

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

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

TIMBERCORP SECURITIES LIMITED (IN LIQUIDATION) (ACN 092 311 469)
IN ITS CAPACITY AS RESPONSIBLE ENTITY OF THE 2004 TIMBERCORP TABLE GRAPE
PROJECT (ARSN 108 648 086) AND THE 2005 TIMBERCORP TABLE GRAPE PROJECT
(ARSN 113 512 236) AND ORS ACCORDING TO THE SCHEDULE

CERTIFICATE IDENTIFYING EXHIBIT

Date of document: 22 December 2010

Filed on behalf of: The Plaintiffs

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This is the exhibit marked '**PWK12**' now produced and shown to PAUL WILLIAM KIRK at the time
of swearing his affidavit on 22 December 2010.

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 'PWK12'

**Copy of sample licence
agreement between TSL and each
participant Grower in the 2005
Table Grape Projects**

COPY

Licence Agreement

Timbercorp Securities Limited

**Each several Participant Grower
named in Schedule to this
Agreement**

**Orchard Investments
Management Limited**

Timbercorp Limited

2005 Timbercorp Table Grape Project

NM TAYLOR
LAWYERS

Level 7
350 Collins Street
MELBOURNE VIC 3000

Telephone: 9600 3525
Facsimile: 9600 3527

Table of Contents

DETAILS OF THIS LICENCE AGREEMENT	1
1. DEFINITIONS AND INTERPRETATION	2
1.1 DEFINITIONS	2
1.2 INTERPRETATION	6
1.3 HEADINGS	7
1.4 GROWER AND AGREEMENT	7
1.5 DELEGATION	7
1.6 CAPACITY OF TIMBERCORP SECURITIES	7
1.7 LICENCE AGREEMENT IS NOT SCHEME PROPERTY	7
2. THE TABLE GRAPE VINEYARD	7
2.1 AGREEMENT BY TIMBERCORP SECURITIES AS TO THE GRAPELOTS	7
2.2 ACKNOWLEDGMENTS BY THE PARTICIPANT GROWER	8
3. LICENCES	9
3.1 GRANT OF LICENCE	9
3.2 WATER LICENCES	9
4. TERM OF AGREEMENT	10
4.1 TERM OF AGREEMENT	10
4.2 GROWER'S OBLIGATIONS UPON TERMINATION	10
5. TIMBERCORP SECURITIES' OBLIGATIONS AND RIGHTS	11
5.1 OBLIGATIONS	11
5.2 RIGHTS	11
6. CONDITIONS PRECEDENT	11
6.1 CONDITIONS PRECEDENT	11
6.2 REASONABLE ENDEAVOURS	12
7. LICENCE & ROYALTY FEES	12
7.1 LICENCE FEES	12
7.2 DISCONTINUANCE OR SUSPENSION OF CPI	12
7.3 ROYALTY FEES	12
7.4 CAPACITY	13
8. GROWER'S OBLIGATIONS	13
8.1 PERMITTED USE	13
8.2 GROWER'S DUTIES	13
8.3 DELEGATION BY THE PARTICIPANT GROWER	14
8.4 DELEGATION DOES NOT LIMIT GROWER'S LIABILITY	14
9. RIGHTS OF OIML AND TIMBERCORP	14
9.1 RIGHTS OF OIML	14
9.2 RIGHTS OF TIMBERCORP	14
10. TERMINATION OF AGREEMENT	14
10.1 TERMINATION OF AGREEMENT BY THE PARTICIPANT GROWER	14
10.2 TERMINATION OF AGREEMENT BY TIMBERCORP SECURITIES	15
10.3 DAMAGE TO GRAPELOTS	15
10.4 REDUCTION OF GRAPELOTS	15
10.5 EFFECT OF TERMINATION	16
10.6 TERMINATION OF SUB-LEASE	16
11. EXCUSES FOR NON PERFORMANCE	17
11.1 FORCE MAJEURE	17
11.2 LACK OR UNAVAILABILITY OF FUNDS	17

11.3	LIABILITY.....	17
11.4	DEFINITION OF FORCE MAJEURE.....	17
12.	LICENCE FEES AND EXPENSES.....	18
12.1	FAILURE TO PAY.....	18
12.2	TIMBERCORP SECURITIES MAY PAY ON BEHALF OF DEFAULTING GROWER.....	18
12.3	DEFAULTING PARTICIPANT GROWER'S INTEREST MAY BE DEALT WITH UNDER THE CONSTITUTION.....	18
13.	ASSIGNMENT.....	18
13.1	ASSIGNMENT BY TIMBERCORP SECURITIES.....	18
13.2	AGREEMENTS WITH CONTRACTORS.....	19
13.3	TIMBERCORP SECURITIES OR GRANTEE TO PAY FOR DEED.....	19
13.4	ASSIGNMENT BY THE PARTICIPANT GROWER.....	19
13.5	RELEASE OF LIABILITY OF GROWER.....	19
14.	GOODS AND SERVICES TAX.....	19
15.	LIMITATION OF LIABILITY OF GROWER.....	20
16.	NOTICE.....	21
16.1	FORM OF NOTICE.....	21
16.2	RECEIPT OF NOTICE.....	21
17.	PROPER LAW.....	21
18.	AMENDMENTS.....	21
19.	DISPUTE RESOLUTION.....	22
19.1	REFERRAL BY THE PARTICIPANT GROWER.....	22
19.2	TIMBERCORP SECURITIES.....	22
20.	CONSTITUTION.....	23
21.	STATUTORY PROVISIONS.....	23
21.1	GENERAL.....	23
21.2	AGRICULTURAL TENANCIES ACT (NSW).....	23
22.	PLANT BREEDERS' RIGHTS.....	23
22.1	THE LICENCE GRANT.....	23
22.2	MARKETING.....	24
22.3	QUALITY ASSURANCE.....	24
22.4	INTELLECTUAL PROPERTY RIGHTS.....	25
22.5	LABELLING AND PACKAGING.....	25
22.6	SALES AGENTS.....	25
22.7	BOOKS AND RECORDS.....	26
22.8	INFRINGEMENT.....	26
22.9	FURTHER ASSURANCES.....	27
22.10	USE OF NAMES.....	27
22.11	UNDERTAKINGS OF THE PARTICIPANT GROWER.....	27
22.12	DISPOSITION OF INVENTORY AND FORFEITURE OF OTHER RIGHTS.....	27
22.13	WARRANTY AND ACKNOWLEDGMENTS.....	28
22.14	FURTHER RESTRICTIONS.....	28
22.15	EXPIRY OF TERM.....	29
22.16	DEFINITIONS.....	29
23.	INSURANCE.....	30
24.	FURTHER ASSURANCES.....	30
25.	SEVERABILITY.....	30

SCHEDULE.....	1
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Details of this Licence Agreement

Date of the Agreement:

In respect of each several Participant Grower means the date on which Timbercorp Securities has accepted the Participant Grower's application for Grapelots being offered under the PDS as specified in the Schedule.

Parties to the Agreement:

1. **TIMBERCORP SECURITIES LIMITED**
ACN 092 311 469
Level 8, 461 Bourke Street
Melbourne, Victoria, 3000
(Timbercorp Securities)
2. The Participant Grower named in the Schedule to this Agreement in relation to Grapelots allocated to the Participant Grower.
(Participant Grower)
3. **Orchard Investments Management Limited**
ACN 105 684 231
Level 5, 605 St Kilda Road
MELBOURNE VIC 3004

in its capacity as responsible entity of the Timbercorp Orchard Trust (ARSN 106 557 297)
(OIML)
4. **TIMBERCORP LIMITED**
ACN 055 185 067
Level 8, 461 Bourke Street
Melbourne, Victoria, 3000
(Timbercorp)

Background to the Agreement

- A. Timbercorp Securities has established a project for the management of a table grape vineyard, the cultivation of table grape vines and harvesting and processing of table grapes for commercial gain.
- B. Timbercorp Securities will sub-lease from Timbercorp the Land and the Table Grape Vines, the Required Water Licences and the Capital Works and any other capital works that may be established on the Land under the Sub-lease. Timbercorp's rights to use

the Land and the Table Grape Vines including the plant breeders' rights, the Required Water Licences and the Capital Works are granted to it by OIML under the Lease.

- C. Under the Sub-lease Timbercorp also grants Timbercorp Securities a sub-licence of the necessary plant breeders' rights to plant and grow the Table Grape Vines on the Grapelots and to process and sell the Licensed Fruit. The plant breeders' rights are owned by Andriske who has granted a licence of those rights to OIML under the Andriske Exclusive Licence Agreement and the Andriske Non-Exclusive Licence Agreement, as defined in clause 22.
- D. Timbercorp Securities has agreed to grant a licence to the Participant Grower to use the Grapelots for the cultivation of Table Grape Vines and the harvesting and processing of Table Grapes, subject to the terms and conditions of this Agreement.
- E. OIML and Timbercorp have entered into this Licence Agreement for the purpose of the agreements in paragraph 10.6.

The Parties Agree as Follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, unless the context otherwise requires or implies, the following expressions have the meanings set opposite each of them:

2005 Bella Vista Land:	means those parts of the land in an unregistered plan of proposed subdivision of Lot 2 in DP 1067588 (a copy of which is attached to the Sub-lease) on which a new vineyard of 600 acres will be established by the Land Owner on or before 30 June 2005;
Administrator:	has the meaning given to it in section 9 of the Corporations Act;
ASIC:	the Australian Securities and Investments Commission;
Authority:	includes any National, State, municipal or other government, statutory or government approved authority or body, which has authority or jurisdiction over the Capital Works, the Required Water Licences or the Land or any part of them or anything about them;
Best Viticultural Practice:	sound viticultural and environmental practices and industry practices that have been adopted in relation to similar vineyards;
Business Day:	any other day other than a Saturday, Sunday or a public holiday on which trading banks are open for general banking business with the public in Melbourne;
Capital Works:	(a) the infrastructure and capital works on the Vineyard as at the date of this Agreement; and (b) the infrastructure and capital works that Timbercorp Securities has agreed to procure OIML to carry out, and any other works that Timbercorp Securities, Timbercorp or OIML may be required in future to carry out, at their cost respectively, on the Vineyard;

Commencement Date:	in respect of each Participant Grower, the date of this Agreement;
Constitution:	the deed entered into by the Responsible Entity and all the Participant Growers, which governs the Project;
Controller:	has the meaning given to it in section 9 of the Corporations Act;
Corporations Act:	the <i>Corporations Act 2001</i> of the Commonwealth of Australia and the Corporations Regulations;
CPI:	the "Weighted Average of Eight Capital Cities All Groups Consumer Price Index" as currently maintained and published by the Australian Bureau of Statistics or should it be discontinued or suspended such other index as determined in accordance with clause 7.2;
Encumbrance:	any mortgage, pledge, charge, lien or assignment by way of security (excluding any such thing arising by operation of law);
Financial Year:	a period of 12 months ending on 30 June in any year and includes the period commencing on the date of this Agreement and ending on 30 June 2005 and the period ending on the termination of this Agreement and commencing on the preceding 1 July;
Force Majeure:	has the meaning given to it in clause 11.4;
Grapelot:	an interest in the Project held by the Participant Grower, including its interest in, and rights in relation to, each separate identifiable area of the Land comprising approximately 0.25 acres on which a Participant Grower will conduct the Grapelot Operations and its interest in, and rights in relation to the Table Grape Vines, the Capital Works and the Required Water Licences attributed to the Project;
Grapelot Management Agreement:	the agreement of that name for the management of the Grapelot Operations conducted on the Grapelots between Timbercorp Securities and the Participant Grower;
Grapelot Operations:	the growing and cultivation of Table Grapes on, and management of, the Grapelots for the production of Product for commercial gain;
GST:	a tax, levy, duty, charge or deduction, together with any related additional tax, interest, penalty, fine or other charge, imposed by or under a GST Law;
GST Law:	the same as in the A New Tax System (Goods and Services Tax) Act 1999 (as amended);
GST Rate:	the rate of GST under the GST Law;
Indexed:	the amount adjusted on the date on which a relevant payment is due or the date upon which the relevant calculation is made, as the case requires (the Adjustment Date) in accordance with the following formula:

$$A_t = A_0 \times \text{CPI}_t / \text{CPI}_0$$

where:

A_t = the amount on the Adjustment Date;

A_0 = the amount being adjusted;

CPI_t = the highest CPI for a full calendar quarter published between the date CPI_0 is published and the Adjustment Date, including CPI_0 ;

CPI_0 = the CPI for a full calendar quarter most recently published before the date from which the adjustment is being made (**the Base Date**), provided that if no Base Date is specified, " CPI_0 " will be the CPI published for the full calendar quarter that ended 12 months before the full calendar quarter in respect of which the CPI has most recently been published before the Adjustment Date;

Irrigation Infrastructure:

means the pipeline (including the mainline), dam, pump and other equipment which are installed and owned, or are to be installed and owned by the Land Owner or to which the Land Owner has rights under and which already services or will be able to service adequately that part of the Vineyard situated on the Land by enabling and facilitating the irrigation and delivery of the necessary water to the Grapelots;

Land:

the land on which the Project will be conducted as described in the PDS or such other land that is used for the Project;

Land Owner:

the registered proprietor or the person entitled to become the registered proprietor for the time being of the Land, which at the date of this Agreement is Orchard Investments Management Limited (ACN 105 684 231) as responsible entity of the Timbercorp Orchard Trust;

Lease:

the Lease made between Timbercorp, as lessee, and OIML, as lessor, whereby OIML has granted Timbercorp a lease of the Land;

Licence Fees:

the licence fees payable under clause 7 of this Agreement;

Licensed Fruit:

all Table Grapes and Product derived from the Licensed Vines grown on the Participant Grower's Grapelots or the Vineyard, whichever is applicable;

Licensed Vines:

all Table Grape Vines which are licensed under this Agreement;

OIML:

Orchard Investments Management Limited (ACN 105 684 231) in its capacity as responsible entity of the Timbercorp Orchard Trust;

Participant Grower:

(a) a several person (or if more than one person, those persons jointly) who is named or otherwise described in the Schedule; and

(b) the term "**Early Grower**" refers to a Participant Grower whose application under the PDS is accepted on or

	before 30 June 2005; and
	(c) the term "Post 30 June Grower" refers to a Participant Grower whose application under the PDS is accepted on or after 1 July 2005 and before the offer period closes;
Participating Interest:	has the same meaning as in the Grapelot Management Agreement;
Part A Grapelot:	means that part of a Participating Grower's Grapelot that will be fully planted by 23 June 2005, representing no less than 60% of the Participating Grower's Grapelot;
PDS:	has the same meaning as in the Constitution;
Pre-Planting Capital Works:	the capital works described in clause 2.1(a)(i)-(vii) which have been, or will be, carried out on the Vineyard by the Land Owner;
Proceeds:	has the meaning given in the Grapelot Management Agreement;
Product:	Table Grapes produced in a saleable condition from the Participant Grower's Grapelots or the Vineyard, whichever is applicable;
Project:	the 2005 Timbercorp Table Grape Project promoted by Timbercorp Securities involving the management of a table grape vineyard, the cultivation and harvesting of table grape vines and the processing of table grapes for commercial gain;
Required Water Licences:	(a) the water licences that are, or will be, licensed to Timbercorp Securities under the Sub-lease and that are attributed to the Land as required from time to time and as specified in clause 3.2; and (b) that provide for a maximum licence entitlement specified in paragraph 3.2(a), as reduced by any variation in the maximum licence entitlement from time to time by the relevant water Authority restricting the amount or rate at which water may be taken, or the purpose for which it may be taken or prohibiting the taking of water or the purpose of its use;
Responsible Entity:	means the responsible entity of the Project from time to time;
Royalty Fees:	the royalty fees payable under clause 7 of this Agreement;
Shed Door Price:	(a) the sale price of the Licensed Fruit; less (b) any cost incurred in respect of the Licensed Fruit after the Licensed Fruit leaves the installation where the Licensed Fruit is packed, including costs such as freight, insurance, agents' fees, cold storage charges, import duty and AQIS (other than any amount or amounts payable to Sales Agents), except in the case of any sale of Licensed Fruit at an invoice price that is less than that which would have been charged to persons negotiating at arms' length, there will be substituted for the purpose of calculation of payments due under this Agreement.

	such invoice price (exclusive of GST) as would be charged in an arms' length transaction;
Shed Door Proceeds:	the gross price charged (exclusive of GST) for Licensed Fruit sold on an arms' length basis at the Shed Door Price;
Sub-lease:	the Sub-lease made between Timbercorp Securities, as sub-lessee, and Timbercorp, as sub-lessor, whereby Timbercorp Securities has been, or will be, granted a sub-lease of the Land;
Table Grapes:	the table grapes grown or growing on the Grapelots of the Participant Grower or the Vineyard, whichever is applicable and whether harvested or unharvested and any other products, rights, benefits or credits derived from the Table Grape Vines;
Table Grape Vines:	the table grape vines planted or to be planted on the Participant Grower's Grapelots or the Vineyard, whichever is applicable;
Term:	the term of this Agreement set out in clause 4.1;
Timbercorp:	Timbercorp Limited (ACN 055 185 067);
Timbercorp Securities:	Timbercorp Securities Limited (ACN 092 311 469);
Vineyard:	all of the Grapelots.

1.2 Interpretation

In this Agreement, unless expressed or implied to the contrary:

- (a) a reference to this or any other document includes a variation or replacement of it;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of it;
- (c) the singular includes the plural and vice versa;
- (d) if a word is defined, cognate words have corresponding definitions;
- (e) a reference to a person includes a firm, body corporate, an unincorporated association or an authority;
- (f) a reference to a person includes the person's legal personal representatives, successors, substitutes (including persons taking by novation) and permitted assigns and transferees;
- (g) a reference to a gender includes the other genders;
- (h) a reference to a clause, recital or schedule is to a clause, recital or schedule in or to this Agreement;
- (i) if a party comprises two or more persons, this Agreement binds them jointly and each of them severally unless a contrary intention is expressed in the Agreement;
- (j) if any of the persons comprising the Participant Grower is a trustee, this Agreement binds that person in its capacity as a trustee and personally; and
- (k) the word "include" or "includes" is to be read as if the expression "(but is not limited to)" immediately followed such word and the word "including" is to be

read as if the expression "**(but not limited to)**" immediately followed such word.

1.3 Headings

Headings are for convenience only and do not affect the interpretation of this Agreement.

1.4 Grower and Agreement

- (a) The term "**Participant Grower**" in this Agreement is a reference to the particular Participant Grower named in the Schedule to this Agreement in relation to the Grapelot.
- (b) Each set of "**Joint Venturers**", as defined in the Constitution, comprise a particular "**Participant Grower**" under this Agreement and any Project Documents.
- (c) The term "**Participant Growers**" in this Agreement is a reference to all several Participant Growers that hold Grapelots in the Project and according to the context, the term "**Participant Growers**" may also include the particular Participant Grower.
- (d) This Agreement is entered into in respect of Participant Growers' Grapelots referred to in the Schedule and, must be read as if it were a separate Agreement on the terms and conditions of this Agreement in respect of the Grapelots held by each Participant Grower in the Project.

1.5 Delegation

Timbercorp Securities is entitled to:

- (a) delegate any of its obligations under this Agreement to; and
- (b) exercise any of its rights under this Agreement through,

its employees, agents and contractors, but any delegation by Timbercorp Securities does not release Timbercorp Securities from liability under this Agreement.

1.6 Capacity of Timbercorp Securities

Timbercorp Securities enters into this Agreement in its personal capacity.

1.7 Licence Agreement is not Scheme Property

This Agreement does not form part of "scheme property", as defined in section 9 of the Corporations Act, of the Project.

2. THE TABLE GRAPE VINEYARD

2.1 Agreement by Timbercorp Securities as to the Grapelots

- (a) Timbercorp Securities agrees with the Participant Grower that it must procure OIML, at OIML's own cost, to establish the Grapelots on the Land in accordance with its obligations under the Lease and Best Viticultural Practice, and construct the necessary infrastructure and carry out the necessary capital works. Without limiting the generality of this paragraph 2.1(a), it must procure OIML to:

- (i) organise various soil surveys, including reconnaissance surveys, detailed soil surveys and contour plans;
 - (ii) prepare that part of the Land on which each Grapelot is located to ensure that the Table Grape Vines can grow satisfactorily subject to any Force Majeure;
 - (iii) acquire rights to or construct and install appropriate Irrigation Infrastructure and carry out the necessary irrigation works to ensure proper reticulation of water to the Table Grape Vines on each Grapelot;
 - (iv) carry out drainage work and other works to help prevent soil erosion on the Land on which the Grapelots are to be located;
 - (v) eradicate as far as reasonably possible any pests and competitive weeds which may affect the growth or yield of the Table Grape Vines on the Grapelots;
 - (vi) rip and mound vine rows;
 - (vii) construct posts and trellising;
(collectively, '*Pre-Planting Capital Works*')
(viii) ensure that it has available sufficient labour and equipment to enable planting of all the Vines as follows:
 - (A) as to Part A of the Grapelots by 23 June 2005, subject to planting taking place in appropriate climatic and horticultural conditions; and
 - (B) as to all other parts of the Grapelots on or before 31 July 2005 subject to planting taking place in appropriate climatic and horticultural conditions.
 - (ix) provide or undertake, as the case requires, such other capital works, services or things which, in the reasonable opinion of Timbercorp Securities, are incidental or ancillary to the effective establishment and provision of the works referred to in paragraphs 2.1(a)(i) to (vi) above.
- (b) The Participant Grower agrees and acknowledges that:
- (i) Timbercorp Securities will use its best endeavours to have OIML complete the Pre-Planting Capital Works in respect of the Grapelots in full by 30 April 2005;
 - (ii) Timbercorp Securities, Timbercorp and OIML will not be liable for any loss (including consequential loss) or damage (including all costs, expenses and other disbursements) incurred by the Participant Grower arising from any delay in establishing the Grapelots for any reason other than the negligence of Timbercorp Securities, Timbercorp and OIML or their respective officers, employees or agents.

2.2 Acknowledgments by the Participant Grower

- (a) The Participant Grower acknowledges that the Capital Works and Table Grape Vines on, and the Required Water Licences attaching to, the Participant Growers' Grapelots are, and will at all times remain, the property of OIML.

- (b) The Participant Grower agrees and acknowledges that Timbercorp Securities will not be liable for any loss or damage incurred by the Participant Grower arising out of or in connection with any act or omission of OIML or Timbercorp or their respective officers, directors, employees, agents or agents under this Agreement, whether or not constituting negligence, misconduct, dishonesty or fraud.

3. LICENCES

3.1 Grant of Licence

- (a) Timbercorp Securities grants to the Participant Grower and the Participant Grower takes from Timbercorp Securities a licence, effective from the Commencement Date, to use the Grapelots for the sole purpose of conducting the Grapelot Operations.
- (b) Timbercorp Securities represents and warrants that:
- (i) as at the date of execution of this Agreement, the Sub-lease is valid and subsisting;
 - (ii) Timbercorp Securities is entitled under the Sub-lease to grant the licence under this Agreement; and
 - (iii) any consents which may be required to the granting of the licence under this Agreement, have been obtained.

3.2 Water Licences

- (a) The required water licences for each Grapelot and the Land on which the Grapelots are located are:

	2005/06 (by 15 August 2005)	2006/07 (by 15 August 2006)	2007/08 (by 15 August 2007)	2008/09 ongoing (by 15 August 2008)
Vineyard: 2005 Bella Vista Land – ML/acre	1.8	3.0	3.0	3.0
Vineyard: 2005 Bella Vista Land – Total for 600 acres	1,080	1,800	1,800	1,800

- (b) Timbercorp Securities must:
- (i) do all things necessary to ensure that its rights under the Required Water Licences (secured to Timbercorp Securities under the Sub-lease) are fully exploited to maximise the use and enjoyment of them by all the Participant Growers in the Project;
 - (ii) take all steps to avoid interfering with the supply of water to the Grapelots and to avoid any actions that would prejudice the Participant Grower's rights under this Agreement; and

- (iii) ensure that the Required Water Licences are maintained during the term of the Project,

except where any Force Majeure or any action or requirement of any Authority prevents or inhibits Timbercorp Securities from doing so.

- (c) The Participant Grower acknowledges that:

- (i) OIML may purchase additional water licences and provide water to Timbercorp Securities to meet its obligations under the Grapelot Management Agreement, or to Timbercorp under the Lease; and
- (ii) such additional water licences will at all times remain the property of OIML.

4. TERM OF AGREEMENT

4.1 Term of Agreement

- (a) This Agreement will commence on the Commencement Date.
- (b) Subject to clauses 6, 10.1 to 10.3 and clauses 10.5 and 12, this Agreement will continue until the earlier of:
 - (i) the date which is the date of expiry or termination of the Sub-lease between Timbercorp Securities, Timbercorp and OIML;
 - (ii) termination of the Participating Grower's Participating Interest in the Project;
 - (iii) 29 June 2020; and
 - (iv) termination of the Project.

4.2 Grower's Obligations Upon Termination

- (a) At the end of this Agreement, the Participant Grower must return the Grapelots to Timbercorp Securities in good condition, but the Participant Grower is not required to remove the Table Grape Vines or restore the Grapelots to their original condition.
- (b) Any structures or plant and equipment of any description which belong to the Participating Grower must be removed from the Grapelots within 30 days after the end of this Agreement. If the Participating Grower does not comply with this requirement then, as between Timbercorp Securities and the Participant Grower, all structures and plant and equipment remaining on the Grapelots at the time will become the absolute property of Timbercorp Securities.
- (c) OIML and Timbercorp have no obligation to pay the Participant Grower any compensation at the end, or on termination, of this Agreement, including for any structures and plant and equipment remaining on the Grapelots that become the absolute property of Timbercorp Securities in accordance with paragraph 4.2(b).
- (d) Timbercorp Securities has no obligation to pay the Participant Grower any compensation at the end, or on termination, of this Agreement, including for any structures and plant and equipment remaining on the Grapelots that become the absolute property of Timbercorp Securities in accordance with paragraph 4.2(b).

5. TIMBERCORP SECURITIES' OBLIGATIONS AND RIGHTS

5.1 Obligations

Timbercorp Securities must:

- (a) maintain for the Term of the Project all local, State and Commonwealth government approvals, licences or permits required for the establishment, ownership and operation of all the Grapelots;
- (b) allow the Participant Grower to use the Grapelots without any interruption by Timbercorp Securities or any person claiming through or under Timbercorp Securities for the purpose of the Project operations;
- (c) not store or use any chemical, inflammable, noxious or dangerous substances in a manner which is likely to result in damage to vegetation, crops or water reserves on the Grapelots;
- (d) comply with the provisions of the Sub-lease;
- (e) not create any Encumbrances over the Land or the Grapelots or any part of the Land or the Grapelots ranking in priority to the interests of the Participant Growers under this Agreement other than the agreements referred to in clause 6.1 or where required to do so by an Authority;
- (f) take all necessary measures to ensure that any fires which may occur or be lit on any neighbouring land owned or occupied by Timbercorp Securities are properly controlled and supervised;
- (g) comply with all laws and regulations relating to the use and occupancy of any neighbouring land occupied by Timbercorp Securities; and
- (h) duly and punctually pay or cause to be paid all rates, taxes and other charges levied by any government or competent Authority in respect of all Grapelots.

5.2 Rights

Timbercorp Securities:

- (a) is entitled to full and free access for the purposes of carrying out its obligations and exercising its rights under this Agreement and the Grapelot Management Agreement with or without vehicles to the Grapelots along any road or track or any neighbouring land owned or occupied by Timbercorp Securities, OIML, Timbercorp or other Participant Growers which gives access to the Grapelots;
- (b) is entitled to full and free access with or without vehicles to the Grapelots for the purpose of accessing neighbouring land owned or occupied by Timbercorp Securities, OIML, Timbercorp or other Participant Growers;
- (c) may at its own expense erect and maintain a sign on the Grapelots detailing such matters as Timbercorp Securities reasonably considers appropriate.

6. CONDITIONS PRECEDENT

6.1 Conditions Precedent

This Agreement is subject to and conditional on:

- (a) the Participant Grower entering into the Grapelot Management Agreement with Timbercorp Securities; and

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- (b) Timbercorp Securities entering into a valid and subsisting Sub-lease with Timbercorp,

on or before the Commencement Date in respect of the Grapelots.

6.2 Reasonable Endeavours

Each of Timbercorp Securities and the Participant Grower will use all reasonable endeavours to ensure that the conditions specified in clause 6.1 are satisfied as soon as is reasonably practicable, and where required will keep each other fully informed as to progress towards satisfaction of the conditions.

7. LICENCE & ROYALTY FEES

7.1 Licence Fees

- (a) Where the Participant Grower is an **Early Grower**, the Participant Grower must pay to Timbercorp Securities the following licence fees per Grapelot:
- (i) for the period from the Commencement Date until 30 June 2005, nil;
 - (ii) for each of the financial years ending 30 June 2006 and 30 June 2007, \$454.55 payable on 31 October 2005 and 2006;
 - (iii) for the Financial Year ending 30 June 2008, an amount equal to \$1,194.54, payable on 31 October 2007; and
 - (iv) on 31 October of each subsequent Financial Year during the Term, an amount equal to the licence fees payable on the immediately preceding 31 October, Indexed.
- (b) Where the Participant Grower is a **Post 30 June Grower**, the Participant Grower must pay to Timbercorp Securities the following licence fees per Grapelot:
- (i) For the period from the Commencement Date until 30 June 2006, \$454.55 payable on or before the Commencement Date;
 - (ii) for each subsequent Financial Year of the Term, the same licence fees as is payable by an Early Grower, payable on 31 October of each Financial Year.

7.2 Discontinuance or suspension of CPI

- (a) If the Consumer Price Index (All Groups) Weighted Average of Eight Capital Cities is discontinued or suspended, such other index number that most closely reflects changes in the cost of living for the eight capital cities of Australia as is mutually agreed between Timbercorp Securities and the Participant Grower will replace it as the new "**CPI**" or, if they fail to agree, such alternative index number, as in the opinion of an expert appointed by the President for the time being of the Institute of Chartered Accountants (Victorian Division) at the request of either of them most closely reflects changes in the cost of living for the eight capital cities of Australia will replace it as the new "**CPI**".
- (b) The cost of any expert determination carried out under this clause 7.2 must be borne equally between Timbercorp Securities and the Participant Grower.

7.3 Royalty Fees

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- (a) Timbercorp Securities will be entitled to be paid in respect of all Participant Grower's Grapelots, 3% of each Participant Grower's Participating Interest in the Shed Door Proceeds of the Licensed Fruit. The fees payable under this clause 7.3 are payable out of and at the time any Proceeds are received by Timbercorp Securities as Responsible Entity.
 - (b) Termination of this Agreement will not relieve the Participant Grower from its obligation to pay any Royalty Fee then due and owing or Royalty Fee that may accrue subsequent to such cancellation upon the Participant Grower's disposition of existing inventory of Licensed Fruit pursuant to clause 22.

7.4 Capacity

All Licence Fees, Royalty Fees and other amounts paid to Timbercorp Securities under this Agreement are paid to Timbercorp Securities in its personal capacity.

8. GROWER'S OBLIGATIONS

8.1 Permitted use

The Participant Grower must only use the Grapelots solely for the purpose of the Grapelot Operations.

8.2 Grower's duties

The Participant Grower must, at its expense:

- (a) undertake the Grapelot Operations on the Grapelots;
- (b) use the Grapelots solely for the purpose of Grapelot Operations;
- (c) comply with Best Viticultural Practice;
- (d) comply with all laws and regulations relating to the use of the Grapelots;
- (e) take all reasonable steps to avoid interfering with the activities carried out on any neighbouring land by the owner or occupier of that land;
- (f) maintain the Grapelots in accordance with Best Viticultural Practice, including using soil management technique methods to reduce erosion and maintain soil quality;
- (g) permit Timbercorp Securities and its employees, agents and contractors to enter upon the Grapelots from time to time with or without equipment for the purposes of observing the state of the Grapelots;
- (h) permit Timbercorp Securities and its employees, agents and contractors to enter upon the Grapelots from time to time with or without equipment for the purpose of performing its obligations under this Agreement and the Grapelot Management Agreement;
- (i) permit OIML and its employees, agents and contractors to enter upon the Grapelots from time to time with or without equipment for the purpose of performing its obligations under this Agreement;
- (j) comply or procure compliance with the provisions of the Grapelot Management Agreement; and
- (k) give such rights of way and free access to the occupiers of any other Grapelots adjoining the Grapelots and their agents and contractors, as are

necessary for their proper use and enjoyment of their Grapelots, but such rights of access are limited to the unimpeded use of any existing access roads, pathways or fire-breaks on or about the Grapelots.

8.3 Delegation by the Participant Grower

The Participant Grower may, for the better performance of its obligations under this Agreement, engage any person as an agent and all rights granted and obligations imposed on the Participant Grower under this Agreement may be enjoyed by the Participant Grower's agent.

8.4 Delegation does not limit Grower's liability

Any delegation by the Participant Grower under clause 8.3 does not release the Participant Grower from liability under this Agreement.

9. RIGHTS OF OIML AND TIMBERCORP

9.1 Rights of OIML

The Participant Grower agrees and acknowledges that OIML:

- (a) is entitled to full and free access for the purposes of carrying out its obligations and exercising its rights under the Lease with or without vehicles to the Grapelots along any road or track or any neighbouring land owned or occupied by Timbercorp Securities, OIML, Timbercorp, other Participant Growers or any other person which gives access to the Grapelots;
- (b) is entitled to full and free access with or without vehicles to the Grapelots for the purpose of accessing neighbouring land owned or occupied by Timbercorp Securities, OIML, Timbercorp, other Participant Growers or any other person.

9.2 Rights of Timbercorp

The Participant Grower agrees and acknowledges that Timbercorp:

- (a) is entitled to full and free access for the purposes of carrying out its obligations and exercising its rights under the Sub-lease with or without vehicles to the Grapelots along any road or track or any neighbouring land owned or occupied by Timbercorp Securities, OIML, Timbercorp, other Participant Growers or any other person which gives access to the Grapelots;
- (b) is entitled to full and free access with or without vehicles to the Grapelots for the purpose of accessing neighbouring land owned or occupied by Timbercorp Securities, OIML, Timbercorp, other Participant Growers or any other person.

10. TERMINATION OF AGREEMENT

10.1 Termination of Agreement by the Participant Grower

The Participant Grower may terminate this Agreement by notice in writing to Timbercorp Securities immediately, if:

- (a) Timbercorp Securities goes into liquidation, other than for the purposes of reconstruction or amalgamation, or a Controller or Administrator is appointed in relation to the undertaking of Timbercorp Securities or any part of its

undertaking;

- (b) Timbercorp Securities ceases to carry on business; or
- (c) Timbercorp Securities fails or neglects to pay any moneys due to the Participant Grower, or is in default of any material obligation under this Agreement and such default continues for a period of 3 months after receipt by Timbercorp Securities of written notice from the Participant Grower specifying the default and requesting that the default be remedied, except where Timbercorp Securities has advised the Participant Grower of a plan of remedial action to satisfy any such duty and has substantially completed such plan.

10.2 Termination of Agreement by Timbercorp Securities

- (a) Subject to paragraph 10.2(b) and without prejudice to Timbercorp Securities' rights under clause 12, Timbercorp Securities may terminate this Agreement in respect of all the Grapelots of the Participant Grower, with immediate effect, if the Participant Grower fails to make a payment within the time required under this Agreement in relation to any Grapelot of the Participant Grower or the Constitution or commits a material breach of this Agreement in relation to any Grapelot of the Participant Grower or the Constitution and fails to remedy the breach or make reasonable compensation in money within 30 days after Timbercorp Securities has served a written notice on the Participant Grower requiring the Participant Grower to remedy the breach.
- (b) The written notice referred to in paragraph 10.2(a) must specify the breach and request the breach to be remedied.
- (c) The Agreement will terminate if Timbercorp Securities exercises its rights under clause 12.

10.3 Damage to Grapelots

If, in respect of the Grapelots:

- (a) the whole or a substantial part of the Grapelots are damaged or destroyed whether by fire or any other cause whatsoever; or
- (b) an independent horticultural consultant jointly commissioned by the Participant Grower and Timbercorp Securities reasonably determines that the whole or a substantial part of the Grapelots is no longer commercially viable,

the Participant Grower may terminate this Agreement in respect of the Grapelots by giving not less than 4 months prior written notice of such termination to Timbercorp Securities. Termination under this clause takes effect on and from the 30 June next following the expiration of the period of notice.

10.4 Reduction of Grapelots

If, in respect of the Grapelots:

- (a) part of the Grapelots are damaged or destroyed whether by fire or any other cause whatsoever; or
- (b) an independent horticultural consultant jointly commissioned by the Participant Grower and Timbercorp Securities reasonably determines that part of the Grapelots is no longer commercially viable,

the Participant Grower may terminate this Agreement in respect of that part of the Grapelots which is damaged or destroyed, by giving not less than 4 months' prior

written notice of such termination to Timbercorp Securities. Termination under this clause takes effect on and from the 30 June next following the expiration of the period of notice.

10.5 Effect of Termination

- (a) Termination of this Agreement under clauses 10.1, 10.2 or 10.3 or reduction of the Grapelots under clause 10.4 is without prejudice to any rights and obligations that may have accrued prior to the date of termination.
- (b) Termination of this Agreement in respect of any number of all of the Grapelots or part of the Grapelots under this clause 10 does not affect the rights or obligations of the parties in respect of any other Grapelots or any other part of the reduced Grapelots.
- (c) If this Agreement is terminated under clause 10.2 in relation to all of the Grapelots of the Participant Grower, the Participant Grower loses all rights and interest as a participant in the Project, and the procedures for consequences of default and termination as set out in the Constitution and, if applicable, clause 12 of this Agreement may be followed.
- (d) The termination of this Agreement will terminate the rights and obligations of the parties under this Agreement except to the extent that those rights and obligations are expressed to survive termination.

10.6 Termination of Sub-lease

If the Sub-lease terminates before it would otherwise have expired by the effluxion of time, then the following provisions apply:

- (a) OIML agrees with the Participant Grower who agrees with OIML that this Licence Agreement will continue with all necessary modifications as if OIML were named as the licensor in lieu of the Licensor from the termination of the Sub-lease;
- (b) In the event that the Participant Grower pays Licence Fees to the Licensor rather than OIML, then the Licensor must pay to OIML all Licence Fees so paid under this Agreement (on a GST exclusive basis) within 60 days after receiving the Licence Fees from the Grower; and
- (c) To the extent that the amount paid to OIML under this clause and the Sub-lease is less than the rent which OIML would have otherwise received from Timbercorp under the Lease, Timbercorp must pay to OIML the shortfall within 30 days after OIML gives Timbercorp notice in writing requesting such payment to be made.
- (d) To the extent that at any given time the amount paid by the Licensor to OIML under paragraph (b) and the Sub-lease is more than the rent which OIML would have otherwise received from Timbercorp under the Lease at that time, OIML must refund the excess to the Licensor within 30 days.

10.7 Land Owner's Liability

Timbercorp Securities, Timbercorp and the Participant Grower agree and acknowledge that:

- (a) the Land Owner will not be liable for any loss or damage incurred by them arising out of, or in connection with, this Agreement, other than any loss or damage incurred by them arising out of, or in connection with, any act or

omission of the Land Owner after it becomes the licensor under this Agreement in accordance with clause 10.6;

- (b) OIML will in no circumstances be required to satisfy any liability owed to any party or to any person claiming through a party for breach of any obligation pursuant to, or in respect of, this Agreement out of any funds, property or assets other than the assets held as the trustee under the Timbercorp Orchard Trust constitution under OIML's control and in its possession and available to be properly resorted to by OIML, except that the limitation contained in this paragraph (b) does not apply in the case of any fraud or breach of trust on the part of OIML.

11. EXCUSES FOR NON PERFORMANCE

11.1 Force Majeure

Timbercorp Securities will not have any obligation to observe or comply with the terms of this Agreement to the extent that the observance of, or compliance with, those terms is prevented by Force Majeure.

11.2 Lack or unavailability of funds

Performance or fulfilment of an obligation is not to be taken to be prevented by Force Majeure if it is prevented by lack of funds or by inability to use available funds resulting from Force Majeure.

11.3 Liability

Timbercorp Securities' failure to observe or comply with the terms of this Agreement will not give rise to any liability to any party for any direct or indirect consequential or special loss or damage of any kind to the extent that the failure to observe or comply with those terms is attributable to Force Majeure.

11.4 Definition of Force Majeure

For the purposes of this Agreement, "**Force Majeure**" means any event or circumstance not reasonably within the control of Timbercorp Securities or OIML, as the case requires, or which Timbercorp Securities or OIML, as the case requires, is not reasonably able to prevent. It includes:

- (a) pestilence, vermin, disease, fire, acts of God, landslide, earthquake, flood, washout, lightning, storm, drought, seasonal and climatic conditions and the elements;
- (b) strikes, lock-outs, bans, work limitations, boycotts and industrial disturbances or action;
- (c) act of the enemies, wars, blockades, insurrection, riots and civil disturbances;
- (d) orders of any court or the order, act or omission or failure to act of any government or governmental authority or instrumentality (including any failure to grant or any withdrawal of any licences, consent or authority);
- (e) epidemic or quarantine;
- (f) shortage or unavailability of equipment, materials or labour or any restriction on equipment, materials or labour or on the use of equipment, materials or labour;

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- (g) delays in transportation or communication; and
 - (h) breakage or breakdown of, or damage to, equipment or machinery, or the necessity to repair equipment or machinery to prevent its breakdown.

Each of these paragraphs and each of the terms within each paragraph are to be construed separately and independently. None of them is to limit the generality of any other.

12. LICENCE FEES AND EXPENSES

12.1 Failure to Pay

If the Participant Grower fails or neglects to pay:

- (a) the Licence Fees payable under this Agreement;
- (b) the Royalty Fees payable under this Agreement;
- (c) any amount due and payable by the Participant Grower under the Grapelot Management Agreement; or
- (d) any amount due and payable by the Participant Grower under the Constitution in respect of the Grapelots,

by the due date, Timbercorp Securities may, after giving the Participant Grower 30 days' prior written notice, terminate this Agreement under clause 10.2 and exercise either of the remedies set out in clauses 12.2 and 12.3 (in addition to and without prejudice to any other rights of Timbercorp Securities).

12.2 Timbercorp Securities may pay on Behalf of Defaulting Grower

If the Participant Grower fails or neglects to make payment of any amount under clause 12.1, Timbercorp Securities may pay on behalf of the Participant Grower, from its own funds, any such expense owing by the Participant Grower and Timbercorp Securities will be entitled to be reimbursed out of any Proceeds to which the Participant Grower is entitled, the amount of such payment together with interest at a rate of interest for the time being fixed under section 2 of the Penalty Interest Rates Act 1983 (Victoria), calculated from the date that the payment fell due until Timbercorp Securities has been reimbursed in full.

12.3 Defaulting Participant Grower's Interest may be dealt with under the Constitution

If the Participant Grower fails or neglects to make payment of any amount under clause 12.1 then Timbercorp Securities may deal with the interest of the Participant Grower by exercising any of its powers and rights under the Constitution.

13. ASSIGNMENT

13.1 Assignment by Timbercorp Securities

Subject to clause 13.2, Timbercorp Securities may freely assign any of its rights and interests under this Agreement so long as Timbercorp Securities does not assign its

interest in this Agreement in any way without first entering a deed with the person with whom Timbercorp Securities is dealing ("the Grantee"). The deed must contain a covenant by the Grantee in favour of the Participant Grower to observe and perform all or any of the covenants:

- (a) contained or implied in this Agreement and the Grapelot Management Agreement; and
- (b) required to be observed or performed by Timbercorp Securities.

13.2 Agreements with Contractors

Timbercorp Securities may only assign its rights and interests in this Agreement to the Grantee if, at the same time, it assigns to the Grantee all its rights and interests in any contract under which it has delegated some or all of its obligations under this Agreement, and for this purpose, Timbercorp Securities has obtained the written consent to the assignment from the contractor.

13.3 Timbercorp Securities or Grantee to pay for deed

The cost of any deed required under clause 13.1 must be paid by Timbercorp Securities or the Grantee, but not the Participant Grower.

13.4 Assignment by the Participant Grower

- (a) Subject to the requirements of the Constitution, the Participant Grower may only assign its rights under this Agreement if the Participant Grower:
 - (i) first obtains a deed of covenant signed by the proposed assignee in favour of Timbercorp Securities and the Responsible Entity stating that the assignee will at all times during the remainder of the Term observe and perform all and any of the terms and conditions of this Agreement, the Constitution and the Grapelot Management Agreement applying to the Participant Grower's Grapelots being assigned; and
 - (ii) is not in default of any of its obligations under this Agreement, the Constitution and the Grapelot Management Agreement applying to the Grapelots or any other agreement to which the Participant Grower is a party in respect of the Project.
- (b) The proposed assignee is deemed to have entered into a Grapelot Management Agreement and this Agreement, with the same terms and conditions as those applying to the Grapelots being assigned to it by the Participant Grower immediately before the date of the assignment, on and from the date of the assignment.

13.5 Release of liability of Grower

Once the Participant Grower has perfected an assignment of its interest in this Agreement in accordance with clause 13.4, the Participant Grower no longer remains liable under this Agreement in respect of any act done or omitted to be done after the assignment is effected in respect of the Grapelots assigned.

14. GOODS AND SERVICES TAX

- (a) If any supply made by a party ("Supplier") to the other ("Recipient") under this

Agreement is a taxable supply (according to GST Law) so that the Supplier is liable to GST, the parties agree that the consideration payable for that taxable supply represents the value of the taxable supply (the "**GST Exclusive Amount**") and not the price for that taxable supply.

- (b) In addition to the GST Exclusive Amount for a taxable supply under this Agreement, the Recipient must pay to the Supplier a further amount in respect of the taxable supply calculated as an amount equal to the GST Exclusive Amount multiplied by the GST Rate.
- (c) The GST payable under paragraph 14(b) is payable by the Recipient without deduction or set-off of any other amount, at the same time and on the same basis as the GST Exclusive Amount is payable by the Recipient under this Agreement.
- (d) The right of a Supplier to payment under this clause is subject to a valid tax invoice, which complies with GST Law, being issued and delivered by the Supplier to the Recipient.
- (e) If a payment to satisfy a claim or a right to a claim under or in connection with this Agreement, for example, a claim for damages for breach of contract, gives rise to a liability to pay GST, the payment is the GST Exclusive Amount and an additional amount must be paid to the Supplier in accordance with paragraph 14(b).
- (f) If a decision making body orders that a payment be made to a party to satisfy a claim under or in connection with this Agreement, and such payment will give rise to a liability to pay GST, the parties authorise the decision making body to order that a further amount, calculated as an amount equal to the payment multiplied by the GST Rate, be paid to the party in whose favour the order is made.
- (g) If a party has a claim under or in connection with this Agreement for a cost on which that party must pay GST, the claim is for the cost plus all GST, except any GST for which that party is entitled to an input tax credit, including a reduced input tax credit or an adjusted input tax credit.
- (h) If a party has a claim under or in connection with this Agreement and the amount of the claim depends on actual or estimated revenue or lost revenue, revenue must be calculated without including any amount received or receivable as reimbursement for GST, whether that amount is separate or included as part of a larger amount.

15. **LIMITATION OF LIABILITY OF GROWER**

Subject to clause 12.2, in no circumstances will the Participant Grower be obliged to incur any liability under this Agreement in excess of the annual licence fees payable under this Agreement, the fees and expenses payable by the Participant Grower under the Grapelot Management Agreement in relation to the Grapelots and its Participating Interest in the Proceeds.

16. NOTICE

16.1 Form of Notice

Any notice to be given under or in connection with this Agreement must be in writing and may be signed by an authorised representative of the party giving the notice. The notice may be served by:

- (a) hand delivery;
- (b) post or registered or certified mail; or
- (c) fax,

to such address or fax number of the party to whom the notice is directed as the addressee may notify prior to such notice being given.

16.2 Receipt of Notice

Any notice will be effective and will be deemed to be received:

- (a) if hand delivered, then upon delivery;
- (b) if posted, then 48 hours after the notice has been properly posted if that falls on a Business Day, and if not, on the first Business Day afterwards; and
- (c) if sent by fax, then at the date and time of transmission as shown by the confirmation report from the sender's fax machine indicating that the notice has been received in full by the recipient's fax machine.

17. PROPER LAW

This Agreement is governed by, and to be interpreted in accordance with, the laws of New South Wales and the parties to this Agreement submit to the non-exclusive jurisdiction of the courts of New South Wales and courts of appeal from them for determining any dispute concerning this Agreement or the transactions contemplated by this Agreement.

18. AMENDMENTS

- (a) This Agreement may be amended by another document in writing and duly signed by the parties to this Agreement.
- (b) Subject to paragraph 18(c), Timbercorp Securities, may amend the provisions of this Agreement to such extent as may be required to:
 - (i) satisfy the requirements of any statute, ordinance, rule, regulation or by-law which may be passed and which affects the Project;
 - (ii) comply with the effect of any judicial decision; or
 - (iii) enable the provisions of this Agreement, or the Project, to be more conveniently, advantageously, profitably or economically administered or managed.
- (c) Before Timbercorp Securities, Timbercorp and OIML may amend the Agreement as provided under paragraph 18(b), the Responsible Entity must be reasonably satisfied that the amendment does not adversely affect the rights of all the Participant Growers.
- (d) Subject to the Corporations Act, Timbercorp Securities may make the amendments on behalf of itself, and the Responsible Entity on behalf of the

Participant Growers. To give effect to this clause, the Participant Grower appoints the Responsible Entity as its attorney to make amendments to this Agreement.

- (e) If the Responsible Entity cannot be satisfied that it can consent to the amendments in accordance with the paragraph 18(c), then amendments may only be made in accordance with paragraph 18(a).
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19. DISPUTE RESOLUTION

19.1 Referral by the Participant Grower

- (a) Any dispute or difference whatsoever in connection with this Agreement must be dealt with by the Participant Grower as follows in the event that the dispute or difference is unable to be resolved by Timbercorp Securities to the Participant Grower's satisfaction:
- (i) if the dispute or difference falls within the rules of the Financial Industry Complaints Service (**FICS**) or Insurance Brokers Disputes Limited (**IBD**), the Participant Grower may refer the dispute or difference to FICS or IBD, for determination in accordance with FICS' or IBD's rules, as the case requires; or
 - (ii) if:
 - (A) the dispute or difference does not fall within the rules of FICS or IBD; or
 - (B) the Participant Grower does not wish to refer the dispute or difference to FICS or IBD in accordance with paragraph 19.1(a)(i),the dispute or difference must be submitted by the Participant Grower to arbitration in accordance with, and subject to, the Institute of Arbitrators and Mediators of Australia Expedited Commercial Arbitration Rules, and to the extent permitted under those rules:
 - (C) the Arbitrator will be a person recommended by the Victorian Chapter of the Institute of Arbitrators and Mediators of Australia; and
 - (D) the arbitration will be conducted in Melbourne, Victoria.
- (b) The Participant Grower and Timbercorp Securities:
- (i) subject to any right of appeal contained in the rules of FICS or IBD, agree to accept the determination of FICS, IBD or the arbitrator, as the case requires, in accordance with paragraph 19.1(a) as final and binding; and
 - (ii) submit to the non-exclusive jurisdiction of the Courts in Victoria for the enforcement of any such determination.

19.2 Timbercorp Securities

- (a) Clause 19.1 is for the benefit of Timbercorp Securities only, and it does not prevent Timbercorp Securities from:
- (i) commencing proceedings against the Participant Grower in any relevant jurisdiction;

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- (ii) submitting any dispute or difference whatsoever with a Participant Grower in connection with this Agreement to arbitration in accordance with, and subject to, the Institute of Arbitrators and Mediators of Australia Expedited Commercial Arbitration Rules, and to the extent permitted under those rules:
 - (A) the Arbitrator will be a person recommended by the Victorian Chapter of the Institute of Arbitrators and Mediators of Australia; and
 - (B) the arbitration will be conducted in Melbourne, Victoria.
 - (b) The Participant Grower and Timbercorp Securities:
 - (i) agree to accept the determination of the arbitrator in relation to any dispute or difference referred to arbitration in accordance with paragraph 19.2(a), as final and binding; and
 - (ii) submit to the non-exclusive jurisdiction of the Courts in Victoria for the enforcement of any such determination.
 - (c) Timbercorp Securities must ensure that it has an internal complaints handling procedure that conforms where reasonably possible to the procedure set out in clauses 25.2, 25.3 and 25.4 of the Constitution.
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20. CONSTITUTION

The rights and obligations of the parties under this Agreement are subject to the terms and conditions of the Constitution.

21. STATUTORY PROVISIONS

21.1 General

To the extent permitted by law, all provisions implied by statute are expressly excluded from this Agreement and the licence granted under this Agreement.

21.2 Agricultural Tenancies Act (NSW)

Without limiting generality of clause 21.1,

- (a) the parties acknowledge and agree that in determining the Licence Fees and other terms of this Agreement they have taken into account improvements that may be made by the Participant Grower to the Grapelots licensed during the Term;
 - (b) the Participant Grower agrees that it will not make any claim in respect of any improvements effected by the Participant Grower to the Grapelots licensed during the Term.
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22. PLANT BREEDERS' RIGHTS

22.1 The licence grant

- (a) Timbercorp Securities grants the Participant Grower the following rights,

subject to the terms of this Licence Agreement, the Lease, the Sub-lease, the Andriske Exclusive Licence Agreement and the Andriske Non-Exclusive Andriske Agreement:

- (i) the right to grow the Licensed Vines on the Grapelots;
 - (ii) the non-exclusive right to process and sell the Licensed Fruit in the Licensed Territory.
- (b) The Participant Grower agrees and acknowledges that:
 - (i) Andriske retains the right to plant, grow and market up to a maximum of 25,000 vines of each of the Protected Products described in the Andriske Exclusive Licence Agreement, in the Licensed Territory;
 - (ii) the rights granted under this clause 22 are subject to the rights granted by Andriske to OIML and the Timbercorp Group and other third parties as described in the Andriske Exclusive Licence Agreement and the Andriske Non-Exclusive Licence Agreement;
 - (iii) the exclusive rights granted under the Andriske Exclusive Licence Agreement to OIML and the Timbercorp Group are revoked and replaced with non-exclusive rights in the event that the Timbercorp Group fails to reach certain planting targets specified in the Andriske Exclusive Licence Agreement.
- (c) The Participant Grower agrees and acknowledges that Timbercorp Securities specifically withholds from the Participant Grower the following:
 - (i) any right or licence to Propagate Licensed Vines;
 - (ii) the ownership of the PBRs and intellectual property in the Protected Products,as these rights are retained by Andriske.

22.2 Marketing

The Participant Grower must use the cultivar name of Licensed Vines and Licensed Fruit given by Andriske to OIML in its marketing.

22.3 Quality assurance

- (a) The Participant Grower agrees to ensure that all Licensed Fruit it sells to others:
 - (i) is true to cultivar;
 - (ii) has been grown and handled in a manner consistent with Best Viticultural Practice; and
 - (iii) has been handled with reasonable precaution taken to avoid preventable infestation by disease causing or transmitting organisms or by other pests harmful to the commercial quality of Licensed Fruit;
 - (iv) is packed according to best table grape packing practice; and
 - (v) is presented for sale in the best possible manner.
- (b) Subject to Timbercorp Securities giving the Participant Grower reasonable notice in writing, the Participant Grower agrees that OIML's, Timbercorp's, Timbercorp Securities' and Andriske's designated employees or agents may inspect any or all growing facilities, fields and/or storage facilities on the Vineyard or the Grapelots at any time during normal business hours to ensure

that the Licensed Vines and the Licensed Fruit contained therein are being grown in accordance with paragraph 22.3(a).

- (c) OIML, Timbercorp, Timbercorp Securities or Andriske and their authorised agents have the right to seek and discover and examine all the Licensed Vines or Licensed Fruit licensed pursuant to this Agreement, and while accompanied by the Participant Grower or its employees or agents, take away for inspection a reasonable number of samples sufficient for examination of the Licensed Vines or Licensed Fruit, or part thereof, and for that purpose, subject to OIML, Timbercorp, Timbercorp Securities or Andriske giving the Participant Grower reasonable notice in writing, OIML, Timbercorp, Timbercorp Securities or Andriske is authorised to enter the Vineyard and the Grapelots, but must take reasonable care in so doing.
- (d) The Participant Grower must abide by all mandatory local, regional and national government laws, rules and regulations that govern the growing of Licensed Vines and sale and distribution of Licensed Fruit.

22.4 Intellectual property rights

- (a) The Participant Grower must take all reasonable steps to ensure that no Licensed Vines, parts of Licensed Vines or Licensed Fruit are misappropriated by any third parties.
- (b) The Participant Grower must not challenge the validity of any intellectual property rights, including PBRs, in relation to the Licensed Vines or Licensed Fruit.
- (c) The Participant Grower must not breach or encourage or permit any breach of any intellectual property rights, including PBRs, in relation to the Licensed Vines or Licensed Fruit.
- (d) The Participant Grower agrees and acknowledges that all rights to:
 - (i) variations or mutations arising from the Licensed Vines or the Licensed Fruit; or
 - (ii) any vines or Licensed Fruit demonstrating Essential Characteristics of the Protected Product; or
 - (iii) any Hybrid of the items specified in paragraphs 22.4(d)(i) and (ii),will be the property of Andriske notwithstanding that the same may constitute a new cultivar.

22.5 Labelling and packaging

- (a) The Participant Grower must give notice to Timbercorp Securities, OIML, Timbercorp and Andriske of its intention to use any of the cultivar names of Licensed Fruit in any of its catalogues, advertisements, brochures or merchandise lists.
- (b) The Participant Grower must ensure that all Licensed Fruit is properly classified, packaged and boxed in accordance with all relevant statutes and regulations affecting the same, and otherwise as directed by Timbercorp Securities, OIML, Timbercorp or Andriske.

22.6 Sales agents

- (a) The Participant Grower nominates Timbercorp Securities in accordance with the Grapelot Management Agreement as the initial sales agent of the

Participant Grower for all Licensed Fruit grown by Participant Grower.

- (b) The Participant Grower agrees and acknowledges that Grapecorp Management Pty Ltd (ACN 105 995 195) will be appointed through Timbercorp Securities as an initial sales agent, and through Grapecorp Management Pty Ltd, The Grape House Pty Ltd (ACN 084 438 951).

22.7 Books and Records

- (a) The Participant Grower must itself or through the manager engaged by it under the Grapelot Management Agreement or any Sales Agent keep books and records relating to receipt and sale of Licensed Fruit for a period of 5 years from the year in which such receipt or sale occurred to accurately show the following information:
 - (i) the amount of Licensed Vines and Licensed Fruit on hand; and
 - (ii) the amount and price of Licensed Fruit sold to each third party (identified by name and business location) in the Licensed Territory together with the date of sale (**Records**).
- (b) The Records must be made available for inspection and audit by Timbercorp Securities, Timbercorp, OIML or Andriske or their designated employees or agents during regular business hours for the purpose of verifying the accuracy of Participant Grower's gross sales of the Licensed Fruit.
- (c) The Participant Grower authorises the manager engaged by it under the Grapelot Management Agreement and any Sales Agent to cause any Records in their power, possession or control to be made available for inspection and audit by Timbercorp Securities or its designated employees or agents.
- (d) The Participant Grower authorises Timbercorp Securities and the manager engaged by it under the Grapelot Management Agreement, upon receiving prior and reasonable written notice, to:
 - (i) provide OIML, Timbercorp or Andriske with the location of each of the greenhouses, screen houses, laboratories, cold storage and field plantings used by or for the benefit of the Participant Grower containing Licensed Vines or Licensed Fruit; and
 - (ii) use its best endeavours to procure the manager of the relevant facility or field to permit OIML, Timbercorp or Andriske and its designated employees or agents, during ordinary business hours, to inspect and audit such facilities and plantings for the purpose of verifying the Records.

22.8 Infringement

- (a) The Participant Grower agrees to co-operate with Timbercorp Securities in any proceedings instituted by Timbercorp Securities for infringement of the Protected Product.
- (b) Nothing in this clause 22 is to be construed as conferring upon the Participant Grower any right to commence proceedings for infringement of the Protected Product, and Participant Grower acknowledges that it does not have any rights in relation to the control of any such proceedings. This paragraph 22.8(b) does not apply whilst the Participant Grower is Timbercorp.
- (c) Nothing in this clause 22 is to be construed as an obligation for OIML, Timbercorp, Timbercorp Securities or Andriske to bring or prosecute actions or proceedings against third parties for infringement of OIML's, Timbercorp's,

Timbercorp Securities', or Andriske's rights.

- (d) Where proceedings are commenced against the Participant Grower in respect of any matter involving any breach of the warranties referred to in paragraph 22.13, the Participant Grower may, on leave being granted, withdraw from the proceedings and OIML, Timbercorp, Timbercorp Securities and/or Andriske will, in their own name and at their own expense, conduct the proceedings.

22.9 Further assurances

The Participant Grower must not by act or omission cause Timbercorp Securities to be in breach of its obligations under the Sub-lease in relation to the Protected Product.

22.10 Use of Names

- (a) The use of the names designated by Andriske, variations of such names or reference to such names by the Participant Grower in any advertisement, labelling or publicity release relating to the Licensed Vines or the Licensed Fruit will only be allowed as directed by Timbercorp Securities, OIML, Timbercorp or Andriske.
- (b) Should the Participant Grower use any advertisement relating to Licensed Vines or Licensed Fruit or to Timbercorp Securities or Andriske, which the Responsible Entity or Andriske, in good faith, finds objectionable on reasonable grounds, Participant Grower agrees promptly to stop the use of such advertisement upon written notification by Timbercorp Securities or Andriske.
- (c) If any trade mark of Andriske is used on or in relation to the Licensed Vines or Licensed Fruit, then all representations of the trade mark must be clearly marked or accompanied with a clear statement that Andriske is the owner of the trade mark and the Participant Grower uses the trade mark under licence from Andriske.
- (d) All use of the trade mark will inure to Andriske.

22.11 Undertakings of the Participant Grower

The Participant Grower must, in addition to its obligations under clause 8.2:

- (a) comply in all respects with the terms and conditions as the case may be of the *Plant Diseases Act 1924 (NSW)*, *Phyloxera and Grape Industry Act 1995 (SA)*, *Plant Health and Plant Products Act 1995 (Vic)* and *Plant Diseases Act, 1914 (WA)* and any amendments to such legislation;
- (b) deliver all books, records, statements and reports required by this clause 22;
- (c) not use Licensed Vines or Licensed Fruit for purposes not expressly contemplated by this clause 22;
- (d) not violate or fail to keep or perform any obligation imposed under this clause 22;
- (e) not violate or induce or knowingly permit others to violate any country, state or other governmental laws, rules or regulations relative to the propagation, sale and or distribution of Licensed Vines or Licensed Fruit as may be in force in Licensed Territory.

22.12 Disposition of Inventory and Forfeiture of Other Rights

- (a) Upon the lawful termination of this Agreement by either party, the Participant

Grower must provide Timbercorp Securities with a written inventory listing the quantity of Licensed Vines and Licensed Fruit in the possession of Participant Grower, the manager engaged by it under the Grapelot Management Agreement or any Sales Agent.

- (b) The existing inventory of such Licensed Fruit must be disposed of within 3 calendar months from the date of lawful termination of this Agreement, provided however that such disposition will be subject to this clause 22.
- (c) Should this Agreement be lawfully terminated by either Timbercorp Securities or Participant Grower, the Participant Grower forfeits all rights granted under this clause 22 other than for the purpose of complying with paragraphs 22.12(a) and 22.12(b).

22.13 Warranty and Acknowledgments

- (a) Timbercorp Securities warrants to the Participant Grower that:
 - (i) it has the right, authority and capacity to grant the licence and rights granted under this clause 22;
 - (ii) the exercise by the Participant Grower of its rights under this clause 22 will not infringe the rights of any other person.
- (b) To the extent permitted by law, Timbercorp Securities makes no express or implied warranties or merchantability, trueness to type, or fitness of the Licensed Vines or Licensed Fruit for a particular purpose and Timbercorp Securities will have no liability to Participant Grower or the Participant Grower's party customers on account of any defect or failure of Licensed Vines or Licensed Fruit.
- (c) All other conditions and warranties which would, or may, but for this paragraph 22.13(c), be implied (whether by statute, law, trade usage or otherwise) into this Agreement are expressly excluded.
- (d) Nothing in this Agreement is to be construed as:
 - (i) conferring by implication, estoppel or otherwise any licence or rights under any other patents, plant variety titles, or variety protection certificates belonging to Andriske, OIML, Timbercorp or Timbercorp Securities other than such limited rights granted to Participant Grower in this Agreement; or
 - (ii) an obligation to furnish any know-how in relation to Licensed Vines or Licensed Fruit, save as expressly provided in this clause 22.
- (e) The Participant Grower agrees and acknowledges that:
 - (i) no representations whatsoever other than are set out in this Agreement, have been made by Timbercorp Securities as to the suitability or fitness for the purpose of trueness of type or merchantability of the Licensed Vines or Licensed Fruit;
 - (ii) the cultivars the subject of this clause 22 have not been viticulturally assessed and the genetic stability of such cultivars has not been established.

22.14 Further Restrictions

The Participant Grower must not:

- (a) propagate or asexually reproduce the Licensed Vines or Licensed Fruit; and

- (b) sell, transfer, lease or otherwise dispose of the Licensed Vines or Licensed Fruit other than on the terms imposed on the Participant Grower under this clause 22.

22.15 Expiry of Term

The rights granted under this clause 22 remain in full force and effect for the Term, after which the Participant Grower must immediately discontinue selling the Licensed Fruit, subject to clause 22.12.

22.16 Definitions

In this clause 22, unless the context or contrary intention appears, the following words and expressions have the meanings set opposite them:

Andriske:	Andriske Research Pty Ltd (ACN 006 565 260);
Andriske Exclusive Licence Agreement:	means the exclusive licence agreement between Andriske as licensor and OIML as licensee made on 9 October 2003 and varied by a deed of variation on 12 November 2004;
Andriske Non-Exclusive Licence Agreement:	means the non-exclusive licence agreement between Andriske as licensor and OIML as licensee made on 12 November 2004;
Essential Characteristics:	has the same meaning as in the <i>Plant Breeders' Rights Act 1994 (Cth)</i> ;
Hybrid:	has the same meaning as in the <i>Plant Breeders' Rights Act 1994 (Cth)</i> ;
Licensed Products:	(a) White Seedless Grape Cultivar known as "Stanley Seedless" Table Grape Vines and Table Grapes from such "Stanley Seedless" Table Grape Vines (Plant Breeder's Rights Application No. 1996/046 and granted 25 May 2002 and Numbered 2010); (b) Red Seedless Grape Cultivar known as "Red Rob" Table Grape Vines and Table Grapes from such "Red Rob" Table Grape Vines (Plant Breeder's Rights Application No. 1998/144 and granted 11 June 2003 and Numbered 2263); and (c) 45,000 White Seeded Grape Cultivar known as "BW41/5" and Table Grapes from such vines (Plant Breeders Rights Application No. 1996/018 and granted 27th March, 2002, and Numbered 1910).
Licensed Territory:	(a) <u>For planting of Licensed Vines:</u> The Grapelots or Vineyard, as the case requires.

	(b) <u>For Sale of Licensed Fruit:</u> (i) For export quality - The World; (ii) For less than export quality – Australia;
PBRs:	plant breeders rights;
Propagate:	to grow, culture or multiply by sexual or asexual means including growing of any seeds produced, grafting, budding, hybridisation or any other means of reproduction;
Protected Products:	(a) Plant Breeders Rights Application No. 1996/046 in respect of the White Seedless Grape Cultivar known as "Stanley Seedless" and granted 25 May 2002 and Numbered 2010; (b) Plant Breeders Rights Application No. 1998/144 in respect of the Red Seedless Grape Cultivar known as "Red Rob" and granted 11 June 2003 and Numbered 2263; (c) Plant Breeders Rights Application No. 1996/018 in respect of the "Golden Globe" Grape cultivar and granted 27th March 2002, and Numbered 1910);
Sales Agents:	sales agents nominated by the Participant Grower in accordance with clause 22.6;
Timbercorp Group:	Timbercorp and its controlled entities.

23. INSURANCE

Each party agrees that it will not do or permit or suffer to be done any act, manner or thing which may prejudice or render void or voidable any insurances in respect of the Grapelots or the Table Grape Vines taken out by Timbercorp Securities, OIML, Timbercorp or any Participant Grower or result in the premiums for such insurances being increased.

24. FURTHER ASSURANCES

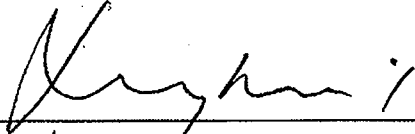
Each party agrees to sign such documents and do all such acts, matters and things as may be reasonably required by any other party to give effect to this Agreement.

25. SEVERABILITY

If any provision of this Agreement is or becomes void or unforeseeable, that provision will be severed from this Agreement to the intent that the remaining provisions of this Agreement will continue in full force and effect.

Executed as an Agreement

EXECUTED by TIMBERCORP)
SECURITIES LIMITED in)
accordance with section 127 of)
the Corporations Act:)



Signature
John Vaughan

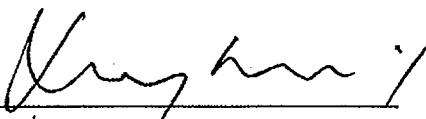
Full Name
Director



Signature
Mark H Pryn

Full Name
Director/Secretary

EXECUTED by TIMBERCORP)
SECURITIES LIMITED as agent)
and attorney for and on behalf of)
each several Participant Grower)
by authority of its directors in)
accordance with section 127 of)
the Corporations Act:)



Signature
John Vaughan

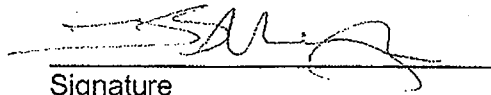
Full Name
Director



Signature
Mark H Pryn

Full Name
Director/Secretary

EXECUTED by ORCHARD)
INVESTMENTS MANAGEMENT)
LIMITED in its capacity as)
responsible entity for the)
Timbercorp Orchard Trust in
accordance with section 127 of
the Corporations Act:

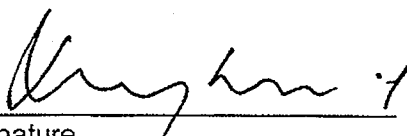

Signature

Trevor Mowbray
Full Name
Director


Signature

Sol Rabinowicz
Full Name
~~Director/Secretary~~ Director

EXECUTED by TIMBERCORP)
LIMITED in accordance with)
section 127 of the Corporations)
Act:)


Signature

John Vaughan
Full Name
Director


Signature

Mark H Pryn
Full Name
Director/Secretary

SCHEDULE

Participant Growers' Details