

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


Prepared by:

**Allens Arthur Robinson**  
Lawyers  
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Melbourne VIC 3000

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Matthew.Whittle@aar.com.au  
Clint.Hinchen@aar.com.au

This is the exhibit marked '**PWK23**' 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 'PWK23'**

**Copy of Variation Agreement  
dated 12 November 2004**

## DEED OF VARIATION OF LICENCE AGREEMENT

THIS VARIATION OF LICENCE AGREEMENT made the 12<sup>th</sup> day of November 2004  
~~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. By Agreement ("the Principal Agreement") made 9th October, 2003, the Licensor granted to each Licensee severally the right to plant and grow the vine Cultivars designated in the Plant Breeder's Rights Applications listed in Part 1 of the Schedule to the Principal Agreement on the terms and conditions set out therein.
- B. The Licensor and Licensee wish to vary the terms and conditions of the Principal Agreement.

### IT IS AGREED AS FOLLOWS :

1. In respect of all vines planted after 1st July, 2004, the Licensee will pay to the Licensor a Licence fee of \$9.00 plus GST per vine in lieu of \$2.00 per vine as set out in Clause 5 of the Principal Agreement.
2. In respect of all fruit grown from any vines planted after 1st July, 2004, the Licensee will pay a Royalty Rate of 3% on the gross sales (as defined) of the fruit in lieu of 8% as set out in Part 6 of the Schedule to the Principal Agreement.
3. Nothing herein shall be deemed to alter the Licensing Fee or Royalty Rate in respect of any vines planted prior to 30th June, 2004.
4. The following definition of Term is inserted in Clause 1 :  
"Term" means :
  - (a) in respect of the "Stanley Seedless" cultivar, the period commencing on the date of this Agreement and expiring on the date of expiry of the Plant Variety Rights for the cultivar being 24th May, 2027; and

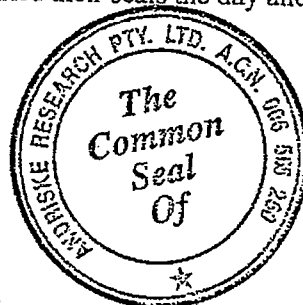
(b) in respect of the "Red Rob" cultivar, the period commencing on the date of this Agreement and expiring on the date of expiry of the Plant Variety Rights for the cultivar being 20th June, 2028.

5. In Clause 2.1, the words "for the Term" are inserted immediately after the words "Licensed Territory".
6. The following new Clause 3.9 is inserted :  
"Where the Licensor enters upon any property of the Licensee to carry out its rights under this Agreement, it must comply with the Occupation Health & Safety requirements of the Licensee".
7. The title of Clause 11 is amended to "Use of Names and Trade Marks".
8. The following new Clause 11.1.5 is inserted :  
"11.1.5 The Licensor grants the Licensee a perpetual non exclusive licence to use any trade mark and other marks of the Licensor used in connection with the Protected Product and the Vines, whether such trade marks are :  
(a) registered or unregistered;  
(b) in existence at the date of this Agreement; or  
(c) created after the date of this Agreement.  
This Clause 11.1.5 will survive the termination or expiry of this Agreement."
9. The words "If any trade mark" are inserted at the beginning of Clause 11.1.6 (formerly 11.1.5).
10. In Clause 16.1.(i), the words "(including the trade marks)" are inserted immediately after "Protected Products".
11. Clause 24 is deleted and replaced with the following :  
"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 expiry of the Plant Variety Rights".

12. In all other respects, the parties confirm each and every provision of the Principal Agreement.  
IN WITNESS whereof the parties hereto have set their hands and affixed their seals the day and year first hereinbefore written.

THE COMMON SEAL of ANDRISKE RESEARCH PTY.

LTD. A.C.N. 078 025 420 was affixed in the presence of  
authorised persons



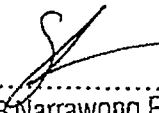
Director C. C. [Signature] Full name GARY CHARLES ANDRISKE  
Usual Address : Paringi, N.S.W.

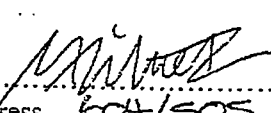
Secretary [Signature] Full Name PAMELA JANETTE WHITE  
Usual Address: Paringi, N.S.W.

EXECUTED by ORCHARD INVESTMENTS MANAGE- )

MENT LTD. ACN 105 684 231 in accordance with Sec. 127.1 )

of the Corporations Act )

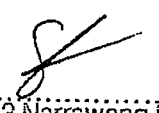
Director.......... Full Name..... Sol Rabinowicz  
Usual Address..... 63 Narrawong Rd. Caulfield South 3162.....

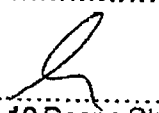
Secretary.......... Full Name.....  
Usual Address..... 604/505 St Kilda Rd, Melbourne 3006.....

EXECUTED by TIMBERCORP LIMITED ACN )

055 185 067 in accordance with section 127(1) of the )

Corporations Act )

Director.......... Full Name..... Sol Rabinowicz  
Usual Address..... 63 Narrawong Rd. Caulfield South 3162.....

Secretary.......... Full Name..... Mark H Pryn  
Usual Address..... 10 Deane Street, Blackburn 3130.....