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U.S. DEPARTMENT OF COMMERCE U.S. Patent and Trademark Office

102425313

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

Firestone Vineyard LP

4.14.03

- Individual(s) Association General Partnership Limited Partnership Corporation-State Other California

Additional name(s) of conveying party(ies) attached? Yes No

3. Nature of conveyance:

- Assignment Merger Security Agreement Change of Name Other

Execution Date: December 21, 1998

2. Name and address of receiving party(ies)

Name: Firestone Vineyard LLC

Internal Address:

Street Address: 5000 Zaca Station Road

City: Los Olivos State: CA Zip: 93441

- Individual(s) citizenship Association General Partnership Limited Partnership Corporation-State

Other California Limited Liability Company

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No (Designations must be a separate document from assignment) Additional name(s) & address(es) attached? Yes No

4. Application number(s) or registration number(s):

A. Trademark Application No.(s) 75182233

B. Trademark Registration No.(s) 1790603 1824559 2148203 2609987 2621758

Additional number(s) attached Yes No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Rod S. Berman, Esq.

Internal Address:

Street Address: Jeffer, Mangels, Butler & Marmaro LLP,

1900 Avenue of the Stars, Seventh Floor

City: Los Angeles State: CA Zip: 90067

6. Total number of applications and registrations involved: 6

7. Total fee (37 CFR 3.41): \$165.00

- Enclosed Authorized to be charged to deposit account

8. Deposit account number:

10-0440

(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Adam B. Firestone Name of Person Signing

Signature

4/14/03 Date

Total number of pages including cover sheet, attachments, and document: 9

Mail documents to be recorded with required cover sheet information to: Commissioner of Patent & Trademarks, Box Assignments Washington, D.C. 20231

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FC:8521 40.00 DP FC:8522 125.00 DP

TRADEMARK REEL: 002715 FRAME: 0572

**AGREEMENT OF MERGER OF  
FIRESTONE FARMING COMPANY LIMITED PARTNERSHIP,  
a California limited partnership**

**with and into**

**THE FIRESTONE VINEYARD,  
a California limited partnership,**

**and the subsequent merger of THE FIRESTONE VINEYARD, a California limited  
partnership,**

**with and into**

**FIRESTONE VINEYARD LLC, a California limited liability company  
under the name of "FIRESTONE VINEYARD LLC"**

THIS AGREEMENT OF MERGER (this "Agreement") is made and entered into as of the 21<sup>th</sup> day of December, 1998 by and among FIRESTONE FARMING COMPANY LIMITED PARTNERSHIP, a California limited partnership ("Farming Company"); THE FIRESTONE VINEYARD, a California limited partnership ("Vineyard") and FIRESTONE FARMING COMPANY LLC, a California limited liability company (the "Company"). At times in this Agreement, Farming Company and Vineyard are referred to separately as a "Partnership" and collectively as the "Partnerships".

**RECTIALS**

A. Farming Company is a limited partnership organized under the laws of the State of California pursuant to the filing of a Certificate of Limited Partnership (Form LP-1) with the California Secretary of State on December 18, 1992 and is governed by the terms and conditions of its Limited Partnership Agreement effective December 1, 1992 as amended and restated from time to time.

B. Vineyard is a limited partnership organized under the laws of the State of California pursuant to the filing of a Certificate of Limited Partnership (Form LP-1) with the California Secretary of State on December 31, 1974, as subsequently amended and/or restated, and is governed by the terms and conditions of its Limited Partnership Agreement effective January 1, 1974, as amended and restated from time to time.

C. The Company is a limited liability company organized under the laws of the State of California pursuant to the filing of Articles of Organization (Form LLC-1) with the California Secretary of State on December 21, 1998 and is governed by the terms and conditions of its Operating Agreement dated December 21, 1998 (the "Operating Agreement").

D. The partners and/or members of Farming Company, Vineyard and the Company, are made up of members of the family of A. Brooks Firestone (the "Firestone Family"), either individually or through wholly owned entities, trusts or custodial arrangements for their benefit.

E. The Firestone Family, through its ownership of Farming Company and Vineyard, owns and operates a grape vineyard and winery and makes and sells fine wines (collectively, the "Winery Business"). Farming Company owns real property (the "Property") located in that portion of the County of Santa Barbara, State of California, commonly known as the Santa Ynez Valley, which is used predominantly for vineyard and related agricultural purposes in connection with the Winery Business. Vineyard makes and sells wine made from the grapes grown on the Property by Farming Company.

F. The operation of the Winery Business through two separate entities creates operational, financial, management and economic inefficiencies.

G. The general partners of Farming Company and Vineyard believe it is in the best interests of the partners of Farming Company and Vineyard, and the Winery Business operated by the Partnerships, that the Winery Business be consolidated into one entity in order to improve and streamline the operational, financial, management and economic aspects of the Winery Business.

H. Subject to the terms and conditions hereinafter set forth, the parties desire to consolidate the Winery Business into one entity pursuant to a merger transaction in which as an initial step, Farming Company merges with and into Vineyard (the "Positioning Merger") and Vineyard, as the surviving partnership of the Positioning Merger, merges with and into the Company (the "Resulting Merger"). At times, the Positioning Merger and the Resulting Merger are referred to as the "Rollup Transaction".

I. For a number of business reasons, the parties desire to effect the Rollup Transaction on or before December 31, 1998.

J. The Positioning Merger and the subsequent Resulting Merger are based on preliminary values of the various Partners' interests in the Farming Company and Vineyard determined by the general partners for purposes of closing the Rollup Transaction in 1998. The parties acknowledge, however, that the values will be adjusted pursuant to the appraisals to be undertaken by Dennis McCarthy of Cornerstone Capital Partners based on information as of the Effective Date of the Rollup Transaction, and the final values of the exchanges for purpose of the Rollup Transaction will be based on the Cornerstone Capital Partners appraisals.

NOW, THEREFORE, in consideration of these premises and of the mutual provisions, conditions and covenants herein contained, the parties hereto do hereby agree as follows:

## AGREEMENT

### 1. POSITIONING MERGER

#### 1.1. Merger

The Partnerships and the partners of the Partnership hereby agree to merge Farming Company with and into Vineyard pursuant to the Positioning Merger, to exist and be governed by the laws of the State of California.

#### 1.2. Terms and Conditions

The consequences of the Merger shall include, without limitation, all of those matters set forth in the California Corporations Code Section 15678.6, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference. In addition, the terms and conditions of the Merger are as follows.

A. The name of the "surviving limited partnership", as that term is defined in California Corporations Code Section 15611(ad), shall be THE FIRESTONE VINEYARD.

B. The separate existence of Farming Company shall cease and Vineyard shall succeed, without other transfer, act or deed, to all the rights and property, whether real, personal, or mixed, of Farming Company and shall be subject to all the debts and liabilities of Farming Company in the same manner as if Vineyard had itself incurred them.

C. All rights of creditors and liens upon the property of both Farming Company and Vineyard shall be preserved unimpaired and may be enforced against Vineyard to the same extent as if the debt, liability or duty that gave rise to that lien had been incurred or contracted by Vineyard, provided that such liens upon the property of the Farming Company shall be limited to the property affected thereby immediately prior to the time the merger is affected.

D. Notwithstanding the Positioning Merger, the liability of the general partners of Farming Company shall not be affected in connection with the debts and liabilities of Farming Company existing prior to the time the Positioning Merger is effected.

#### 1.3. Effective Date of Positioning Merger

The "Effective Date" of the Merger shall be the date on which a Limited Partnership Certificate of Merger (Form LP-9) is filed in the office of the California Secretary of State.

#### 1.4. Recitals of Constituent Entities

##### 1.4.1. Disappearing Partnership

Farming Company is a limited partnership duly organized, validly existing, and in good standing under the laws of the State of California. Farming Company is the

“disappearing limited partnership” as that term is defined in Corporations Code Section 15611(h).

#### 1.4.2. Surviving Partnership

Vineyard is a limited partnership duly organized, validly existing, and in good standing under the laws of the State of California. Vineyard is the “surviving limited partnership” as that term is defined in Corporations Code Section 15611(ad).

#### 1.5. Basis Of Converting Interests

##### 1.5.1. Assets of Constituent Entities; Capital Accounts

The general partners of Farming Company and Vineyard have determined a preliminary equity value ( the “Preliminary Equity Value”) for Farming Company and Vineyard. The Preliminary Equity Value shall be the basis for converting interests of Farming Company into Vineyard as reflected on the Spreadsheet attached hereto as Schedule “1”. The general partners of Farming Company and Vineyard have retained Dennis McCarthy of Cornerstone Capital Partners who will determine the value of Farming Company and Vineyard as of the Effective Date of the Rollup Transaction. Such appraisal shall serve as the basis for a determination of the final equity values (the “Final Equity Values”) of the Partnerships. All parties hereto acknowledge that the initial conversion shall be based on the Preliminary Equity Values, and that such interests will be revised to reflect the Final Equity Values once the Cornerstone Capital Partners appraisal is completed. Furthermore, as of the Effective Date of the Positioning Merger, each partners’ capital account of Vineyard shall be appropriately adjusted to reflect the Final Equity Values.

##### 1.5.2. Conversion

As of the Effective Date of the Positioning Merger, the partnership interest of each partner of Farming Company shall be converted into a partnership interest in Vineyard as set forth on Exhibit “B” attached hereto and incorporated herein by reference (the “Positioning Merger Conversion”). The Positioning Merger Conversion shall be calculated as follows: (i) each partner’s pro rata value in each constituent Partnership shall be determined by multiplying each partner’s partnership interest in each Partnership by the preliminary Equity Value of each Partnership; (ii) the sum of each partner’s pro rata preliminary equity value in each constituent Partnership shall be added to obtain a total pro rata preliminary equity value in both Partnerships; and (iii) the total pro rata preliminary equity value of each partner’s interest in both Partnerships shall be divided by the sum of the preliminary Equity Value of both Partnerships to obtain each partner’s resulting partnership interest in Vineyard (the “Positioning Partnership Interest”).

##### 1.5.3. Post Effective Date Adjustments

The general partners of the Partnerships shall cause appropriate appraisals to be prepared and, based upon the results of those appraisals, shall adjust the Positioning Merger Conversion as necessary, to more accurately reflect the Positioning Merger Conversion as of the Effective Date based on the Final Equity Values. Thereafter, the Partnership Agreement of Vineyard shall be amended after the Effective Date, to the extent necessary, to reflect any changes to the Positioning Merger Conversion and the Positioning Partnership Interests of the partners in Vineyard. Notwithstanding anything to the contrary contained in the Partnership

Agreement of Vineyard, the general partners of Vineyard shall have the right to amend the Partnership Agreement of Vineyard without the limited partners of Vineyard joining in such amendment, solely to reflect any changes in the Positioning Merger Conversion and the Positioning Partnership Interests of the partners based on the Final Equity Values as contemplated herein, and the partners of Vineyard hereby direct the general partners to undertake such action and hereby ratify, approve and confirm such action, including the amendment of the Partnership Agreement of Vineyard without the further approval of or signature by the limited partners of Vineyard.

## 2. RESULTING MERGER

### 2.1. Merger

Vineyard, the partners of Vineyard, the Company and the members of the Company, subject to completion of the Positioning Merger, hereby agree to merge with and into the Company pursuant to the Resulting Merger, to exist and be governed by the laws of the State of California. As used in this Article 2, the composition of the partners, assets and liabilities of "Vineyard" shall assume that completion and effectiveness of the Positioning Merger and shall reflect Vineyard as the surviving limited partnership of the Positioning Merger.

### 2.2. Terms and Conditions

The consequences of the Resulting Merger shall include, without limitation, all of those matters set forth in the California Corporations Code Section 17554, a copy of which is attached hereto as Exhibit "C". In addition, the terms and conditions of the Merger are as follows:

A. The name of the "surviving limited liability company", as that term is defined in California Corporations Code Section 17001 (am), shall be FIRESTONE VINEYARD LLC.

B. The separate existence of Vineyard shall cease and the Company shall succeed, without other transfer, act or deed, to all the rights and property, whether real, personal, or mixed, of Vineyard and shall be subject to all the debts and liabilities of the Vineyard in the same manner as if the Company had itself incurred them.

C. All rights of creditors and liens upon the property of both Vineyard and the Company shall be preserved unimpaired and may be enforced against the Company to the same extent as if the debt, liability or duty that gave rise to that lien had been incurred or contracted by the Company, provided that such liens upon the property of Vineyard shall be limited to the property affected thereby immediately prior to the time the Resulting Merger is affected.

D. Notwithstanding the Resulting Merger, the liability of the general partners of Vineyard shall not be affected in connection with the debts and liabilities of Vineyard existing prior to the time the Resulting Merger is effected.

E. The Company will carry on business with the assets of Vineyard as well as with its own assets.

### 2.3. Effective Date

The "Effective Date" of the Resulting Merger shall be the date on which a Certificate of Merger (Form LLC-9) is filed in the office of the California Secretary of State; provided, however, in no event shall the Certificate of Merger for the Resulting Merger be filed prior to the Certificate of Merger for the Positioning Merger.

### 2.4. Recitals of Constituent Entities

#### 2.4.1. Disappearing Partnership

Vineyard is a limited partnership duly organized, validly existing, and in good standing under the laws of the State of California. Vineyard is the "disappearing other business entity" as that term is defined in Corporations Code Section 17001(i).

#### 2.4.2. Surviving Limited Liability Company

Company is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of California. Company is the "surviving limited liability company" as that term is defined in Corporations Code Section 17001(am).

### 2.5. Basis Of Converting Interests

#### 2.5.1. Assets of Constituent Entities; Capital Accounts

The Preliminary Equity Value of Vineyard and the Positioning Partnership Interests determined after the Positioning Merger shall be the basis for converting interests of Vineyard into the Company. All parties hereto acknowledge that the initial conversion shall be based on Preliminary Equity Values, and that the Positioning Interests will be revised to reflect the Final Equity Values once the Cornerstone Capital Partners appraisal is completed. Furthermore, as of the Effective Date of the Resulting Merger, each member's capital account of the Company shall be appropriately adjusted to reflect the Final Equity Values.

#### 2.5.2. Conversion

As of the Effective Date of the Resulting Merger, the partnership interest of each partner of Vineyard (as such interest exists after the Positioning Merger) shall be converted into an equivalent membership interest in the Company as set forth on Exhibit "D" attached hereto and incorporated herein by reference (the "Resulting Merger Conversion").

#### 2.5.3. Post Effective Date Adjustments

The general partners of Vineyard and the managers of the Company shall cause appropriate appraisals to be prepared and based upon the results of those appraisals, shall adjust the Resulting Merger Conversion as necessary, to more accurately reflect the Resulting Merger Conversion as of the Effective Date based on the Final Equity Values and otherwise consistent with Section 1.5.3 above. Thereafter, the Operating Agreement of the Company shall be amended after the Effective Date, to the extent necessary, to reflect any changes to the Resulting Merger Conversion and the Membership Interests of the members in the Company. Notwithstanding anything to the contrary contained in the Operating Agreement of the Company, the managers of the Company shall have the right to amend the Operating Agreement of the Company without the members of the Company joining in such amendment, solely to

reflect any changes in the Resulting Merger Conversion and the Membership Interests of the Members, based on the results of the appraisals contemplated herein, and the members of the Company hereby direct the managers to undertake such action and hereby ratify, approve and confirm such action, including the amendment of the Operating Agreement of the Company, without the further approval of or signature by the Member's of the Company.

### 3. TIMING MATTERS

The parties hereto acknowledge that notwithstanding that the Effective Dates of the Positioning and Resulting Mergers may fall on the same date, the Positioning Merger shall be deemed to occur prior to the Resulting Merger and the occurrence of the Positioning Merger prior to the Resulting Merger shall be a condition precedent to the effectiveness of the Resulting Merger. Furthermore, the approval of the Resulting Merger by the parties hereto including the Partners in Vineyard and the Members in Company, shall be deemed to be the approval of such Partners as they exist both before and after the Positioning Merger.

### 4. FURTHER ASSIGNMENTS OR ASSURANCES

If at any time the Company as the ultimate surviving entity considers or is advised that any further assignments or assurances in law are necessary to vest or to perfect or to confirm of record in the Company as the ultimate surviving entity, the title to any property or rights of Farming Company and/or Vineyard, or otherwise carry out the provisions of this Agreement and to effect the Rollup Transaction, the general partners of Farming Company and/or Vineyard, as of the Effective Date of the Merger, will execute and deliver all proper deeds, assignments, confirmations, and assurances in law, and do all acts that the Company as the surviving entity determines in its sole discretion to be proper to vest, perfect, and confirm title to such property or rights in the Company, and otherwise carry out the provisions of this Agreement.

### 5. INTERPRETATION AND ENFORCEMENT

#### 5.1. Partial Invalidity

If any term of this Agreement is held by a court of competent jurisdiction to be void and unenforceable, the remainder of the contract terms shall remain in full force and effect.

#### 5.2. Controlling Law

The validity, interpretation, and performance of this Agreement shall be controlled by and construed under the laws of the State of California, the state in which this Agreement is being executed.

#### 5.3. Attorneys' Fees

The prevailing party to any action or proceeding commenced in connection with this Agreement shall, in addition to any other damages or relief awarded, recover its reasonable attorneys' fees.



5.4. Approval

By their signatures below, each of the partners to each of the Partnerships and each of the Members of the Company hereby consent to and approve of the Positioning Merger, Resulting Merger and Rollup Transaction pursuant to the terms of this Agreement, and hereby ratify, approve and confirm the terms of this Agreement.

5.5. Counterparts

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument. Executed counterpart copies may be delivered by facsimile transmission (followed by delivery of the signed original). This Agreement shall be effective upon receipt by facsimile transmission of executed counterpart copies.

5.6. Successors and Assigns

This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto.

IN WITNESS WHEREOF, this Agreement is executed as of the date set forth above.

THE FIRESTONE VINEYARD, a California  
Limited partnership

By: BROOKS FIRESTONE, INC., a  
California corporation, General Partner

By: A. Brooks Firestone  
A. Brooks Firestone, President

By: Adam B. Firestone  
Adam B. Firestone, General Partner

FIRESTONE FARMING COMPANY  
LIMITED PARTNERSHIP, a California  
limited partnership

By: Brooks Firestone  
Brooks Firestone, General Partner

By: Adam B. Firestone  
Adam B. Firestone, General Partner

FIRESTONE VINEYARD LLC, a  
California limited liability company

By: BROOKS FIRESTONE, INC., a  
California corporation, Manager

By: A. Brooks Firestone  
A. Brooks Firestone, President

By: Adam B. Firestone  
Adam B. Firestone, Manager

*Signatures continue*