**This is a sample of the agreement.**

**Do NOT share with students!**

**Wine Distribution Agreement**

This agreement is dated , 20XX, between SWW, LLC, a Washington limited liability company (“**SWW**”), and Magna Distribution, Inc., a Washington corporation (“**Distributor**”).

**Background**

SWW is engaged in business at 45083 North Sunset Road, Benton City, Washington 99320, as a winery, growing and fermenting grapes, selling wine, and operating a tasting room under the assumed business name of Windwalker Vineyard and Winery (the “**Winery**”).

Distributor is engaged in business as a nationwide distributor for wine and beer from various wineries and breweries.

Distributor desires to secure from SSW, and SSW is willing to grant to Distributor, the exclusive right to sell and distribute SWW’s Windwalker Merlot, Windwalker Malbec, and Windwalker Cabernet Sauvignon (the “**Product**” or “**Products**”) in the United States of America, excluding the Winery (the “**Territory**”) under the terms of this agreement.

Therefore, the parties agree as follows:

**Article 1. Grant of Exclusive Distributorship**

1. **Exclusive Distributorship.** By signing this agreement and subject to the terms of this agreement, SWW grants to Distributor the exclusive right to distribute, market, and sell the Products in the Territory, and Distributor shall distribute the Products in the Territory. During the Initial Term (as defined in Section 2.2) or any extended Term (as defined in Section 2.2), SWW shall not license or grant any right to or interest in the distribution of the Products in the Territory to any individual or company not a party to this agreement. Notwithstanding anything in this agreement to the contrary, SWW reserves the right to market, sell, and distribute the Products to customers at the Winery.
2. **Independent Contractor.** This agreement does not create the relationship of principal and agent, employer and employee, partners, joint venturers, or any similar relationship between the parties. Distributor shall not exercise any control or authority over SWW, the Products, or any other product produced by SWW, except as provided in this agreement. Distributor acknowledges that it is solely responsible for any of the acts, illegal or otherwise, of Distributor’s employees.

**Article 2. Term**

1. **Effective Date**. The effective date of this agreement is January 1, 20XX (the “**Effective Date**”).
2. **Initial Term and Renewal.** Subject to earlier termination as provided in this agreement, the initial term of this agreement is two years, beginning on the Effective Date (the “**Initial Term**”). To extend this agreement for an additional two years to begin on January 1, 20XX [the year after the Initial Term ends], and to end on December 31, 20XX [two years after the extended term begins] (the “**Extended Term**”), both parties must agree in writing at least sixty days before the Initial Term expires. If the parties fail to renew this agreement, this agreement will terminate at the end of the Initial Term without prior written notice by either party.

**Article 3. Pricing**

1. **Product Pricing.** SWW and Distributor shall agree on an annual basis, or more frequently if required, as to (i) SSW’s prices to Distributor (the “**Distributor Price**”), and (ii) the prices at which Distributor shall sell each of the Products to its customers (the “**Retailer Price**”). The Distributor Price for each Product will be based on delivery to Distributor’s warehouse and will include a mutually negotiated delivered price to the warehouse in Seattle, Washington. In the event that SWW and Distributor cannot agree on the price points for either the Distributor Price, or the Retailer Price, or both, before thirty calendar days after commencement of the negotiations, the prices then in effect for the disputed price will be increased by an amount equal to the Consumer Price Index-All US over a period of months equal to the number of months since the last price increase for the disputed price. Notwithstanding anything in Article 3 to the contrary the Distributor Price and the Retailer Price for each Product during the first six months of the Initial Term are those stated in the attached **Exhibit A.**
2. **Price Increases.** SWW and Distributor shall negotiate any price increases for the Products at least sixty calendar days prior to the effective date of any increase. Distributor may order one month’s supply of the Products at the current price prior to any increase.

**Article 4. Purchase Orders**

1. **Placement of Orders.** Distributor shall order the Products from SWW by completing and submitting to SWW a purchase order in substantially the form attached as **Exhibit B** (“**Purchase Order**”). The completed Purchase Order will provide all necessary information to enable SWW to fill the order, including descriptions of Products ordered, the requested delivery date(s), and the address of the warehouse where the Product will be delivered.
2. **Acceptance of Purchase Orders**. Each Purchase Order is subject to acceptance or rejection by SWW. Upon written acceptance by SWW, a Purchase Order will be deemed a binding contract to purchase the Products under the terms and conditions of this agreement. SWW has no liability to Distributor with respect to Purchase Orders that have not been accepted by SWW. Despite the preceding sentence, SWW shall not unreasonably reject any Purchase Order for the Products.
3. **Sales Price**. If SWW accepts a Purchase Order, the sales price for the Products covered by the Purchase Order will be the prices that are in effect on the date of SWW’s acceptance, subject to the provisions and limitations provided in Article 3.
4. **Cancellation.** SWW may cancel any outstanding, accepted Purchase Orders if Distributor fails to make a full payment as required by Article 6.

**Article 5. Product Supply and Delivery**

1. **Delivery.** SWW shall fill promptly and to the best of its ability all accepted Purchase Orders. SWW shall make reasonable efforts to meet Distributor’s delivery requirements for the Products ordered in accepted Purchase Orders. SWW shall bear all liability for loss of or damage to the ordered Products until the Products are delivered to Distributor’s designated warehouse.
2. **Quality.** SWW shall ensure that all Products sold or shipped under this agreement will be of good quality; suitable for beverage consumption, will be free from foreign matter, whether or harmful or not; and will be bottled and packaged in conformity with the applicable laws and regulations in effect within the Territory.
3. **Post-delivery Inspection**. Distributor will have ten calendar days after delivery of the Products to inspect the Products and reject any defective Products. Distributor shall return promptly rejected Products to SWW. If Distributor does not reject the Products before ten calendar days after the day on which the Products were delivered, then the Products will be deemed accepted by Distributor. Upon receiving timely notice from Distributor of rejected Products, SWW shall promptly deliver to Distributor all Products required to replace the defective Products in order to fulfill Distributor’s Purchase Order.
4. **Allocation of the Products.** SWW shall not enter into any contract or agreement to distribute the Products outside of the Territory which would adversely affect SWW’s ability to meet Purchase Orders accepted by SWW.
5. **Shipping to Third Parties.** SWW shall not ship the Products, or any other wines bearing the same or similar trademark, signature or identification anywhere on the package, in the Territory except under order or by the direction of Distributor. SWW shall refer to Distributor all orders or inquiries for the Products that it receives for shipment in the Territory or orders which are intended for eventual shipment in the Territory.
6. **Changes to the Products.** SWW shall not cease production of any of the Products without Distributor’s prior written consent. If SWW ceases production of any of the Products as provided in this Section, SWW shall propose other wines it produces of similar quality to replace the retired Product. Distributor will choose from the replacement product proposed by SWW the precise product that will replace the retired Product.

**Article 6. Payment**

1. **Payment Period.** Upon delivery of the Products to Distributor, SWW shall supply to Distributor an invoice for the Products delivered. Distributor shall make payment on the invoice no later than ninety days from the date of delivery to Distributor’s designated warehouse.
2. **Late Payment.** Distributor shall pay SWW a late fee the lesser of the daily equivalent of (i) eighteen percent per year simple interest, or (ii) 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 Products and accruing until the past-due amount is paid in full. This provision does not permit or excuse late payments, and SWW reserves the right to terminate this agreement as provided in Article 15.
3. **Suspension of Delivery for Nonpayment.** SWW may suspend delivery of the Products during any time period Distributor is past due on amounts owed to SWW, effective upon written notice to Distributor.

**Article 7. Intellectual Property**

1. **Intellectual Property Rights.** SWW shall retain the Intellectual Property Rights attached or relating to the Products. “**Intellectual Property Rights**” means all patents, trademarks, copyrights, trade dress, know-how, trade secrets, goodwill, or logos, whether registered or unregistered, and any rights SWW holds in the Products.
2. **Grant of License.** By signing this agreement and subject to the terms of this agreement, SWW grants to Distributor the right to use SWW’s Intellectual Property Rights solely for distributing, marketing, and selling the Products in the Territory. Distributor shall perform all of the following obligations:
   1. Distributor shall not damage, or permit damage, to the Intellectual Property Rights of SWW in a way that could damage SWW’s business.
   2. Distributor shall not assist any third party to use the Intellectual Property Rights in a manner that would reasonably devalue, injure, demean or dilute the goodwill and reputation of the Products.
   3. Distributor shall not use any trademark or trade name that is substantially similar to those of SWW or any trademark or trade name derivative of SWW.
   4. Distributor shall obtain SWW’s prior written approval for any references to, or use of, the Intellectual Property Rights or the Products, except as provided in this agreement.
   5. Distributor shall not submit an application with the United States Patent and Trademark Office or the United States Copyright Office for any mark or patent that incorporates the Intellectual Property Rights.
   6. Distributor shall not knowingly use the Intellectual Property Rights in any manner that would jeopardize SWW’s rights in the Products.
3. **Goodwill of the Intellectual Property Rights.** Distributor acknowledges that any goodwill arising from its use of the Intellectual Property Rights according to the terms of this agreement shall inure to SWW’s benefit.
4. **SWW’s Discretion.** Distributor acknowledges that SWW has the sole discretion to register and maintain the Intellectual Property Rights in the Territory. Distributor shall co-operate with SWW to register and maintain any Intellectual Property Rights of the Products, shall execute any documents required by SWW, supply any samples or other materials or take any actions necessary for SWW to register and maintain the Products and the Intellectual Property Rights in the Territory. SWW shall promptly reimburse Distributor for any expenses incurred under this Section.
5. **SWW’s Control.** SWW shall control Distributor’s use of the Intellectual Property Rights. Distributor acknowledges that SWW’s exercise of control over its use of the Intellectual Property Rights is to preserve the validity and goodwill of the Products and the Intellectual Property Rights.
6. **Right of Inspection.** Distributor shall permit SWW’s representatives to inspect Distributor’s facilities during normal business hours and without advance notice, to confirm that Distributor is using the Intellectual Property Rights as provided in this agreement.
7. **Notification of Infringement.** Distributor shall notify SWW of any actual or perceived infringement to any of SWW’s Intellectual Property Rights. Distributor acknowledges that SWW has the sole right to any recovery from any lawsuit pertaining to the Intellectual Property Rights.

**Article 8. Marketing**

1. **Joint Development of the Marketing Plan.** SWW and Distributor shall develop jointly the marketing and promotion of the Products (the “**Marketing Plan**”). The parties shall finalize the Marketing Plan on or before fifteen calendar days after the Effective Date. Distributor will discuss with SWW any proposed changes in its distribution network at least 30 calendar days prior to the change.
2. **Distributor’s Marketing Efforts.** Distributor shall use its best efforts to promote and sell the Products to the maximum number of responsible customers according to the Marketing Plan. Distributor shall maintain, or cause to be maintained, a sales staff for distribution of the Products. Distributor shall pay all costs for marketing the Products and shall display all Intellectual Property notices required by SWW on all advertising and Marketing Materials (as defined in Section 8.4).
3. **SWW’s Support.** SWW will provide Distributor with price lists, promotional flyers, catalogs, and other materials to assist Distributor in marketing the Products.
4. **Marketing Materials.** SWW shall grant Distributor permission to use SWW’s business name, logo, price lists, promotional flyers, and other materials to assist Distributor in marketing the Products (“**Marketing Materials**”). Distributor shall be responsible for the creation of any additional Marketing Materials.
5. **Pre-approval.** Distributor shall submit any Marketing Materials created for the promotion of the Products to SWW for approval prior to its use in connection with the Products. SWW shall notify Distributor of its approval or disapproval of the submitted materials on or before the fifth Business Day after receiving Marketing Materials from Magna. “**Business Day**” means the days that SWW offices in Benton City, Washington, are open for business. If SWW fails to give notice of its approval or disapproval within this time period, Marketing Materials will be deemed approved by SWW. If SWW disapproves of Marketing Materials on or before the fifth Business Day after receiving the materials, then Distributor shall use its best efforts to correct the deficiencies and resubmit the corrected Marketing Materials for approval.
6. **Marketing Reports.** Upon written request from SWW, Distributor shall furnish SWW with available sales and depletion reports and details of all promotional and sampling programs with respect to the Products.

**Article 9. Warehousing and Transporting the Products**

Distributor shall maintain the quality of the Products as received from SWW.Distributor shall transport, store and distribute the Products in a temperature-controlled, moisture-free environment.

**Article 10. Compliance with Laws**

1. **SWW’s Compliance.** SWW shall comply with all applicable federal, state, and local laws and regulations necessary for producing the Products. SWW shall furnish to Distributor, promptly upon Distributor’s request, all authorizations that may be required by any governmental authority in connection with producing the Products. SWW shall obtain and maintain these authorizations.
2. **Distributor’s Compliance.** Distributor shall comply with all applicable federal, state, and local laws and regulations in promoting and distributing the Products in the Territory. Distributor shall furnish to SWW, promptly upon SWW’s request, all authorizations that may be required by any governmental authority in connection with the sale and distribution of the Products in the Territory. Distributor shall obtain and maintain these authorizations.

**Article 11. SWW’s Representations and Warranties**

1. **Licensure.** SWW represents and warrants that it has all permits, licenses and similar authority necessary for the conduct of its business, and that it is not in default in any material respect under any permits, licenses or other similar authority.
2. **Exclusivity.** SWW represents and warrants that it is not a party to any other contract that provides for the distribution of the Products in the Territory.

**Article 12. Distributor’s Representations and Warranties**

1. **Good Standing.** Distributor represents and warrants that it is a corporation, duly organized, validly existing, and in good standing under the laws of the State of Washington.
2. **Authority.** Distributor represents and warrants that it has the authority to enter into this agreement, and any related agreements, and perform its obligations under this agreement and any related agreements.
3. **Permits and Licenses.** Distributor represents and warrants that it has all permits, licenses and similar authority necessary for the conduct of its business, and that it is not in default in any material respect under any of permits, licenses or other similar authority.
4. **Exclusivity.** SWW represents and warrants that it is not a party to any other contract that conflicts with its obligations under this agreement.

**Article 13. Force Majeure**

“**Force Majeure Event**” means a tornado, earthquake, fire, acts of war, terrorist activity, strikes, lockouts, interruption of transportation, action of the government or public authority, or other act of nature or destructive event that

(i) is beyond the non-performing party’s control,

(ii) is beyond the non-performing party’s ability to avert through its exercise of due diligence, and

(iii) prevents or delays a non-performing party’s performance under

this agreement.

If a party is unable to perform any obligation under this agreement due to a Force Majeure Event, the party is excused from any delay or failure to perform its obligation under this agreement during the duration of a Force Majeure Event so long as the party

(a) provides notice of the Force Majeure Event, including its nature and expected duration, as soon as practicable after it knows or should have known of the Force Majeure Event giving rise to or appearing likely to give rise to a delay or failure to perform its obligations, and

(b) continues to use its best efforts to recommence performance to whatever extent possible without delay.

Notwithstanding the previous sentence, a Force Majeure Event will not excuse Distributor’s obligations under Articles 6 and 9, or either party’s obligations under Articles 7 and 10.

The non-performing party shall resume performance of its obligations under this agreement within fifteen calendar days after termination of the excused Force Majeure Event and notify the other party of the termination of the event.

If the non-performing party’s delay or suspension of performance due to a Force Majeure Event lasts more than ninety calendar days, then the other party may terminate this agreement by giving written notice to the non-performing party.

**Article 14. Indemnification**

1. **Indemnification by SWW.** SWW shall indemnify Distributor and its officers, directors, employees and agents from any loss, claims and defense costs arising out of any misrepresentations or breach of obligation by SWW. This indemnification will survive so long as this agreement is in effect or for as long as the statute of limitations remains in effect for any indemnified claim, whichever is the longer period.
2. **Indemnification by Distributor.** Distributor shall indemnify SWW and its members, employees and agents from any loss, claims and defense costs arising out of any or all of the following:

(i) Misrepresentations by Distributor.

(ii) Breach of obligation by Distributor.

(iii) Loss or damages suffered as a result of Distributors use of the Intellectual Property Rights in any way not in accordance with this agreement.

This indemnification will survive so long as this agreement is in effect or for as long as the statute of limitations remains in effect for any indemnified claim, whichever is the longer period.

**Article 15. Default and Termination**

1. **Termination for Breach of Obligation.** Except as otherwise provided in this Article 15, if a party breaches a material obligation under this agreement, then the non-breaching party may terminate this agreement

(i) after giving written notice of the termination to the breaching party,

and

(ii) the breaching party fails to cure its breach before thirty calendar days

after receiving the written notice from the non-breaching party.

Termination will be effective immediately upon the breaching party’s failure to cure its breach within the time period provided in (ii) of this Section.

1. **Bankruptcy**. SWW may terminate this agreement by giving written notice of the termination to Distributor if

(i) a petition of bankruptcy, insolvency, or reorganization is filed against or by Distributor, or

(ii) Distributor goes into receivership or otherwise becomes insolvent.

1. **Failure to Meet Performance Goals.** If Distributor fails to meet at least ninety percent of the mutually agreed upon sales performance goals as set forth in the Marketing Plan, then SWW may terminate this agreement upon sixty days prior written notice to Distributor.
2. **Termination for Change of Control.** Each party will give the other prior written notice at least fifteen calendar days before consummating a Change of Control. “**Change of Control**” means any sale, merger, consolidation, or acquisition, not including a corporate restructuring. The other party may terminate this agreement immediately upon written notice to the first party in the event of a Change of Control.
3. **Surviving Obligations.** If this agreement terminates, whether as provided in this Article 15 or by expiration of the Initial Term or Extended Term, Distributor shall perform all of the following:

(i) Pay SWW all amounts owed to or becoming owed to SWW, including

interest on those amounts paid after the date they became or will

become due as provided in Article 6 of this agreement.

(ii) Surrender to SWW no later than thirty calendar days after termination all Products, Marketing Materials, and Intellectual Property Rights remaining in its possession.

(iii) Immediately cease use of all Products, Marketing Materials, and

Intellectual Property Rights granted to it under this agreement.

SWW shall repurchase the surrendered Products at Distributor’s laid-in cost upon the condition that Distributor must have properly stored and maintained the inventory of Products in a saleable condition.

**Article 16. Alternative Dispute Resolution**

1. **Informal Negotiations.** For all disputes arising under or related to this agreement, the parties shall first attempt to resolve the dispute through informal negotiations. The negotiations will take place at SWW’s business offices in Benton City, Washington. The parties shall negotiate in good faith. If the parties cannot resolve the dispute through informal negotiations within three Business Days after commencing the negotiations, then the parties shall engage in mediation as provided in Section 16.2.
2. **Mediation.** For disputes that are not resolved by the process in the preceding section, the parties shall engage in mediation. The mediation will take place at Distributor’s business offices in Seattle, Washington, and consist of at least three sessions within ten Business Days. The parties shall agree upon a neutral who must be a member of the Washington Academy of Mediators & Arbitrators. Each party shall bear its own costs and attorneys’ fees and the cost of the neutral will be split evenly. If a party refuses to mediate under the provisions of this section, that party shall pay for the expenses and attorneys’ fees incurred in resolving the dispute by arbitration. If the dispute cannot be resolved by the mediation process set forth in this section, the parties shall submit to binding arbitration as provided in Section 16.3.
3. **Arbitration.** For disputes not resolved by mediation in Section 16.2, the parties shall submit to binding arbitration. The arbitration will take place in Seattle, Washington. The American Arbitration Association rules will govern the arbitration proceedings and for selecting a neutral. The neutral must be a member of the Washington Academy of Mediators & Arbitrators and must not have served as the neutral for mediating the same dispute. The parties shall bear their own attorneys’ fees and expenses and evenly split the costs for the arbitrator, unless otherwise provided in Section 16.2. If a party refuses to submit to arbitration under the provisions of this section, that party shall pay the costs and expenses, including attorney’s fees, incurred by the other party in resolving the dispute in court.

**Article 17. General Provisions**

1. **Governing Law.** Washington law will govern this agreement and all matters arising under or related to this agreement.
2. **Notice.** All notices required by this agreement are to be given as provided in this Section. The parties shall deliver all notices required under this agreement by overnight courier. Notice is effective upon receipt. Both parties to this agreement shall comply with this Section when notifying the other party of a change in notice address or contact information.

All notices to Distributor will be sent to:

Magna Distribution, Inc.

Attn: Chief Distribution Officer

4589 Commerce Boulevard

Seattle, Washington 98101

All notices to SWW will be sent to:

SWW LLC

Attn: Managing Member

45083 North Sunset Road

Benton City, Washington 99320

1. **Merger.** This agreement (i) is the complete, final, and exclusive agreement between the parties, and (ii) supersedes all prior proposals, negotiations, representations, warranties, commitments, whether written or oral, between the parties.
2. **Amendments and Modifications.** Any amendments or modifications made by either party will be in writing and signed by a Managing Member of Distributor and the President of SWW; otherwise, the amendments or modifications are not effective.
3. **Waiver**. A party's failure to insist on the other party's strict performance under this agreement does not constitute a waiver of that right to performance if another default occurs. To waive a right under this agreement, an authorized representative of the party against whom waiver is sought to be enforced must give the other party written notice of the waiver and sign the waiver notice.
4. **Assignment and Delegation.** Neither party shall assign its rights or delegate its duties under this agreement without the prior approval of the other party. Any approval issued under this Section will be in writing and signed by an authorized representative of the approving party.
5. **Severability.** If any provision in this agreement is declared to be unenforceable by a court of competent jurisdiction, that provision is deemed severed and the other provisions in this agreement will remain in effect. Notwithstanding the previous sentence, the court may reform the unenforceable provision to the minimum extent necessary to render the provision enforceable according to its original business purpose.

The parties have signed this agreement on the date stated next to their respective signature blocks below.

SWW, LLC

By: Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Lucas Sweetwater

Managing Member

Magna Distribution, Inc.

By: Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Melani Robinson

President