

10-06-2004



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9.30.04

To the Director of the U. S. Patent and Trademark Office: Please record the attached documents or the new address(es) below.

1. Name of conveying party(ies)/Execution Date(s):

WEIBEL INCORPORATED

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

Citizenship (see guidelines) California

Execution Date(s) September 28, 2004

Additional names of conveying parties attached? Yes No

3. Nature of conveyance:

- Assignment
- Security Agreement
- Other
- Merger
- Change of Name

2. Name and address of receiving party(ies)

Additional names, addresses, or citizenship attached? Yes No

Name: Simon Levi Company, Ltd.

Internal

Address:

Street Address: 9380 Sonoma Highway

City: Kenwood

State: CA

Country: USA

Zip: 95452

- Association
- General Partnership
- Limited Partnership
- Corporation
- Other

Citizenship California
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)

4. Application number(s) or registration number(s) and identification or description of the Trademark.

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

No. 1,176,445

No. 1,364,824

Additional sheet(s) attached? Yes No

C. Identification or Description of Trademark(s) (and Filing Date if Application or Registration Number is unknown):

"Stone Creek" and "Valley Ridge" -- wine and winery related trademarks

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

Name: John Barry Jacobs

Internal Address: Simon Levi Company, Ltd.

Street Address: 9380 Sonoma Highway

City: Kenwood

State: CA Zip: 95452

Phone Number: 707-833-4455

Fax Number: 707-833-1355

Email Address:

6. Total number of applications and registrations involved:

2

7. Total fee (37 CFR 2.6(b)(6) & 3.41) \$ 65.00

- Authorized to be charged by credit card
- Authorized to be charged to deposit account
- Enclosed \$65.00

8. Payment Information:

- a. Credit Card Last 4 Numbers _____
Expiration Date _____
- b. Deposit Account Number _____
Authorized User Name _____

9. Signature: Marti B. McAllister

Signature

September 30, 2004

Date

Marti B. McAllister

Name of Person Signing

Total number of pages including cover sheet, attachments, and document: 6

Documents to be recorded (including cover sheet) should be faxed to (703) 306-5995, or mailed to:
Mail Stop Assignment Recordation Services, Director of the USPTO, P.O. Box 1450, Alexandria, VA 22313-1450

OFFICE OF TRADEMARKS
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FINANCE SECTION

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ROYALTY AGREEMENT

THIS ROYALTY AGREEMENT (“**Agreement**”) is entered into as of September 28, 2004, by and between WEIBEL INCORPORATED, a California corporation, dba Weibel Vineyards (“**Weibel**”), and SIMON-LEVI COMPANY, LTD., a California corporation (“**SLC**”). Weibel and SLC are referred to collectively herein as the “**Parties**”. All capitalized terms not defined in this Agreement shall incorporate the meanings of such terms as defined in that certain Asset Purchase Agreement, as may be amended, executed between the Parties of even date herewith (collectively, “**Purchase Agreement**”).

Recitals

A. Pursuant to the Purchase Agreement, Weibel, as buyer, acquired and/or assumed from SLC, as seller, the Acquired Assets and the Assumed Liabilities.

B. As an inducement for SLC to enter into the Purchase Agreement, Weibel desires to pay to SLC, and SLC desires to receive from Weibel, a royalty payment on sales of all finished wine products bearing the Marks over a five (5)-year period, commencing as of January 1, 2005, subject to the terms and conditions set forth in this Agreement.

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

1. **Royalty.** Weibel shall pay to SLC an annual royalty on all sales of finished wine products bearing the Marks for a period of five (5) years beginning as of the “**Commencement Date**” (as defined in Section 2), pursuant to the following royalty payment schedule (“**Royalty**”):

<u>Annual Case Sales</u>	<u>Royalty/Case</u>
1 to 40,000	\$ 0.50
40,001 to 50,000	\$ 0.75
50,001 to 60,000	\$ 1.00
60,001 to 75,000	\$ 1.25
all cases in excess of 75,000	\$ 1.50

The Royalty payments due under this Agreement are based on annual case sales, not cumulative case sales. For example, if sales in the 2005 calendar year are 40,000 cases and sales in the 2006 calendar year are 60,000 cases, then the Royalty amounts payable by Weibel to SLC hereunder would be \$20,000 and \$37,500, respectively.

2. **Term of Royalty Payments.** The commencement date of Weibel’s obligation to pay, and SLC’s right to receive, Royalty payments hereunder shall be January 1, 2005 (“**Commencement Date**”), and such Royalty obligations and rights shall expire five (5) years thereafter on December 31, 2009.

3. **Commercially Reasonable Efforts.** During the term of this Agreement, Weibel shall exercise commercially reasonable and diligent efforts to maximize the manufacturing, marketing and sales of finished wine products bearing the Marks.

4. **Security Interest.** During the term of this Agreement, Weibel hereby grants to SLC a first priority security interest in and to the Marks, which interest shall secure the performance of Weibel’s obligations hereunder. The Parties shall prepare, execute, deliver, file

and/or record such other documents or instruments that may be reasonable or necessary in order to perfect SLC's first priority security interest in and to the Marks, including a UCC-1 Financing Statement. The parties acknowledge and agree that this Agreement constitutes an Article 9 security agreement. Upon the expiration of this Agreement, SLC shall promptly facilitate the release and/or discharge of any security interests SLC has in or to the Marks.

5. **Payment.** The Royalties due and payable hereunder shall be calculated on a calendar quarterly basis (March 31, June 30, September 30 and December 31) and paid by Weibel to SLC within thirty (30) days following the end of each calendar quarter. Within thirty (30) days following the end of each quarter, Weibel shall also give SLC quarterly sales depletion reports with respect to the sales of finished wine products bearing the Marks, along with corresponding calculations of the Royalty payment. If any Royalty payment is not received by SLC by the due date and SLC gives Weibel at least five (5) days' written notice thereof, then Weibel agrees to pay a late charge of five percent (5%) of the amount due, plus interest at the rate of the lesser of ten percent (10%) per annum or the maximum rate permitted by law, plus any related costs of pursuing collection (including attorneys' fees and costs).

6. **Accounting; Records.** Weibel shall keep accurate accounting and sales depletion information and records with respect to sales of finished wine products bearing the Marks. Upon reasonable prior notice, SLC shall have the right to inspect Weibel's accounting and sales depletion books, records, information and documents relating to the Marks, at Weibel's principal place of business during regular business hours. If following SLC's inspection, there is a discrepancy of greater than 2% in Royalties otherwise due and payable hereunder, Weibel shall, upon demand, pay such Royalty shortage (plus interest at the rate of ten percent (10%) per annum) to SLC and reimburse SLC all reasonable costs and expenses incurred in connection with such inspection including audit fees, travel expenses, and reproduction charges.

7. **Entire Agreement.** This Agreement (including the documents referred to herein) constitutes the final written expression and the complete and exclusive statement of all the agreements, conditions, promises, representations, warranties, covenants and understandings between the Parties with respect to the subject matter hereof and supersedes any and all prior or contemporaneous oral and prior written agreements, conditions, promises, representations, warranties, covenants and understandings between the Parties with respect to the subject matter.

8. **Succession and Assignment.** This Agreement shall be binding upon and inure to the benefit of the Parties named herein and their respective successors and assigns; provided, however, in the event of an assignment of this Agreement by Weibel to a person or entity which is not an "Affiliate" (as defined below), concurrent with such assignment Weibel shall pay to SLC an accelerated guaranteed minimum Royalty payment based on annual case sales of 40,000 cases per year for each calendar year or portion thereof remaining on the term of this Agreement ("**Assignment Prepayment**"); provided, however, Weibel shall not be obligated to pay the Assignment Prepayment in the event of an assignment to an entity that (i) has a tangible net worth of at least Five Million Dollars (\$5,000,000), (ii) is a winery that has existing annual wine sales of at least one hundred thousand cases, and (iii) executes an assignment and assumption of this Agreement for the benefit of SLC; provided, further, that Weibel delivers to SLC satisfactory documentation regarding the same. Notwithstanding the foregoing, the Parties acknowledge that the Assignment Prepayment is merely intended to account for a minimum guaranteed Royalty payment to SLC and that SLC shall be entitled to receive any annual Royalty payments that are payable in the event actual case sales exceed the annual 40,000 case guaranteed minimum in any year. For purposes of this Agreement, an "**Affiliate**" means any person under the control of, in common control with, or in control of Weibel, whether that control is direct or indirect. The term "**control**," as used herein, means, with respect to a corporation or limited liability company, the ability to exercise more than fifty percent (50%) of the voting rights of the controlled entity, and with respect to an individual, partnership, trust, or

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other entity or association, the ability, directly or indirectly, to direct the management or policies of the controlled entity or individual.

9. **Counterparts.** This Agreement may be executed in one or more counterparts, via facsimile or hard copy, each of which, when executed and delivered, shall be an original, and all of which, when executed and delivered, shall constitute one and the same instrument.

10. **Headings.** The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

11. **Notices.** All notices, requests, demands, claims, and other communications hereunder shall be in writing. Any notice, request, demand, claim, or other communication hereunder shall be deemed duly given if (and then two business days after) it is sent by registered or certified mail, return receipt requested, postage prepaid, and addressed to the intended recipient as set forth below:

If to Weibel: Weibel Incorporated, a California corporation,
dba Weibel Vineyards
One Winemaster Way
Fremont, California 95240
Attn: Fred E. Weibel, Jr.
Fax: (209) 365-9469

If to SLC: SIMON-LEVI COMPANY, LTD.
9380 Sonoma Highway
Kenwood, California 95452
Attn: John Barry Jacobs
Fax: (707) 833-1355

Any Party may send any notice, request, demand, claim, or other communication hereunder to the intended recipient at the address set forth above using any other means (including personal delivery, expedited courier, messenger service, telecopy, telex, ordinary mail, or electronic mail), but no such notice, request, demand, claim, or other communication shall be deemed to have been duly given unless and until it actually is received by the intended recipient, confirmation receipt required. Any Party may change the address to which notices, requests, demands, claims, and other communications hereunder are to be delivered by giving the other Party notice in the manner herein set forth.

12. **Attorneys' Fees.** In the event any legal action or proceeding is initiated arising out of or in connection with this Agreement, whether based in contract or tort, the prevailing party shall be entitled to recover all reasonable and actual costs and expenses incurred in such action or proceeding, including attorneys', court and expert witness fees and costs.

13. **Governing Law.** This Agreement shall be governed by and construed in accordance with the internal laws of the State of California without giving effect to any choice or conflict of law statutes, regulations, agreements or provisions (whether of the State of California or any other jurisdiction) that direct the application of the laws of another jurisdiction.

14. **Amendments and Waivers.** No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by the Parties. No waiver by any Party of any default, misrepresentation, or breach of warranty or covenant hereunder, whether intentional or not, shall be deemed to extend to any prior or subsequent default,

misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent occurrence.

15. Severability. Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.

16. Construction. The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement. Any reference to any federal, state, local, or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise. Unless the context clearly requires otherwise, (i) the plural and singular members are each deemed to include the other, (ii) the masculine, feminine and neuter genders are deemed to include the others, (iii) "shall", "will" and "agrees" are mandatory and "may" is permissive, (iv) "or" is not exclusive, and (v) "includes" and "including" are not limiting.

17. Further Assurances. The Parties agree to make all reasonable good faith efforts to take all actions and to do all things necessary, proper or advisable to consummate the transaction(s) contemplated by this Agreement. In the event federal or state alcoholic beverage licensing issues prevent the Parties from performing their respective obligations hereunder, then the Parties shall exercise commercially reasonable efforts to restructure this Agreement so that it accomplishes the intention of the Parties. The Parties shall execute and deliver such additional instruments, documents, conveyances or assurances and take such other actions as shall be necessary or otherwise reasonably requested by the other Party to confirm and assure the rights and obligations provided for in this Agreement.

18. Effective Date. This Agreement shall be effective concurrent upon the Closing of the Purchase Agreement ("Effective Date"). Notwithstanding the above, this Agreement shall be null and void in the event that the Effective Date does not occur on or before September 30, 2004.

The Parties have executed this Agreement as of the date first above written.

WEIBEL:


WEIBEL INCORPORATED,
a California corporation,
dba Weibel Vineyards.,
a California corporation

By: 
Fred Weibel, President

SIC:

SIMON-LEVI COMPANY, LTD.,
a California corporation

By: 
John Barry Jacobs, President

By: 
Jay Bradley Jacobs, President