

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

LIST E

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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

Prepared by:

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This is the exhibit marked '**PWK22**' 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 'PWK22'

**Copy of Andriske Licence
Agreement dated 9 October 2003**

ANDRISKE RESEARCH PTY. LTD.
A.C.N. 006 565 260

and

ORCHARD INVESTMENTS
MANAGEMENT LIMITED
A.C.N. 105 684 231

and

TIMBERCORP LIMITED
A.C.N 055 185 067

LICENCE AGREEMENT

DAVID MESSENGER,
Legal Practitioner,
101 Deakin Avenue,
DX 50004,
MILDURA. 3500.
Tel. 03 5023 5982
Fax 03 5022 1313
Solicitor's Code 1258
Ref. : DRM/ENH 15257

THIS LICENCE AGREEMENT is made the 9th day of October 2003

BY AND BETWEEN

ANDRISKE RESEARCH PTY. LTD. ACN 006 565 260
the registered office of which is situated at the office of Boyd
Partners Ltd., Level 10, 600 St. Kilda Road, Melbourne, Victoria,
("the Licensor")

AND

ORCHARD INVESTMENTS MANAGEMENT LIMITED
ACN 105 684 231 the registered office of which is situate at Level
2, 613 St Kilda Road, Melbourne, Victoria, as responsible entity of
THE TIMBERCORP ORCHARD TRUST constituted by a
Constitution dated 15th September, 2003, a copy of which is
annexed hereto and marked with the letter "A" ('OIM')

AND

TIMBERCORP LIMITED AC N 055 185 067 the registered
office of which is situate at Level 8, 461 Bourke Street, Melbourne,
Victoria ('Timbercorp')
(each severally a "Licensee")

RECITALS

- A The Licensor owns all right, title and interest in and to various plant patents, plant variety titles, plant breeders rights or similar forms of protection for the Licensed Products (listed in Part 3 of the Schedule to this Agreement) in Australia in respect of the vine cultivars designated in the Plant Breeders Rights Applications listed in Part 1 of the Schedule to this Agreement.
- B OIM desires the right to plant Vines (hereinafter defined) on those parts of the land designated in Part 4 of the Schedule hereto that it owns from time to time. Its primary income producing purpose is to derive rent. Accordingly, its primary purpose in entering into this Agreement is to secure all rights necessary to enable a tenant of the land (and not itself) to carry on a primary production business in consideration for which the tenant will pay rent to OIM.
- C Timbercorp desires the right to plant Vines (hereinafter defined) on those parts of the land designated in Part 4 of the Schedule hereto that it or a controlled entity of it owns from time to time and to process and sell Fruit to third parties pursuant to the terms and conditions of this Agreement.
- D Each Licensee represents it has the means and wherewithal to undertake diligently the planting of the Vines and sale of the Fruit pursuant to the terms and conditions of this Agreement.
- E The Licensor has agreed to grant a licence to each Licensee severally, on the terms of this Agreement.

IT IS AGREED as follows:

1. DEFINITIONS

In this Agreement, except to the extent the context otherwise requires:

"Agreement" means this licence agreement;

"Corporations Act" means the Corporations Act 2001(Cth) and the Corporations Regulation;

Final 7.10.2003

- "**Earned Royalties**" means the royalties that accrue to the Licensor at the Royalty Rate (set out in Part 6 of the Schedule), when the Licensee receives payment of the prices payable by purchasers of the Fruit from time to time;
- "**Essential Characteristics**" has the same meaning as is defined in the Plant Breeders' Rights Act, 1994.
- "**Fruit**" means all grapes and produce grown on the Vines processed or unprocessed;
- "**Gross Sales**" means the gross price charged (exclusive of GST) for Fruit sold on an arms' length basis at the Shed Door Price. In the case of any sale of Fruit by the Licensee at an invoice price less than that charged to persons negotiating at arms' length, there shall be substituted for the purpose of calculation of payments due under this Agreement, such invoice price as would be charged in any arms' length transaction;
- "**GST**" has the same meaning as in the GST Act;
- "**GST Act**" means *A New Tax System (Goods and Services Tax) Act 1999* as amended;
- "**Hybrid**" shall have the same meaning as is defined in the Plant Breeders' Rights Act, 1994.
- "**Licensee**" means each of OIM and Timbercorp, severally.
- "**Licensed Products**" means the grape cultivars listed in Part 3 of the Schedule hereto;
- "**Licensed Territory**" means the countries and/or geographical areas specified in Part 4 of the Schedule to this Agreement. Such territory shall be specified separately for the planting of Vines and for the sale of Fruit.
- "**Plan**" means the plan attached as Annexure A specifying the Licensed Territory described in Part 4 of the Schedule for the Planting of the Vines;
- "**Project**" means a project whereby a Related Body Corporate of Timbercorp establishes and/or manages a table grape vineyard and invites subscriptions for participation in the farming of the table grape vineyard, whether or not the project is a managed investment scheme under the Corporations Act;
- "**Properties**" means the properties within the Licensed Territory specified in Part 4 of the Schedule;
- "**Propagate**" means 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**" means the products described in Part 1 of the Schedule;
- "**Related Body Corporate**" has the same meaning as in the Corporations Act;
- "**Royalty Rate**" means the Royalty Rate for Fruit sold, such rate being specified in Part 6 of the Schedule to this Agreement;
- "**Shed Door Price**" means the sale price of Fruit excluding any cost incurred in respect of the Fruit payable by the Licensee after the fruit leaves the installation where the Fruit is packed such cost including but not limited to freight, insurances, agents fees, cold storage charges, import duty, AQIS, but does not include any amount or amounts payable to the Sales Agent.
- "**Timbercorp Asset Management**" means Timbercorp Asset Management Pty Ltd (ACN 105 888 364) of level 8, 461 Bourke Street, Melbourne, Victoria. 3000;
- "**Timbercorp Group**" means Timbercorp Limited and its controlled entities as defined in Accounting Standard AASB1024 "Consolidated Accounts";
- "**Timbercorp Orchard Trust**" means a managed investment scheme constituted under a constitution registered with ASIC (ARSN #####) and of which Orchard Investments Management Limited (ACN 105 684 231) is the responsible entity;

"Timbercorp Orchard Trust Management Agreement" means a management agreement made on or about the date of the Constitution of the Timbercorp Orchard Trust under which the Licensee has appointed Timbercorp Asset Management as manager to acquire, develop, manage and dispose of assets on behalf of the responsible entity of the Timbercorp Orchard Trust;

"Vines" means vines and plants of the vine cultivars listed in Parts 1 & 3 of the Schedule to this Agreement provided to the Licensee pursuant to this Agreement.

2. LICENCE GRANT

2.1 The Licensors hereby grants the Licensee the following rights within the Licensed Territory, subject to the terms of this Agreement:

2.1.1 subject to this Agreement, the exclusive right to plant and grow the Vines in the Licensed Territory;

2.1.2 save as hereinafter provided, to the non-exclusive right to sell the Fruit in the Licensed Territory;

This Agreement and the rights granted herein will operate as a separate enforceable agreement in respect of each of OIM and Timbercorp severally in respect of those parts of the land designated in Part 4 of the Schedule hereto that it (in the case of OIM) or a Related Body Corporate (in the case of Timbercorp) owns from time to time.

OIM's primary income producing purpose is to derive rent from granting a lease of the lands on which the Vines are planted. Accordingly, it enters into this Agreement for the purpose of enabling a tenant of the lands to grow the Vines and sell the Fruit and not for the purpose of itself growing the Vines and selling the Fruit.

Timbercorp holds the benefit of this Agreement in trust for each entity in the Timbercorp Group from time to time and such entities are entitled to enforce this Agreement.

It is acknowledged by the Licensee that the Licensors or a third party authorised by the Licensors may grow Fruit outside the Licensed Territory (for planting) and sell such Fruit within the Licensed Territory (for sale).

2.2 Save as provided in this Agreement, the Licensors specifically withholds from the Licensee the following:

2.2.1 any right or licence to Propagate Vines;

2.2.2 the ownership of the Plant Breeders' rights or any other intellectual property in, or relating to Licensed Product.

2.3 Upon execution of this Agreement and for the duration of this Agreement, the Licensors shall make available to the Licensee such amount of bud wood of the Licensed Product as shall be reasonably requested for planting in the Licensed Territory. The Licensee shall bear the responsibility of obtaining all necessary permits to import the bud wood into the Licensed Territory. The Licensors shall be responsible for all costs of and incidental to cutting and transporting the budwood from its source to the nurseries referred to in Paragraph 2.5 hereof.

2.4 Licensee must use the cultivar name of Vines and Fruit given by the Licensors in its marketing.

2.5 Licensee shall at the Licensee's expense undertake the grafting of the bud wood to a stock of the Licensee's choice, in such nurseries as from time to time be approved by the Licensors.

- 2.6 It is understood between the parties that nothing contained in this Agreement shall be construed to mean that the Licensor or the Licensee are partners or joint venturers nor that the Licensee is the agent or employee of the Licensor. Licensee shall not have any right or authority to enter into any agreement on behalf of the Licensor other than the rights specifically granted herein, and shall not incur any obligation on behalf of nor commit the Licensor in any manner.
- 2.7 It is acknowledged by the Licensee that the Licensor or Related Body Corporate retains the right to plant and grow up to a maximum of 25,000 Vines of each of the Protected Products, namely, Red Rob and Stanley Seedless, in the Licensed Territory, and the right to sell the Fruit from those Vines in the Licensed Territory or anywhere else.
- 2.8 It is further acknowledged by the Licensee that this Agreement is subject to the rights of:
- (i) Carmelo Costa, Paul Costa and John Holman Investments Pty. Ltd. who have the right to plant and grow 4,882 Stanley Seedless and 5,883 Red Rob vines in the Licensed Territory pursuant to Agreement dated 29th July, 2002, and made with Andriske Table Grapes Pty. Ltd. a copy of which Agreement is annexed hereto and marked with the letter "B"
 - (ii) Carmelo Costa, Paul Costa and Ian Laurence Tyack who have the right to plant and grow 9072 Stanley Seedless and 4087 Red Rob vines in the Licensed Territory pursuant to Agreement dated 29th July, 2002, and made with Andriske Table Grapes Pty. Ltd. a copy of which Agreement is annexed hereto and marked with the letter "C".
 - (iii) Carmelo Costa and Paul Costa who have the right to plant and grow 4989 Stanley Seedless and 6090 Red vines Rob in the Licensed Territory pursuant to Agreement dated 29th July, 2002, and made with Andriske Table Grapes Pty. Ltd. a copy of which Agreement is annexed hereto and marked with the letter "D".
 - (iv) Carmelo Costa and Paul Costa who have the right to plant and grown 21,153 Stanley Seedless and 21,177 Red Rob vines in the Licensed Territory pursuant to Agreement dated 11th March, 2003, with Andriske Table Grapes Pty. Ltd. a copy of which Agreement is annexed hereto and marked with the letter "E".
 - (v) Graeme Donald Stone and Shirley Isobel Stone who have the right to plant and grow 1440 Stanley Seedless vines in the Licensed Territory pursuant to Agreement dated 24th July, 2002, a copy of which Agreement is annexed hereto and marked with the letter "F".
 - (vi) Graeme Donald Stone, Shirley Isobel Stone, Andrew David Stone and Melissa Julie Stone who have the right to plant and grow 8165 Red Rob vines pursuant to Agreement dated 14th July, 2002, and made with Andriske Table Grapes Pty. Ltd. a copy of which Agreement is annexed hereto and marked with the letter "G".
 - (vii) Carmelo Costa and Paul Costa who have the right to plant and grow 1371 Stanley Seedless and 1801 Red Rob vines pursuant to Agreement dated 25th November, 2002, and made with Andriske Table Grapes Pty. Ltd. a copy of which Agreement is annexed hereto and marked with the letter "H".
 - (viii) Andrew David Stone who has the right to plant and grown 3375 Stanley Seedless vines pursuant to an Agreement dated 24th August, 2003, and made with Andriske Table Grapes Pty. Ltd., a copy of which Agreement is annexed hereto and marked with the letter "I".

3. QUALITY ASSURANCE

3.1 The Licensee agrees to ensure that all Fruit it sells to others:

3.1.1 is true to cultivar;

3.1.2 has been grown and handled in a manner consistent with good viticultural practice;
and

- 3.1.3 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 Fruit;
- 3.1.4 is packed according to best table grape packing practice; and
- 3.1.5 is presented for sale in the best possible manner.
- 3.2 Subject to the Licensor giving the Licensee reasonable notice in writing, the Licensee agrees that the Licensor's designated employee or agent may inspect any or all growing facilities, fields and/or storage facilities at any time during normal business hours to ensure that the Vines and the Fruit contained therein are being grown pursuant to Paragraph 3.1 above.
- 3.3 The Licensor or its authorised agent shall have the right to seek and discover and examine all the Vines or Fruit licensed pursuant to this Agreement, and while accompanied by the Licensee or its employees or agents, take away for inspection a reasonable number of samples sufficient for examination of the Vines or Fruit, or part thereof, and for that purpose, subject to the Licensor giving the Licensee reasonable notice in writing, the Licensor is authorised to enter the land designated for the growing of Vines set out in Part 4 of the Schedule and shall take reasonable care in so doing.
- 3.4 Licensee agrees that it will abide by all mandatory local, regional and/or national government laws, rules and/or regulations that govern the growing of Vines and sale and/or distribution of Fruit.
- 3.5 Licensee must take all reasonable steps to ensure that no Vines or parts of Vines or Fruit is misappropriated by any third parties.
- 3.6 Licensee shall not challenge the validity of any intellectual property rights, including Plant Breeder's Rights, in relation to the Vines or Fruit.
- 3.7 Licensee shall not breach or encourage or permit any breach of any intellectual property rights, including Plant Breeder's Rights, in relation to the Vines or Fruit.
- 3.8 Licensee acknowledges that all rights to variations or mutations arising from the Vines or the Fruit or any vines or fruit demonstrating Essential Characteristics of the Protected Product or any Hybrid thereof will be the property of the Licensor notwithstanding that the same may constitute a new cultivar. Licensee must notify the Licensor immediately it becomes aware of the existence of any such variation or mutation or Hybrid thereof.

4. LABELLING AND PACKAGING

- 4.1 Licensee agrees that, prior to the delivery of Fruit sold to any third party, Licensee shall attach, in a form reasonably approved by the Licensor, to each package, bundle or container of fruit, a durable and legible label or tag denoting:
- 4.1.1 the correct cultivar name;
- 4.1.2 any plant variety protection number or identifier (if applicable); and
- 4.1.3 a warning that unlicensed sale or propagation is prohibited.
- 4.2 Licensee agrees to give notice to the Licensor of its intention to use any of the cultivar names of Fruit in any of its catalogues, advertisements, brochures or merchandise lists.
- 4.3 Licensee shall ensure that all Fruit is properly classified, packaged and boxed in accordance with all relevant statutes and regulations affecting the same, and otherwise as may be nominated by the Licensor, acting reasonably, from time to time, in consultation with the Licensee.

5. LICENCE FEE

The following licence fees must be paid to the Licensor :

- 5.1 Within 30 days of signing this Agreement, OIM must pay a licence fee of \$84,660 in respect of the Vines described in paragraph 2.8(iv) planted on Property 1; and
- 5.2 in respect of all other Vines planted or to be planted in accordance with this Agreement, the Licensee which purchases the Vine from time to time will pay \$2.00 per Vine within 30 days of the planting of that vine.

The Licensee will not pay the Licensor licence fees in respect of Vines, which are planted as replacements for Vines in respect of which licence fees have previously been paid.

6. EARNED ROYALTIES AND REPORTS

- 6.1 Earned Royalties shall accrue to the Licensor at the rate specified in Part 6 of the Schedule to this agreement. The Licensee shall pay Earned Royalties to the Licensor quarterly in arrears for the periods:

- 1 July to 30 September;
- 1 October to 31 December;
- 1 January to 31 March;
- 1 April to 30 June.

Payment of the Earned Royalties shall be made to the Licensor in respect of each quarter within 30 days of the end of each quarter.

- 6.2 Without prejudice to the Licensor's rights of termination pursuant to paragraph 12, in the event payment of the total amount of Earned Royalties is not received by the Licensor when due, and such delay in payment is not due to any act or fault of the Licensor, Licensee shall pay interest charges on the amount still due from the date such payment was due until fully paid. Interest charges shall be at the rates from time to time prescribed by Section 2 of the *Penalty Interest Rates Act, 1983 (Vic)*.

7. PLANTING OF VINES AND DEVELOPMENT OF VINEYARDS

- 7.1 In connection with the planting of Vines, the Licensor may appoint a representative to assist and supervise the planting and to check and count Vines planted. Within 30 days of completing the planting of the Vines, the Licensee shall provide Licensor with an accurate map showing the quantity and location of the Vines planted.
- 7.2 The licence given under this Agreement will expire at any time during the financial years 30 June 2004 to 30 June 2008 where the average number of Vines planted in a financial year and all previous financial years (including the financial year ended 30 June 2004) by the Licensee either alone or in combination with Timbercorp (where the Licensee is OIM) or OIM (where the Licensee is Timbercorp) is less than 67,500 (regardless of the proportion which the Stanley Seedless variety or the Red Rob variety represents of the total planting). such average to be determined on a rolling basis. In such circumstances, the Licensee's exclusive rights under paragraph 2.1 will be revoked and the Licensee will be granted the same rights, but on a non-exclusive basis. That is, the Licensor would then be free to licence third parties to plant and grow the Vines, and sell the Fruit, in the Licensed Territory.

Example: if during the 2004, 2005 and 2006 financial years, a total of 270,000 Vines are planted by Licensee, the Licensee may refrain from any further plantings of Vines during the 2007 financial year. As the rolling average of planted vines developed over the 2004-

2007 financial years is 67,500 Vines per annum, the Licensor will be prohibited from granting a licence to any other person in the Licensed Territory.

- 7.3 The licence given under this Agreement will expire at any time after 1st July 2008 unless:
- (a) the total number of Vines planted by the Licensee either alone or in combination with Timbercorp (where the Licensee is OIM) or OIM (where the Licensee is Timbercorp) on 1 July 2008 is at least 382,500; and
 - (b) thereafter, the total number of Vines planted by the Licensee either alone or in combination with Timbercorp (where the Licensee is OIM) or OIM (where the Licensee is Timbercorp) is, on average, equal to or greater than 67,500 per annum (regardless of the proportion which the Stanley Seedless variety or the Red Rob variety represents of the total planting), such average to be determined on a rolling basis.

If the plantings described in paragraph (a) and (b) are not achieved, the Licensee's exclusive rights under paragraph 2.1 will be revoked and the Licensee will be granted the same rights, but on a non-exclusive basis. That is, the Licensor would then be free to licence third parties to plant and grow the Vines, and sell the Fruit, in the Licensed Territory.

7A PROPERTY IN VINES PLANTED

The Licensor acknowledges and accepts that, as between the Licensor and the Licensee, the Vines planted by the Licensee on the Property described in Part 4 of the Schedule is vested in and is the exclusive property of the Licensee or any person claiming through the Licensee, subject to the rights granted under this Agreement.

8. SALE AGENT

The Licensee agrees to appoint the person set out in Part 10 as the initial exclusive sales agent of Licensee for all Fruit grown by Licensee ("Sales Agent"). The Sales Agent shall act as agent for Licensee in connection with all such sales, shall be authorised to make sales on behalf of Licensee, arrange transport for Fruit at Licensee's cost. The Licensee shall be bound to supply Fruit in accordance with orders solicited by the Sales Agent on behalf of the Licensee. The Licensee must notify the Licensor immediately of any change in the appointment of a Sale Agent.

9. BOOKS AND RECORDS

- 9.1 The Licensee shall keep books and records relating to receipt and sale of Fruit for a period of 5 years from the year in which such receipt or sale occurred to accurately show the following information:
- 9.1.1 the amount of Vines and Fruit on hand; and
 - 9.1.2 the amount and price of Fruit sold to each third party (identified by name and business location) in the Licensed Territory together with the date of sale.
- 9.2 Licensee will provide a signed and dated royalty report specifying the Fruit sold, Fruit on hand and Fruit on Vines by the end of each quarter specified in paragraph 6.1. Should the Licensee have had no activities pursuant to the reports, the Licensee shall provide a signed and dated statement to that effect.
- 9.3 The Licensee's books and records, including those of any subsidiary or related Body Corporate (as that term is defined in the Corporations Act), which relate to the sale of Fruit, and the prices received for such sale, under this Agreement, shall be open for inspection and

audit by the Licensor or its designated employees or agents during regular business hours for the purpose of verifying the accuracy of Licensee's gross sales of the Fruit. Upon giving reasonable notice, the books and records relating to the sale of Fruit, and the price received for such sale, under this Agreement shall be made available for inspection by the Licensor or its designated employees or agents. The Licensee shall provide such verification of any matter disclosed in the books and records which relate to the sale of Fruit, and the price received for such sale, under this Agreement as may be reasonably required by the Licensor or its designated employees or agents.

- 9.3. The Licensee shall cause the books and records of any manager employed by it and/or any Sales Agent, including those of any subsidiary or related Body Corporate (as that term is defined in the Corporations Act) which relate to the sale of Fruit, and the price received for such sale, under this Agreement, to be open for inspection and audit by the Licensor or its designated employees or agents during regular business hours for the purpose of verifying the accuracy of the Licensee's gross sales of the Fruit. Upon giving reasonable notice, the books and records of any Manager and/or Sales Agent relating to the sale of Fruit and the price received for such sale, under this Agreement shall be made available for inspection by the Licensor or its designated employees or agents. The manager and or any Sales Agent shall provide such verification of any matter disclosed in the books and records which relate to the sale of Fruit and the price received for such sale under this Agreement as may be reasonably required by the Licensor or its designated employees or agents.-
- 9.4. Licensee agrees to provide Licensor or its representatives or agents, upon receiving prior and reasonable written notice, with the location of each of the greenhouses, screen houses, laboratories, cold storage and/or field plantings used by or for the benefit of the Licensee containing Vines or Fruit and agrees to permit the Licensor and/or its designated employees or agents, during ordinary business hours, to inspect and audit such facilities and/or plantings for the purpose of verifying the Licensee's reports, books and records concerning Vines and Fruit.

10. INDEMNITY AND INFRINGEMENT

- 10.1 Licensee agrees to indemnify, hold harmless, and defend the Licensor, its officers, employees and/or agents against any and all claims, suits, losses, damages, costs, fees, and/or expenses suffered by the Licensor resulting from or arising out of Licensee's negligence or breach of this Agreement.
- 10.2 Without limiting the generality of paragraph 10.1 above, the Licensee shall not make or publish or cause to be made or published any false, misleading, deceptive or mis-descriptive statement or information in relation to the Vines or Fruit which may give rise to liability of the Licensor, and indemnifies the Licensor against any claim, liability, cost and expense which may be incurred or sustained by the Licensor arising or by reason of any false, misleading, deceptive or misdescriptive statement or information made by the Licensee in relation to the Vines or Fruit.
- 10.3 The Licensor will at all times indemnify and keep indemnified the Licensee and its sub-licensees and the officers, employees and agents of the Licensee and its sub-licensees (in this paragraph 10.3 referred to as "those indemnified") from and against any loss (including legal costs and expenses on a full indemnity basis) or liability incurred by any of those indemnified arising from any claim, demand, suit, action or proceeding by any person against any of those indemnified where such loss or liability arose out of in connection with or in respect of:

- (a) any breach of this Agreement by the Licensor; or

- (b) any of the warranties given by the Licensor under paragraph 16.1 proving to have been false, misleading or inaccurate when made.

- 10.4 Licensee and the Licensor agree to notify each other promptly of any suspected propagation, sale or use of Vines or Fruit, or any use of Vines or Fruit from essentially derived varieties, by firms or persons not duly licensed to propagate or sell or use such material. Notification of such suspected infringement shall include all details known to the party providing the information, such as name and address of the person suspected of infringing, location, size of area planted, number of plants propagated or sold or any other information that would enable the other party to investigate such alleged infringement. Licensee agrees to co-operate with Licensor in any infringement proceedings instituted hereunder provided the Licensor pays or reimburses the Licensee's reasonable costs and expenses of doing so.
- 10.5 Nothing herein shall be construed as conferring upon Licensee any right to bring suit for infringement relating to Vines or Fruit, and Licensee acknowledges that it shall not have any rights relative to the control of any such litigation. Nothing in this Agreement shall be construed as an obligation for Licensor to bring or prosecute actions or suits against third parties for infringement of Licensor's rights.
- 10.6 Where litigation is commenced against the Licensee in respect of any matter involving any breach of the warranties referred to in paragraph 16 or any infringement or alleged infringement referred to in paragraph 16.1, the Licensee may, on leave being granted, withdraw from the litigation and the Licensor will, in its own name and at its own expense, conduct the litigation.

11. USE OF NAMES

- 11.1 The use of the names designated by the Licensor, contractions thereof or reference thereto by the Licensee in any advertisement, labelling or publicity release relating to the Vines or the Fruit shall be allowed only in the following manner :
- 11.1.1 "Name of Licensee" is licensed in Licensed Territory by Licensor for the sale of the Fruit variety "Name of Variety".
- 11.1.2 With respect to describing the origin and characteristics of Vines or Fruit for advertising purposes, the Licensee shall use the Licensor's name only to provide factual and truthful information and shall not use the name to imply endorsement by the Licensor of either Licensee nor endorsement of the performance of Vines or Fruit.
- 11.1.3 To ensure the Licensor's approval of proposed wording of Licensee's advertising text or use of Licensor's name, Licensee may submit such text to Licensor for prior written approval.
- 11.1.4 Should Licensee use any advertisement relating to Vines or Fruit or to Licensor, which Licensor, in good faith, finds objectionable on reasonable grounds, Licensee agrees promptly to stop the use of such advertisement upon written notification by Licensor.
- 11.1.5 If any trade mark of the Licensor is used on or in relation to the Vines or Fruit, then all representations of the trade mark shall be clearly marked or accompanied with a clear statement that the Licensor is the owner of the trade mark and the Licensee uses the trade mark under licence from the Licensor. All use of the trade mark will inure to the Licensor.

12. CANCELLATION BY LICENSOR

12.1 It is expressly agreed that if the Licensee should :

12.1.1 fail to well and truly cultivate manure farm and irrigate all the Vines in a good workmanlike and commercially responsible manner and to a standard consistent with best horticultural practice and industry practices for similar Vines AND in all cases fail to adopt and pursue in the most prompt and careful manner a most effectual means for arresting combating reducing or eradicating pests or diseases having regard to best horticultural and industry practice AND fails to undertake all necessary trellising and pruning of the Vines at proper times and develop and protect and care for the Vines AND fails to comply in all respects with the terms and conditions as the case may be of the Plant Diseases act 1924 (N.S.W.), Phyloxera and Grape Industry Act 1995 (S.A.), Plant Health and Plant Products Act 1995 (Vic.) and Plant Diseases Act, 1914 (W.A.) or any statutory amendments thereof.

12.1.2 fail to exercise diligence in the growing of and sale of the Fruit in the Licensed Territory;

12.1.3 fail to deliver any statement or report;

12.1.4 fail to pay royalties at the time or times that the same should be made;

12.1.5 use Vines or Fruit for purposes not herein expressly contemplated;

12.1.6 violate or fail to keep or perform any obligation, term or condition of this Agreement;

12.1.7 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 Vines or Fruit as may be in force in Licensed Territory;

12.1.8 stop or suspend or threatens to stop or suspend payment of all or a class of its debts; then, and in such event, Licensor shall provide written notice of such breach or default to the Licensee specifying the default. If the Licensee shall fail to repair such breach or default or fail to pay reasonable compensation in money within ninety (90) days from receipt by it of such notice, Licensor shall have the right to cancel and terminate this Agreement as to any or all of the rights granted herein upon delivery of second written notice to the Licensee. Such termination shall not relieve the Licensee from its obligation to pay any Earned Royalties then due and owing or royalties that may accrue subsequent to such cancellation upon the Licensee's disposition of existing inventory of Fruit pursuant to the terms and conditions of this Agreement.

12.2 In the event of any breach or default of this Agreement by the Licensee which the Licensee fails to remedy or in respect of which the Licensee fails to pay reasonably compensation as provided in paragraph 12.1, subject to clause 13.1 the Licensee's rights under this agreement shall expire and the Licensor may sue for damages for breach of contract.

13. DISPOSITION OF INVENTORY AND FORFEITURE OF OTHER RIGHTS

13.1 Upon the lawful termination of this Agreement by either party hereto regarding any or all of the rights granted to the Licensee herein, the Licensee shall provide the Licensor with a written inventory listing the quantity of Vines and Fruit in the possession of Licensee. Licensee shall dispose of the existing inventory of such Fruit within three (3) calendar months from the date of notice of cancellation provided however that such disposition be subject to all terms of this Agreement. Licensee shall not sell or dispose of any Fruit after the three month period has expired.

- 13.2 Should this Agreement be lawfully terminated pursuant to the terms hereof by either Licensor or Licensee, the Licensee shall forfeit all right to use, and agrees to cease all such use, of the Licensor's name and forfeit all other rights granted under this Agreement other than for the purpose of complying with paragraph 13.1.

14. ASSIGNABILITY AND SUB-CONTRACTS

- 14.1 This Agreement is binding upon and shall inure to the benefit of the Licensor and its successors and assigns but subject to this Agreement and in particular paragraphs 17 and 17A, is personal to Licensee and assignable by Licensee only with the express prior written consent of Licensor which consent shall not be unreasonably withheld and provided the assignee agrees to be bound by the terms imposed on the Licensee under this Agreement. PROVIDED ALWAYS it is acknowledged:

14.1.1 that the responsible entity from time to time of Timbercorp Orchard Trust or any entity that holds the office of manager of the Timbercorp Orchard Trust from time to time is an acceptable assignee and provided the assignee agrees to be bound by the terms of this Agreement:

14.1.2 the Licensee may sub-license all rights under this Agreement to Timbercorp or any company in the Timbercorp Group or to the responsible entities or managers of Projects and to any growers or participants in any such Projects or projects.

- 14.2 Subject to paragraph 14.3, the Licensee may sub-contract to any third party the performance of any of its obligations under this Agreement with the prior consent of the Licensor which consent shall not be unreasonably withheld.

- 14.3 The Licensor consents to the appointment of Grape House Pty Ltd and Costa Management Pty Ltd by the Licensee to sub contract the performance of the obligations of the Licensee in whole or in part for the term of this Agreement.

15. WAIVER

It is agreed that no waiver by either party hereto of any breach or default of any of the covenants or agreements herein set forth shall be deemed a waiver as to any subsequent and/or similar breach of default.

16. WARRANTY AND ACKNOWLEDGEMENT

- 16.1 The Licensor warrants that:

- (i) it owns the rights to the Protected Products and has the right, authority and capacity to grant the licence and rights granted under this Agreement;
- (ii) the original applicant and title holder of the Protected Products was Andriske Table Grapes Pty Ltd in the case of Red Rob and Andriske (Paringi) Nominees Pty Ltd in the case of Stanley Seedless. The Licensor took a valid transfer of all rights, title and interest in and to the Protected Products was transferred to the Licensor on 24th September, 2003; and
- (iii) the exercise by the Licensee of its rights under this Agreement will not infringe the rights and intellectual property rights of any other person.

- 16.2 To the extent permitted by law, Licensor makes no express or implied warranties or merchantability, trueness to type, or fitness of Vines or Fruit for a particular purpose and shall have no liability to Licensee or of its third party customers on account of any defect or failure of Vines or Fruit.

- 16.3. All other conditions and warranties which would, or may, but for this provision, be implied (whether by Statute, law, trade usage or otherwise howsoever) into this Agreement are expressly excluded.
- 16.4. Nothing in this Agreement shall be construed as:
- 16.4.1. conferring by implication, estoppel or otherwise any licence or rights under any other patents, plant variety titles, or variety protection certificates belonging to Licensor other than such limited rights granted to Licensee in this Agreement; or
 - 16.4.2. an obligation to furnish any know-how in relation to Vines or Fruit, save as expressly provided in this Agreement.
- 16.5. The Licensee acknowledges that it has relied on its own viticultural knowledge and has taken expert advice as to the suitability, fitness of the Vines or the Fruit, the suitability of the district and soil in which the Vines are to be planted or otherwise and that no representations whatsoever other than are set out in this Agreement, have been made by the Licensor as to the suitability or fitness for the purpose of trueness of type or merchantability of the Vines or Fruit. The Licensee further acknowledges that the cultivars the subject of this Agreement have not been viticulturally assessed and the genetic stability thereof has not been established.

17. DEALING WITH PROPERTIES

The Licensee must not sell, transfer, let, license or otherwise dispose of the Properties referred to in Part 4 of the Schedule on which the Vines are planted, unless the Licensee procures the purchaser, transferee, lessee, licensee or other party proposed to obtain rights over the land ("the third party"):

- 17.1. to enter into an agreement with the Licensor to assume and observe the prohibition against the Propagation of the Vines or Fruit; and
- 17.2. to enter into an agreement with the Licensor to restrict the third party's right to sell, transfer, lease or otherwise dispose of the Vines or Fruit other than on the terms imposed on the Licensee under this Agreement.

17A PERMITTED DEALINGS

Subject to compliance with paragraph 17, the Licensor consents to the Licensee entering into leases, sub-leases and licenses granted for the purpose of a Project, on any part of the Properties referred to in Part 4 of the Schedule to and by any company in the Timbercorp Group, responsible entities or managers of Projects which are not part of the Timbercorp Group and to any growers or participants in the Projects whether those leases, sub-leases and licenses exist at the date of this Agreement, or arise subsequently.

18. SEVERABILITY

In case any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof but this Agreement shall be construed as if such invalid or illegal or unenforceable provisions had never been contained herein.

19. DUE DILIGENCE

Licensee agrees that as soon as reasonably practicable after the execution of this Agreement either it or any lessee or licensee of the Properties referred to in Part 4 of the Schedule will diligently

proceed with the growing of the Vines and sale of Fruit to third parties in the Licensed Territory and will use best endeavours to sell Fruit in quantities sufficient to meet the market demands therefor.

20. FORCE MAJEURE

The Licensee shall be excused from any performance required hereunder if such performance is frustrated due to any catastrophes or other major events beyond its reasonable control. Such catastrophes or major events include, but are not limited to, war, riot and insurrection, laws, proclamations, edicts, ordinances or regulations, strikes, lockouts or other serious labour disputes; and floods, fires, explosions or other natural disasters. When such events have abated, the parties' respective obligations hereunder shall resume.

21. CHOICE OF LAW AND JURISDICTION

- 21.1 This Agreement and its validity, construction, enforcement and interpretation shall be governed by the laws of Victoria provided that where a matter is governed by the law of a jurisdiction outside Victoria which cannot be excluded or negated in respect of its application to such matter, then this Agreement shall, in respect of such matter, be construed and interpreted subject to such law.
- 21.2 The parties hereby agree that venue and jurisdiction with respect of any matter arising under this Agreement shall be exclusively in the State or Federal Courts, as applicable, located in Victoria, Australian and Courts of Appeal therefrom.
- 21.3 Each of the parties hereby irrevocably and unconditionally waives any objections it may now or hereafter have to the laying of venue or any action or proceeding in any of the Courts referred to in Paragraph 21.2 hereof and any claim that they may now or hereafter have that any such action or proceeding has been brought in an inconvenient forum or place.

22. NOTICES

- 22.1 Any notice, demand, consent or other communication to be given by a party to another party under this Agreement must:
- 22.1.2 be in writing;
 - 22.1.3 give the address of the recipient as set out in Part 9 of the Schedule to this Agreement or as varied by notice from the relevant party; and
 - 22.1.4 be given or served by facsimile, or left at or sent by prepaid registered post to that address or facsimile number.
- 22.2 In the absence of proof to the contrary, a notice is deemed to have been given or served on the party to whom it was sent:
- 22.2.1 in the case of hand delivery, upon delivery during Business Hours of the recipient;
 - 22.2.2 in the case of pre-paid registered post, 3 Business Days after the date of dispatch; and
 - 22.2.3 in the case of facsimile transmission, at the time of dispatch if that dispatch is during Business Hours; or at 9.00am on the next Business Day following the day of dispatch, if the dispatch is outside Business Hours.
- 22.3 In this clause, 'Business Hours' means from 9.00am to 5.00pm on a Business Day.

23. MISCELLANEOUS

The attachment and Exhibits attached are part of this Agreement as if contained herein.

24. LIFE OF AGREEMENT

Unless sooner lawfully terminated by either party to this Agreement with respect to any or all rights granted herein, this Agreement shall remain in full force and effect from the effective date of this Agreement until the expiration of 25 years at which time it may be extended or modified by mutual agreement of the parties and if not so extended or modified, the Licensee will forthwith discontinue selling Fruit.

25. COMPLETE AGREEMENT

It is understood and agreed between the parties hereto that this Agreement constitutes all of the Agreements, both written and oral between the Licensor and the Licensee and that all prior Agreements respecting the subject matter hereof, either written or oral, expressed or implied, between the parties hereto shall be abrogated, cancelled and are null and void and of no effect.

26. AMENDMENT

No amendment or variation of this Agreement is valid or binding on a party unless made in writing executed by all parties.

27. GST

- 27.1 If any supply made under or in connection with this Agreement is a Taxable Supply (as defined in the GST Act), then the purchaser of that supply will pay the GST in respect of that supply to the supplier of that supply, where the GST is calculated in accordance with the GST Act and on the basis that the consideration otherwise payable under this Agreement is the value of the Taxable Supply.
- 27.2 The supplier of that supply must provide a Tax Invoice to the purchaser of that supply prior to the due date for payment of the consideration due in respect of the supply.

28. COSTS

- 28.1 The parties bear their own costs of and incidental to the negotiation, preparation and execution of this Agreement.
- 28.2 Except to the extent it is otherwise expressly provided in this Agreement, the Licensee pays all stamp duty on this agreement and on any instrument or other document executed to give effect to any provision of this Agreement.

29. DAY OF PAYMENT

If any day appointed or specified by this Agreement for the payment of money falls on a Saturday, Sunday or a day on which banks (as defined in the *Banking Act 1959 (Cth)*) are not open for business ("Non Business Day"), the day so appointed or specified is deemed to be the next day which is not a Non Business Day.

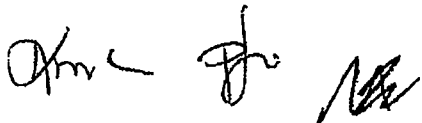
30. CANCELLATION OF EXISTING LICENSING AGREEMENT

Upon signing this Agreement, the Licensor must:

- 30.1 procure Carmelo Costa and Paul Costa to sign a deed under which they surrender their all of their rights, title and interest under the Licensing Agreement referred to in Paragraph 2.8(iv); and
- 30.2 countersign the deed of surrender. ✕

31. GOODWILL

Any goodwill in, or in relation to, the Protected Products or the Licensed Products arising by virtue of this agreement shall remain the property of the Licensor. The Licensee shall not be entitled to any compensation or payment in respect of any such goodwill upon lawful termination of this agreement.



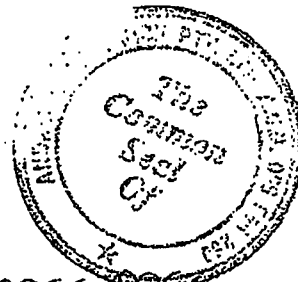


IN WITNESS WHEREOF the parties have hereto set their hands and seals the day and year first hereinbefore referred to.

THE COMMON SEAL of ANDRISKE RESEARCH

PTY.LTD. A.C.N. 006 565 260 was affixed in the

presence of authorised persons



Director [Signature] Full name KIM MARCE MACOMELL
Usual Address : Paring, N.S.W.

Secretary [Signature] Full Name PAMELA JANETTE WHITE
Usual Address: Paring, N.S.W.

PART

EXECUTED by ORCHARD INVESTMENTS
MANAGEMENT LTD. ACN 105 684 231 in
accordance with Sec. 127.1 of the Corporations Act.

Director [Signature] Full Name MICHAEL EMERY
Usual Address LEVEL 2 60 ST KILDA ROAD, MELBOURNE, VICTORIA

Secretary..... Full Name.....
Usual Address.....

EXECUTED by TIMBERCORP LIMITED
ACN 055 185 067 in accordance with section
127(1) of the corporations Act

Director [Signature] Full Name ROBERT JOHN HINES
Usual Address 1501 8 461 BOWKE ST MELB

Secretary [Signature] Full Name MARK HAMILTON
Usual Address 1501 8 461 BOWKE ST MELB

[Signature]

SCHEDULE

PART 1: PROTECTED PRODUCTS

Plant Breeders Rights Application No. 1996/046 in respect of the White Seedless Grape Cultivar known as "Stanley Seedless" and granted 25th May, 2002, and Numbered 2010 as recorded by the Certificate, a true copy of which is annexed hereto and marked with the letters "SSC".

Plant Breeders Rights Application No. 1998/144 in respect of the Red Seedless Grape Cultivar known as "Red Rob" and granted 11th June, 2003, and Numbered 2263, as recorded by the Certificate, a true copy of which is annexed hereto and marked with the letters "RRC".

PART 2: LICENSEE

Name : ORCHARD INVESTMENTS MANAGEMENT LTD.
A.C.N. 105 684 231 as responsible entity of the Timbercorp Orchard Trust

and

TIMBERCORP LIMITED
A.C.N. 055 185 067

PART 3: LICENSED PRODUCTS

White Seedless Grape Cultivar known as "Stanley Seedless" Vines and Grapes therefrom (Plant Breeder's Rights Application No. 1996/046 and granted 25th May, 2002, and Numbered 2010).

Red Seedless Grape Cultivar known as "Red Rob" Vines and Grapes therefrom (Plant Breeder's Rights Application No. 1998/144 and granted 11th June, 2003 and Numbered 2263).

PART 4: LICENSED TERRITORY:

For planting of Vines:

South of Latitude 32-54 degrees South in all of Australia, save in Western Australia, it shall be South of Latitude 30 degrees South including but not limited to the following Properties:

1. The land described in Folio Identifier 2/1046695. (a copy of which is annexed hereto and marked "Property 1" being an area comprising a vineyard of 94 acres planted on or before 30 June 2002 and a further area of 23 plantable acres to be planted on or before 30 June 2004.

→ sub divides

2. Lots 1 and 2 on Proposed Subdivision of Lot 4378 in DP 767245 and Part W.L.L. 9829 (a copy of which is annexed hereto and marked "Property 2").

3. Such other land notified by the Licensee to the Licensor from time to time.

For Sale of Fruit:

1. For export quality - The World
2. For less than export quality - Australia.

PART 5 LICENCE FEE

INTENTIONALLY DELETED

PART 6 EARNED ROYALTY

Royalty Rate: 8% of the Gross Sales (as defined) of the Fruit

PART 7 QUANTITIES OF VINES AND DATES BY WHICH PLANTING IS TO BE COMPLETED

INTENTIONALLY DELETED

PART 8: REPORTS

INTENTIONALLY DELETED

PART 9: ADDRESS FOR NOTICES

Licensor: ANDRISKE RESEARCH PTY. LTD.
Box 5053, P.O.,
MILDURA. VIC. 3502.
Fax: (03) 5024 0336

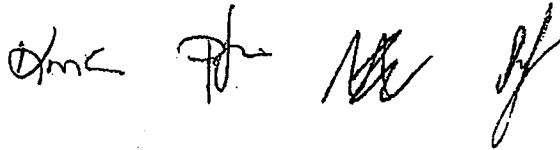
Licensee: ORCHARD INVESTMENTS MANAGEMENT
LIMITED,
Level 2, 613 St Kilda Road,
MELBOURNE. VIC. 3004.

and a copy to:
TIMBERCORP ASSET MANAGEMENT PTY
LTD
Level 8, 461 Bourke Street,
MELBOURNE, VIC. 3000

TIMBERCORP LIMITED
Level 8, 461 Bourke Street,
MELBOURNE, VIC. 3000

PART 10: SALES AGENT

The initial Sales Agent shall be THE GRAPE HOUSE PTY. LTD.

Four handwritten signatures in black ink, arranged horizontally. The first signature appears to be 'Dmc', the second 'Jh', the third 'ME', and the fourth 'Jf'.