a) observe, perform and discharge the covenants, terms, agreements, conditions and provisions on the part of SIPL as tenant, lessee or licensee to be observed and performed in relation to the Premises and other liabilities and obligations on the part of SIPL as tenant, lessee or licensee in relation to the Asset falling due after the grant of vacant possession as if such lease or leases had actually been assigned to Buyer);



- (b) indemnify and keep Sellers indemnified against and hold harmless Sellers and SIPL from all actions, proceedings, costs, expenses, loss and damage whatsoever arising out of or in connection with any failure by Buyer to comply with its obligations under this Agreement or caused by or arising from the use of the Asset after grant of vacant possession by Sellers to Buyer;
- (c) adhere strictly to and implement its Business Plan (as amended) including the proposed programme for the rehabilitation, refurbishment and development of the divested SIPL as contained in Buyer's proposal to Sellers as attached to the Offer Letter and attached hereto as Schedule 2;
- (d) ensure that it shall use the Asset only in accordance with the proposals and Business Plan and all relevant laws of Ghana, specifically that it shall use the Asset in accordance with lawful directions given by the Forestry Commission from time to time as to the use of the Asset.

9 EXCLUSION OF WARRANTIES

- 9.1 Buyer acknowledges that it has not entered into this Agreement upon reliance on any representation or warranty (whether of fact or opinion or otherwise) relating to the subject matter of this Agreement (and, without limitation, in reliance upon any information, warranty, statement or silence on the part of Sellers and SIPL or any officer, employee, agent or adviser of Sellers or SIPL, and unless required by statute, all representations, warranties and conditions, express or implied, statutory or otherwise, in respect of the Premises are expressly excluded.
- 9.2 Buyer further acknowledges that it enters this Agreement in full knowledge of the legal status, rights, limitations and obligations of Sellers in relation to the sale of the Asset.

10. ANCILLARY PROVISIONS

10.1 Right of re-entry

Sellers reserves the right to re-enter the Premises or repossess any part of the Asset or abrogate any part of this Agreement if it becomes evident that Buyer is unable to or has defaulted on or is in breach of any of the terms and conditions of this Agreement including payment terms, adherence to the scheduled Work Programme and to the Business Plan, including the proposed investments in the Business Plan, employment targets and environmental plans.

- 10.2 The right of re-entry as provided herein shall subject to clause 11.16 and shall not be enforceable, by action or otherwise, until

(a) the Seller serves on the Buyer a notice:

- (i) specifying the particular breach complained of;
- (ii) requiring the Buyer to remedy the breach,

(b) the Buyer has knowledge of the fact that such notice has been served; and



(c) the Buyer fails, within a reasonable time thereafter, to remedy the breach.

10.3 Time is of the essence

Time is of the essence of this Agreement.

10.4 Remedies

- (a) If Buyer shall be in breach of this Agreement or refuse or fail to purchase the Asset as contemplated herein, Sellers shall be entitled to retain the Commitment Fee as liquidated damages or seek specific performance, at its sole discretion and be entitled to all their common law rights.
- (b) If Sellers shall be in breach of this Agreement or be unable to convey title to the Premises to Buyer at Completion in accordance with the requirements of this Agreement, Buyer shall be entitled to all its common law rights.
- (c) The remedies provided in this Agreement are cumulative and not exclusive of any other remedies that may be provided by law.

10.5 Waiver

- (a) No delay or failure by either party to exercise any powers, rights or remedies under this Agreement shall operate as a waiver of same, nor shall any single or partial exercise of any such powers, rights or remedies preclude any other or further exercise of them.
- (b) No waiver by either party of any breach by the other party of any provision of this Agreement shall be deemed to be a waiver of any subsequent breach of that or any other provision of this Agreement.

10.6 Severability

If any part of this Agreement is found by any Court or other competent authority to be invalid, unlawful or unenforceable then such part shall be severed from the remainder of this Agreement and the Agreement shall continue to be valid and enforceable to the fullest extent permitted by law.

10.7 Costs and Expenses

- (a) Each Party shall pay its own costs and expenses incurred in the preparation, execution and carrying into effect of this Agreement.
- (b) All applicable stamp or transfer duties and registration fees which arise as a result of or in consequence of this Agreement shall be payable by Buyer.

10.8 Entire agreement

This Agreement constitutes the entire understanding between the Parties in relation to its subject matter.

10.9 Amendment



Except as otherwise permitted under this Agreement, no amendment or modification of its terms and conditions shall be effective unless it is in writing and signed by or on behalf of all Parties.

10.10 Announcements

No announcement or circular in connection with this Agreement or any matter arising hereunder shall be made or issued by or on behalf of Buyer without the prior written consent of DIC.

10.11 Non-merger

Notwithstanding Completion, this Agreement shall remain in full force and effect as regards any of its unperformed or unimplemented provisions including, without limitation, all guarantees, warranties and undertakings.

10.12 Counterparts

- (a) This Agreement may be executed in any one or more counterparts all of which when taken together constitute one and the same Agreement. A signed counterpart is as binding as an original.
- (b) This Agreement shall be immediately binding and effective when each of the Parties has unconditionally executed either this Agreement or any counterpart hereof.

10.13 Notices

- (a) Any notice required or permitted under the terms of this Agreement shall unless otherwise agreed by the Parties in writing and shall be sufficiently served if delivered by hand or sent by registered mail, telex or facsimile to the respective Parties as follows:

i. Sellers:

Divestiture Implementation Committee
F35/5 Ring Road East (North Labone)
P.O. Box C102
Cantonments
Accra, Ghana

Attention: the Executive Secretary

Telephone: +233 (302) 773126
Email: dic@dic.com.gh

ii. Buyer:

The Managing Director
Plantations SOCFINAF Ghana Ltd
P. O. Box TD1429
Takoradi

Attention: George Quarteng-Mensah



Telephone:+233 (543)-168941
Email: socfinaf.gh@gmail.com

or to such other address or facsimile number as may from time to time by notice be designated by any Party.

- (b) Notices shall be in the English language and shall be deemed, in the absence of proof to the contrary, to have been received and given:
 - i. If delivered by hand or registered mail, at the time of delivery;or
 - ii. If delivered by facsimile, at the time of transmission if within normal business hours of the addressee and, if not, at 9:00 hours local time on the next following Working Day.

10.14 Governing law

This Agreement shall be governed by and be construed in all respects in accordance with the laws of the Republic of Ghana.

10.15 Dispute Resolution

- i. The Parties shall attempt first to settle amicably any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination. Where the parties cannot reach amicable settlement within sixty Working Days after the dispute first arose, it shall be referred to and finally resolved by arbitration under the LCIA-MIAC Arbitration Rules, which Rules are deemed to be incorporated by reference into this clause.
- ii. The number of arbitrators shall be three.
- iii. The seat, or legal place, of arbitration shall be Mauritius.
- iv. The language to be used in the arbitration shall be English.

11. MISCELLANEOUS

- 11.1 This Agreement shall be binding upon and inure to the benefit of the personal and legal representatives, successors and assigns of the respective parties.
- 11.2 This Agreement including all Schedules attached hereto constitutes the entire contract between the Parties.



11.3 This Agreement has been prepared by Sellers and reviewed by Buyer and its professional advisers. Sellers and Buyer and their respective advisors agree that this Agreement is the product of all of their efforts, that it expresses their agreement and that it should not be interpreted in favor or against either Sellers or Buyer. The parties further agree that this Agreement will be construed to effectuate the normal and reasonable expectations of a sophisticated Sellers and Buyer in the type of transaction covered by this Agreement.

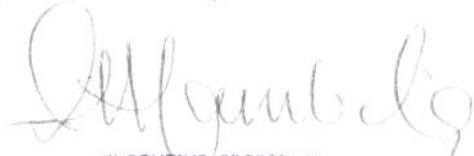
11.4 In the event the time for performance of any obligation hereunder expires on a Saturday, Sunday, or legal holiday, the time for performance shall be extended to the next day which is not a Saturday, Sunday or legal holiday.

12. AS-IS

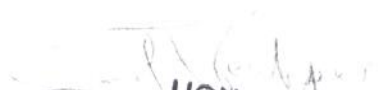
Sellers shall deliver the Premises to Buyer "where as" and in "as-is" condition.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first set forth above.

Signed for and on behalf of DIC by
Asakkua Agambila, Executive
Secretary of the DIC

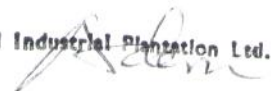

**EXECUTIVE SECRETARY
DIVESTITURE IMPLEMENTATION COMMITTEE
ACCRA**

Signed for and on behalf of the DIC
by the Chairman of the DIC


**HON. SETH E. TERKPER
MINISTRY OF FINANCE
P. O. BOX MB 40
ACCRA**

Signed for and on behalf of the
SIPL by the Managing Director
Nicholas Adorsu

Sibir Industrial Plantation Ltd.



In the presence of:

Managing Director

Signature: 

Name: *Richard Nana Akuffo*

Address: *Investment Implementation
Committee Box C102
Centenary - Accra*
Designation: *Head (F&A) Dept*



Signed for and on behalf of Buyer, by
Managing Director of SOCFINAFs.a



L. J. S. Boeelt

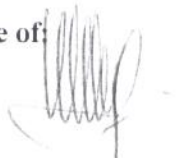
Signed for and on behalf of
Plantations SOCFINAF Ghana Ltd by
Managing Director of George
Quarteng-Mensah



PLANTATIONS SOCFINAF
GHANA LIMITED

In the presence of:

Signature:



Name:

George Quarteng-Mensah, J.P.M.

Address:

26 New Accra Road, New East Legon

Designation:

Director



SCHEDULE 1

LEGAL DESCRIPTION OF THE PREMISES

ALL THAT LANDED PROPERTY AND PIECES OR PARCELS OF LAND CONTAINING THE LEGAL INTERESTS OF THE SUBRI INDUSTRIAL PLANTATION LIMITED DABOASE IN THE WESTERN REGION OF THE REPUBLIC OF GHANA AND COMPRISING OF ALL LANDS COVERED BY E.I.7 of 1990, INDENTURE NO.WR.800/95 IN RESPECT OF LAND IN THE MANSO AREA AND INDENTURE NO. WR.453/91 IN RESPECT OF LAND LOCATED IN THE DABOASE AREA. (INDENTURE AND E.I.7 ATTACHED)

Two handwritten signatures in black ink, one on the left and one on the right, appearing to be initials or names.

SCHEDULE II

BUSINESS PLAN & PROPOSALS OF SOCFINAF

(Attached herewith and marked as Appendix II)