**Term Sheet #2**

**Additional terms for the “new deal”:**

**U.S. Domestic Wine Distribution Deal**

To complete your draft of the contract, use the following information as well as the information that you previously received on this deal. Use defined terms, where appropriate. Note that the following agreed terms are not listed in any particular order. You must decide how to organize all this. Also, the agreed terms listed below are notes and are not well written; you will need to apply the drafting concepts discussed in the book to rewrite these terms into contract provisions that are clear, concise, and precise.

1. Magna Distribution, Inc.’s principal office is located at 4589 Commerce Boulevard, Seattle, Washington 98101. The President of Magna is Melani Robinson, who will sign the agreement on behalf of the company.

2. SWW LLC’s principal office is 45083 North Sunset Road, Benton City, Washington 99320. Lucas Sweetwater will sign the agreement as Managing Member of the LLC.

3. Invoices will be supplied to Magna when the wines are delivered. Payment in full of the invoice shall be made no later than 90 days from the delivery to Magna’s designated warehouse.

If Magna is late with payment, it must pay SWW a late fee the lesser of the daily equivalent of 18% per year simple interest or the highest amount allowed under law, on any overdue amount for each day any amount is past due calculated from the date of the original delivery of the wines and accruing until the past-due amount is paid in full. In any event, this does not permit or excuse late payments, and SWW can terminate this agreement.

SWW has the option to suspend delivery of any wine during any time that Magna is past due on amounts owed to SWW; this will be effective on written notice to Magna.

4. SWW will promise that the wines sold or shipped will be of good quality, suitable for beverage consumption, free from foreign matter, whether or harmful or not, and will be bottled and packaged in conformity with applicable laws and regulations in effect within the United States.

5. Magna is expected to comply with all applicable federal, state, and local laws and regulations relating to promoting and distributing the wines. Magna also will furnish to SWW, promptly at SWW’s request, all authorizations required by governmental authority in connection with the sale and distribution of the wines in the United States. Magna is required to obtain and maintain these authorizations. In turn, SWW is expected to comply with all laws and regulations necessary for producing the wines. Further, SWW will furnish to Magna, promptly at Magna’s request, all authorizations required by governmental authority in connection with the sale and distribution of the wines in the United States. SWW is required to obtain and maintain these authorizations.

6. Provide that Magna must maintain the quality of the wines it receives from SWW. Also, Magna must promise to transport, store and distribute the wines in a temperature-controlled, moisture-free environment.

7. Magna will order wine from SWW by completing and submitting a written purchase order using SWW’s purchase order form, which will be attached to the contract. The completed form should provide all necessary information to enable SWW to fill the order, including descriptions of the wines ordered, the requested delivery date(s), and the warehouse where the product should be delivered.

8. SWW has the right to cancel any outstanding order accepted by it if Magna fails to make a full payment as required under the contract.

9. If SWW accepts an order, the sales prices for the wines covered by the order will be the prices in effect on the date of its acceptance, subject to the provisions and limitations otherwise provided in the contract.

10. All orders placed by Magna are subject to SWW’s acceptance or rejection. Upon written acceptance by SWW, a purchase order is considered a binding contract to purchase the wines under the terms and conditions of the contract as herein contemplated. SWW has no liability to Magna with respect to order not accepted. Nevertheless, SWW is not to unreasonably reject any order.

11. SWW will fill promptly and to the best of its ability all accepted purchase orders. It

will also make reasonable efforts to meet Magna’s delivery requirements for the wines ordered in those accepted orders. SWW will bear all liability for loss of or damages to the ordered wines until the products are delivered to Magna’s designated warehouse.

12. SWW is not to enter into any contract or agreement to distribute the wines outside of the United States if it would adversely affect SWW’s ability to meet Magna’s purchase orders that are accepted by SWW.

13. After delivery of the wines, Magna will have 10 days to inspect the wines and reject any defective wines. Rejected wines must be returned promptly to SWW. If Magna fails to make timely notification, then the wines will be considered accepted by Magna. When SWW receives timely notice of the defective wines, it will replace the defective wines, fulfilling the purchase order.

14 SWW is not to ship the wines, or any other wines bearing the same or similar trademark, signature or identification anywhere on the package in the United States except under the order or by the direction of Magna. SWW is to refer to Magna all orders or inquiries for the wines that it may receive for shipment in the United States or orders which are intended for eventual shipment in the United States.

15. Retiring wines: SWW is not to cease production of any of the wines without the prior written consent of Magna. If SWW ceases production as provided hereunder, it shall propose other wines it produces of similar quality to replace the retired wine. Magna must then choose from the replacement wine proposed by SWW the precise wine that will replace the retired wine.

16. Magna has the right to use SWW’s patents, trademarks, trade dress, know-how, trade secrets, goodwill, or logos, whether registered or unregistered, and any rights SWW holds in the wines solely for distributing, marketing, and selling the wines in the United States. Magna must promise not to damage or permit damage to SWW’s intellectual property in a way that could damage SWW’s business. Magna must also promise to indemnify SWW for any loss or damages suffered as a result of Magna’s use of SWW’s intellectual property in any way not in accordance with this agreement. Also, Magna is to promise that it will not assist any third party to use SWW’s intellectual property in a manner that would reasonably devalue, injure, demean or dilute the goodwill and reputation of the wines; will not use any trademark or tradename that is substantially similar to those of SWW or any trademark or tradename derivative of SWW; will obtain SWW’s prior written approval for any references to, or use of, SWW’s intellectual property or the wines, excepted as provided in the contract; will promise not to submit an application with the United States Patent and Trademark Office or the United States Copyright Office any mark or patent that incorporates SWW’s intellectual property; and will not knowingly use SWW’s intellectual property in any manner that would jeopardize SWW’s rights in the wines.

The trademarks, trade names, corporate name, logos, characters, designs, and artwork, and copyrights remain the exclusive property of SWW. Magna has no ownership rights. Magna is to notify immediately SWW if it discovers any potential or actual infringement by third parties of SWW’s intellectual property. And, Magna will explicitly state that SWW had the sole right to recovery from a lawsuit pertaining to its intellectual property. Further, Magna will explicitly state that any goodwill arising from its use of SWW’s intellectual property will inure to the benefit of SWW.

17. Magna must explicitly state that SWW has the sole discretion to register and maintain its intellectual property in the United States. Magna will cooperate with SWW to register and maintain SWW’s intellectual property in the wines. It must execute any documents required by SWW, supply any samples or other materials or take any actions necessary for SWW to register and maintain the wines and SWW’s intellectual property. In turn, SWW will promptly reimburse Magna for any expenses incurred.

18. SWW is to control Magna’s use of its intellectual property. Also, Magna will state that SWW’s exercise of control over its use of the intellectual property is to preserve the validity and goodwill of the wines and the intellectual property that is being provided in the contract. Also, Magna must permit SWW’s representatives to inspect during normal business hours and without advance notice Magna’s facilities to confirm that Magna is using SWW’s intellectual property in compliance with the contract.

19. Include an “independent contractor” provision; that is, the contract is not intended to create the relationship of principal and agent, employer and employee, partners, joint venturers, or any similar relationship between the parties. Except as provided in the contract, Magna is prohibited from exercising any control or authority over SWW, the wines, or any other products produced by SWW. Include an acknowledgement that Magna is the one responsible for its employees’ acts, illegal or otherwise.

20. Draft an indemnification provision where SWW indemnifies Magna, and its officers, directors, employees and agents from misrepresentations or breach of obligation by SWW. Provide a similar indemnification provision where Magna indemnifies SWW.

21. The parties’ indemnifications are to remain in effect for the duration of the contract or for as long as the statute of limitations remains in effect for any indemnified claim, whichever is the longer period.

22. To resolve any disputes: The parties have agreed to begin with an attempt to informally negotiate a resolution to the dispute. Negotiations location: SWW’s business offices in Seattle, Washington. Parties must negotiate in good faith. If the dispute cannot be resolved within three business days after commencing the negotiations, then the parties will move on to mediation.

Mediation will take place at Magna’s business offices in Seattle, Washington. The mediator is to be chosen by both parties; the neutral must be a member of the Washington Academy of Mediators & Arbitrators. Both parties are required to attend and mediate in good faith in at least three mediation sessions to be held within ten business days. If an agreement has not been reached after the third mediation session, the parties can agree by written consent to continue with mediation. If they cannot resolve the dispute by mediation, the parties will proceed to arbitration. Each party bears its own costs for the mediation and an equal share of the mediator’s fee. A party who refuses to mediate as agreed here must pay the costs and expenses, including attorney’s fees, incurred by the other party in resolving the dispute by arbitration.

Arbitration of any disputes will be binding. The site of arbitration will be Seattle, Washington. The arbitration proceedings and selection of a neutral will be governed by American Arbitration Association rules. The neutral shall be a member of the Washington Academy of Mediators & Arbitrators and cannot be the neutral that mediated the same dispute. Each party bears its own costs for the arbitration and an equal share of the fees for arbitration. A party who refuses to arbitrate as agreed here must pay the costs and expenses, including attorney’s fees, incurred by the other party in resolving the dispute in court.

23. Upon the filing of a petition in bankruptcy, insolvency, or reorganization against or by Magna, or Magna going into receivership or otherwise becoming insolvent, the agreement may be terminated by SWW by giving written notice of termination to Magna.

24. Also, if there is a change in control in a party, that party must give notice to the other party at least 15 days prior consummating that change. The other party can terminate the contract immediately upon written notice to the other party that is changing control. Change of control means any sale merger, consolidation, or acquisition, not including a corporate restructuring.

25. Termination of the agreement, premature or otherwise, shall not affect the obligation of Magna to pay SWW all amounts owing or to become owing as a result of wines tendered or delivered to Magna on or before the date of such termination, as well as interest thereon to the extent any such amounts are paid after the date they became or will become due. Further, Magna will surrender no later than 30 days after termination all wines, marketing materials, and intellectual property rights remaining in its possession. Finally, Magna must cease using the wines, marketing materials, and intellectual property rights granted to it by SWW under the contract. In turn, SWW agrees to repurchase the surrendered wines at Magna’s laid-in cost, conditioned on Magna having properly stored and maintained the inventory of wines in a saleable condition.

26. All notices provided for in this agreement will be by overnight courier. Notice is considered given upon receipt at the addresses listed above and the Managing Member for SWW and the Chief Distribution Officer for Magna.

27. Include a force majeure clause; ensure that it does not conflict with other provisions by creating exceptions where necessary in those other provisions. The affected party shall notify the other of the occurrence or cause, state the nature of it and the expected duration, and provided further that within 15 days after the termination of the cause the party gives notice to the other party of the termination of the occurrence. Put a cap on this: If the event lasts longer than 90 days, then the other party can terminate the contract by giving notice to the non-performing party.

28. Neither SWW or Magna can assign its rights or delegate its duties without the prior written approval of the other party. Any approval must be in writing and signed by an authorized representative of the approving party.

29. Recall that the governing law of the contract is Washington law. State an appropriate severability clause.

30. Include other provisions that you consider appropriate for this contract. Check with your professor before including these provisions in your contract.