

Alcohol Management Plan for Retail Outlets

Prepared by: Garden State Wine Growers Association

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The New Jersey Alcoholic Beverage Control Act provides that holders of plenary winery licenses and farm winery licenses may operate retail outlets within the State of New Jersey. See N.J.S.A. 33:1-10(2)(a) and 33:1-10(2)(b). These retail salesrooms are commonly referred to as "outlets" by members of the regulated community (hereinafter "Outlets"). The Garden State Wine Growers Association is a membership organization of the New Jersey wine industry, which includes among its members licensees that operate Outlets throughout the State (referred to herein as "Licensees" or "Winery Licensees"). A number of members operate Outlets at BYOB restaurants in the State of New Jersey.

The State Division of Alcoholic Beverage Control ("ABC") has recommended that operators of Outlets adopt an alcohol management plan to standardize the operations of salesrooms located within this State, with a particular focus of creating standards to formalize the business relationship between wineries and owners (hereinafter "Store Owners") of the restaurants or retail stores (hereinafter "Stores") in which Outlets are located. After consultation with ABC representatives, the Association has developed the following Amended Alcohol Management Plan to govern the operation of all Outlets. All members of the Association agree to follow the standards set forth herein, and understand that the failure to do so shall result in the immediate closure of the non-compliant Outlet.

1. Lease Agreement: The Licensee must enter into a lease agreement ("Lease Agreement") with the Store Owner, and for storefront outlets, with the landlord, if any. The Lease Agreement shall outline the parties' rights and obligations, as well as the payment of rent for use of the premises for the Outlet and any restocking fee to be paid by Licensee. All payments to be made by Licensee to the Store Owner must be specified in the Lease Agreement. The term of each Lease Agreement shall correspond with the expiration date of the license of the Licensee; however, the Lease Agreement may include certain renewal and/or option rights that are triggered upon the renewal of the winery license. A copy of all Lease Agreements shall be provided to the ABC upon execution, and are subject to ABC approval.

All Lease Agreements with Store Owners must include a provision that provides that the Store Owner is subject to the control and direction of the Licensee in connection with the operation of the Outlet. All Lease Agreements with Store Owners must include provision that provides that all alcohol sales activity is under the control and direction of the Licensee in connection with the operation of the Outlet. The termination clause in any such Lease Agreement must provide that noncompliance with the terms and standards set forth in this Alcohol Management Plan shall result in the termination of the Lease Agreement unless the deficiency is cured within a reasonable amount of time. A sample Lease Agreement is attached hereto as Exhibit A.

2. Retail Outlet Premises: Each Lease Agreement shall attach a map of the outlet premises ("Leased Premises"), specifically identifying the area

which will be used for storage, sale, display and delivery of the wine. This map should also reflect all entrances and exits at the Store in which the Outlet is located, and all best efforts should be made to avoid storing or selling wine near the Store's entrances and exits. Also, the Lease Agreement shall include a narrative to describe the leased area reserved for the sale of wine, a description regarding the storage location, the area from which the wine will be sold and where it will be consumed. The narrative should also explain how the wine will remain secured on the premises in accordance with the Security Plan discussed herein. In the case of Outlets located at restaurants, to the extent possible, all wine shall be stored in one location at the restaurant and displays shall be empty bottles or bottles filled with non-alcoholic liquid. In non-restaurant outlets, wine may be displayed and maintained in a discrete area designated exclusively for the display and sales of wine, such as a wine rack or shelving, which may be accessible to the customer seeking to purchase the wine. All proposed locations for sale or storage are subject to ABC review and approval at the time of application or any amendments thereto.

3. Authorized Persons: Only authorized persons are permitted to sell wine at the Outlets, and must undergo training of the rules and regulations applicable to the operation of Outlet prior to being authorized to sell wine at the Outlet. All authorized persons shall execute a certification that indicates, in connection of the sale of wine at the Outlet, they are under the direction and control of the Licensee (Exhibit B).

In the case of retail outlets operating at Stores, the Licensee and Store Owner acknowledge that all reasonable and diligent efforts will be made to limit the

amount of employees that will be authorized to provide services on behalf of both the Store and the Outlet so to promote adequate training of such personnel, and to provide direct supervision and accountability of all authorized personnel. The Outlet must be adequately staffed on a daily basis to ensure that the outlet is operated in compliance with the standards set forth in this Alcohol Management Plan. The Licensee is responsible, however, for maintaining an up-to-date E-141 form on the premises of the Outlet. (Exhibit C).

The Licensee may pay the Store Owner a restocking fee ("Restocking Fee") in order to compensate Store Owner for services performed on behalf of the Licensee. The Restocking Fee shall be set forth in the Lease Agreement and shall be a fixed amount per 750 milliliters of wine delivered to the Outlet. The Restocking Fee shall be paid to Store Owner upon delivery and shall be paid irrespective of whether that wine is eventually sold by Outlet. As such it shall not be compensation for the sale of wine but rather a fee for services by Store Owner to Licensee to maintain and operate the Outlet including but not limited to, staffing of the Outlet, tracking and maintaining inventory, maintenance of files and spreadsheets related to Outlet and provision of accoutrements necessary for the sale of wine. The fixed amount of the Restocking Fee shall not vary according the price of the wine and may only be adjusted according to the volume of the bottle delivered (for example, if a 375 ml bottle is delivered, Restocking Fee would be half the fixed 750 ml fee). Rent and the Restocking Fee, if any, shall represent all the compensation paid by Licensee to Store Owner.

4. Training/Education: Each authorized person shall undergo training prior to being permitted to sell wine at the Outlet, and thereafter shall participate in a refresher training seminar on a yearly basis, or as needed. Trainers shall be

certified by a nationally recognized organization for server training (i.e., TIPS, TAMS, etc.). This training shall include a detailed overview of the State's laws regarding the service of alcohol. A copy of the ABC handbook for retail operations shall be made available for review. After the successful completion of each training seminar, a certification shall be executed by that authorized person, which must be available for inspection upon request of an official or representative of ABC or local law enforcement. This training requirement applies to all Outlets of Licensees.

5. Supervision of Outlets: The Licensee or an employee of the Licensee (who must also undergo the training similar to that for authorized persons) must conduct regular inspections of the Outlets, which from time to time shall be unannounced. Each inspection must be documented, and a record of those inspections shall be maintained by the Licensee and, in the case of Outlets located in Stores, by the Store Owner, so that those records may be made available for inspection upon request of an official or representative of ABC or local law enforcement. To the extent that there are any problems identified during a visit, an unannounced follow-up visit must occur within 10 days thereafter. If the deficiency is not cured within 10 days, all sale of wine at that Outlet must cease immediately until the violation is fully addressed, and all authorized persons undergo a training seminar. The Licensee shall also conduct regular audits of the Outlet's records and operations.

6. Sale of Wine: At all Outlets located at Stores, wine may only be sold by the bottle by authorized persons. Tastings of no more than 1½ ounce each are permitted at Outlets. If the Outlet is jointly operated with a third party, i.e. a restaurant or gift shop, then the tasting must be free of charge. If the Outlet is a storefront for the winery only,

then a tasting fee is permitted. Under no circumstances shall wine be sold by the glass. At restaurant outlets, authorized trained personnel, who are employees of both the outlet and the winery and who are properly listed on the E141A form and have undergone training, may, at the tableside, inform the customer that wine is available for purchase from the winery and, at the customer's direction, deliver the product in the original container to the table. At that point, the authorized trained personnel may present the wine as they would in a BYO situation including opening the bottle at the table and pouring wine into glasses. There may be no corkage fee charged. The authorized trained personnel may also, at the table in the presence of the customer, combine the wine from the original container opened at that table with other non-alcoholic ingredients in a pitcher or other container for the purposes of making sangria.

Authorized personnel shall adhere to the standard operating procedures attached hereto as Exhibit D in their daily operations of the Outlet. In particular, authorized personnel handling sales-on a particular shift must ensure that a full and complete record of all wine sales are maintained on a daily basis; shall ensure the transfer of all cash and checks collected during that business day related to the sale of wine in accordance with the daily operating procedures; and shall reconcile all credit card sales in accordance with the daily operating procedures. It is understood that the wine sales transactions at all outlets take place at the bonded point of sales area where the cash is retained or the credit card is swiped.

7. Adherence to State Service Law: Each Outlet location must comply with State laws regulating the service of alcohol. See, e.g. N.J.S.A 2C:33-27. A copy of the ABC handbook for retail operations shall be present on the premises of the Outlet, and each person who is selected to undergo training to be designated an authorized person shall review that handbook prior to executing the training certification identified

above (the ABC handbook for retail operations comprehensively covers the State's service laws). All authorized personnel, as well as the Licensee and Store Owners, are responsible to ensure the following policies are implemented at the outlet:

- Wine may not be sold to anyone under the age of 21, nor shall the restaurant owner allow the drinking of alcohol by anyone under the age of 21 at the outlet location. All authorized personnel must request identification prior to the sale of wine. Violation of this rule will result in the immediate termination of the lease agreement and subject the licensee and restaurant owner to prosecution under State law.
- Wine may not be sold to intoxicated patrons, nor may authorized personnel be permitted to sell volumes of alcohol to patrons that will allow them to drink to the point of intoxication. All authorized personnel must be made aware of the signs of intoxication (such as fumbling, change in speech volume or pace, slurred speech, sleepiness, red eyes, excessive sweating, decreased alertness, stumbling or weaving, noticeably shallow breathing), and should also be instructed to bring to the restaurant owner's attention or authorized personnel situations where patrons may be intoxicated.

8. Insurance: For Outlets located at Stores, the Licensee and Store Owners are responsible for obtaining all necessary insurance to cover any and all risks associated with the operation of the Outlet. A copy of proof of insurance shall be maintained by the Licensee and Store Owners, which shall be present on the premises of the Outlet at all times and available for inspection upon request by an official or representative of ABC or local law enforcement.

9. Accounting: For Outlets located at Stores, a separate accounting system must be established by each Outlet to track the sale of wine on no less than a monthly basis, in accordance with the operating procedures set forth in Exhibit D. This accounting system must be separate and apart from the accounting system used by the Store for purposes of the Store operations. There shall also be a separate record regarding the compensation of authorized persons for services rendered at the Outlet. All books and records of the Outlet shall be available for inspection upon request by an official or representative of ABC or local law enforcement, and shall not be destroyed for at least three years (except for daily records, which shall be maintained by the licensee for a full year). The Lease Agreement shall include a term which acknowledges that the records of the Licensee maintained at the Outlet and the Leased premises are subject to warrantless searches by ABC officials or representatives.

10. Security: All wine must be stored in an approved location at the Outlet at all times. The Outlet must be locked during those times that the Outlet is not open for operation. Storage of wine does not need to be in a locked area during business hours so long as the whole store is locked upon termination of hours of operation. Authorized personnel of Winery Licensee must be on site at Outlet during hours of operation and shall maintain a record that accounts for the amount of wine located on the premise at the start of the month as well as at the end of the month (which should therefore correspond with all deliveries and sales). A record of any discrepancies must be immediately recorded, and Licensees shall be notified so that all steps necessary are taken to rectify the discrepancy.

11. Hours of Operation: The days and hours of operations for the Outlet shall be set forth in the Lease Agreement, and must comply with applicable State, County and local laws regulating the sale of liquor. No wine may be purchased prior to the opening of the Outlet, nor after closing. At closing time, all sales and consumption of wine at the Outlet must cease, and all members of the general public must leave the premises. The hours of operation of the Outlet within a Store must correspond to the hours of operation of the store and the Outlet may not be open beyond the hours of operation of the store where the Outlet is located. For Outlets located at restaurants, authorized persons and employees of the restaurant may not consume any wine on premises, unless they are patrons of the Outlet or restaurant during operating hours.

12. Pre-existing Outlets: There are a number of Outlets already in operation as of the adoption of this Amended Alcohol Management Plan. For those pre-existing Outlets, a ninety-day grace period shall be provided to allow them to implement this plan, which shall begin on April 1, 2013. Prior to the expiration of this grace period, all pre-existing Outlets shall provide a copy of the Lease Agreement and a list of authorized persons who have successfully undergone training to the ABC. Failure to do so shall result in the immediate closure of that Outlet.

For those pre-existing Outlets that have existing Lease Agreements in place that comply with the standards set forth herein, those Lease Agreements shall remain in force, and a copy of that Lease Agreement shall be provided along with a list of authorized persons who have successfully undergone training must be provided to the ABC within the ninety-day grace period. To the extent that an amendment to the existing Lease Agreement would be sufficient to ensure compliance with the standards

set forth in this Amended Alcohol Management Plan, a copy of the existing lease and related amendment shall be provided to ABC within the ninety-day grace period, along with a list of authorized persons who have successfully undergone training in accordance with this Alcohol Management Plan.

13. Employee Records: The Licensee must maintain an updated E-141 form of authorized personnel at all times on the outlet premises. A copy of that form is attached hereto as Exhibit C, and shall be available for inspection at all times upon request by an official or representative of ABC or local law enforcement

14. Maintenance of Records: All of the aforementioned records pertaining to the operations of the Outlets must be maintained on the premises of the Outlet; with a copy to be maintained by the Licensee at the vineyard and/or winery. All records shall be made available for inspection upon request by an official or representative of ABC or local law enforcement. The Lease Agreement shall include a specific term that the records of the Outlet are subject to warrantless searches by an official or representative of ABC or local law enforcement.

15. Sales Tax: The Licensee is responsible for the payment of all sales tax related to the sale of wine at the Outlet and all related records shall be made available for inspection upon request by an official or representative of ABC or local law enforcement. In addition, all records related to the collection and payment of sales tax for the Outlet shall be maintained in accordance with requirements of the State of New Jersey Division of Taxation.

16. Advertising and Promotion of Outlets: Both Licensee and the Store Owner are each permitted to promote and advertise the sale of wine at the Outlet. In any promotional materials or advertising, it must be stated clearly that the wine is being sold by the Licensee at the Outlet. The language used shall be substantially as follows – “Winery is now selling wine at Store.” The Store is not permitted to state that they themselves are selling wine but that wine is being sold by Licensee at the Outlet location. Local enforcement of laws and rules related to the advertisement of alcohol sales or BYO is at the discretion of the local authorities. Promotional materials may include table tents, wine lists, wine menus and any other signage within or outside the outlet location.

17. Farm markets: A Licensee may sell wine at a farm market in one of the following ways: (a) Festival Permit – this would entitle Licensee to sell wine for the day indicated on the permit only and would require reapplication for each day Licensee wishes to sell at that market; or (b) Retail Outlet – the Licensee may designate farm market as an Outlet applying annually as they would for a traditional retail outlet, except that the Licensee must indicate in the application a particular location or stall at the market where wine sales activity will take place, any subsequent modification of which would require ABC approval. There may be more than one winery at a market so long as each has a designated stall that is their exclusive bonded area and they do not share staff.

The members of the Association hereby agree that diligent efforts will be taken to fully implement the standards set forth herein at all outlets operated within this State before the expiration of the 90 day grace period discussed above. The members of the

Association also acknowledge and agree that complete and full compliance with this Amended Alcohol Management Plan shall constitute a special condition of their permits.

AGREED ON BEHALF OF THE GARDEN STATE WINE GROWERS ASSOCIATION

Name : _____

Title: _____

Date: _____