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GRAPE PURCHASE AGREEMENT

This Grape Purchase Agreement ("**Agreement**") is entered into this ____ day of _____, _____, by and between _____, a _____, (hereinafter referred to as "**Grower**") and _____, a _____ (hereinafter referred to as "**Winery**"). Grower is the owner of certain real property comprising approximately ____ acres located at _____, _____ in _____ County, California, hereinafter referred to as the "**Vineyard**".¹ The parties have agreed upon the sale by Grower and the purchase by Winery of grapes grown in the Vineyard by Grower as specifically defined in Exhibit A, attached hereto and made a part hereof (the "**Grapes**").²

¹ A Grape Purchase Agreement is not, strictly speaking, an interest in real property as a lease would be. However, there are a number of similarities, particularly, if such an Agreement is to endure for a number of years. The subject vineyard should be carefully described. If grapes are to be harvested from one portion of the vineyard (often described as a "block") those blocks or rows or areas should be specifically described.

²In some situations a Grape Purchase Agreement is used as a "pre-plant contract." This means that the Grower and Winery enter into a long term contract to purchase grapes from a vineyard that the Grower will develop. Particularly if the Grower will be borrowing money to develop the vineyard, it is usually necessary for the Grower and Winery to have a pre-plant contract. The degree of agreed upon vineyard development detail will be the subject of negotiation between the Winery and the Grower. Much of the information provided in Exhibit A to the Agreement is the kind of information that should be agreed upon. It is recommended that a specific vineyard development plan be established with projected scheduling. Consideration may be given to any grapes harvested in what would be considered the "pre-productive period," as well as the price that would be applicable in the early productive years. In most cases, grapes produced in the first several years following the first productive years, are not considered to be the same quality as the expected long-term quality in the vineyard. Appropriate price adjustment should be made. In some cases, grapes from either the pre-productive period or the period immediately following the first productive harvest, may not be of the quality the Winery seeks. The Winery may have the option, but not the obligation, to purchase the grapes or allow others to purchase them.

The purpose of this Agreement is to set forth the terms and conditions relating to the purchase of Grapes on which the parties have agreed.

NOW, THEREFORE, in consideration of the mutual promises and agreements contained herein and for the other valuable consideration, receipt of which is hereby acknowledged, IT IS AGREED:

PURCHASE AND SALE OF GRAPES

1.01 Purchase and Sale. This Agreement shall commence with the harvest season of _____ and continuing for an initial term of _____ years (____), unless terminated as set forth in paragraph 4.05 herein. During the term of this Agreement, Winery hereby purchases and agrees to receive from Grower all Grapes produced from the Vineyard as defined in Exhibit A. It is understood that annual tonnages may vary due to weather and other factors; however, Grower agrees to deliver not less than the pro-rata amount of tons by variety delivered to all parties from the respective vineyard if a designated area does not exist. If a designated area exists, then, Winery shall receive all Grapes from said area in each year for which this agreement is in effect.

1.02 Price. The price to be paid for the Grapes sold pursuant to this Agreement is specifically defined in Exhibit B, attached hereto and made a part hereof (the "**Price**").³

³Exhibit B describes some potential variations in the price for the grapes, based on tonnage. There are a number of other options. Historically, grapes that are considered more "commodity" grapes as opposed to "premium," are sold based on a per acreage price. Recently, however, some very high-end vineyards also sell grapes at a per acre price. This might be the case if the Winery wants to have total control over viticultural practices, such as cropping or hang time.

1.03 Payment. The purchase price for Grapes shall be payable _____. Winery will pay a finance charge of one and one-half percent (1.5%) per month on the unpaid balance of the Purchase Price outstanding after the dates for payment set forth herein.⁴

⁴Payment terms should be defined such as: (a) paid in a specific time after harvest – e.g., 30, 60 or 90 days; (b) paid on a specific date – e.g., November 30th of each crop year; and/or (c) a mix – e.g., 50% 30 days from harvest and 50% prior to December 31st after harvest. Obviously, the Grower would like to be paid immediately upon delivery, having borne all the costs of growing and very often owing a bank or financing company. The Winery would obviously like to stretch out the payments as long as possible and make them somewhat closer to the time when the Winery is experiencing income. It is most common for some payment to be made at or soon after harvest with the rest of the payments made by December 31, or at the latest by March 31 of the year following harvest. The Grower should be careful to match payments with any crop financing.

1.04 Term of Agreement.

The term of this Agreement is _____ years commencing with the harvest season of _____ and shall terminate as of _____, unless extended by mutual agreement of the parties.⁵

⁵The term of an Agreement can be from one year to much longer. A grape contract that is a "pre-plant contract" usually includes at least four years for pre-plant period and usually at least four years thereafter for the actual grape contract.

{Alternative:}

The term of this Agreement shall be automatically extended by one year on each - _____, beginning _____, _____, unless, prior to that date, notice is given that either party intends to terminate this automatic renewal provision; such party shall so indicate by written notice to the other party prior to March 1st, of any crop year beginning _____. Said notice, shall be delivered by registered mail with return receipt requested at the address of Winery or Grower, as appropriate as set forth in Section 6.05. Once such notice has been received, the Agreement shall terminate following the harvest year of notice plus _____ subsequent harvest years. Winery and Grower shall nonetheless remain obligated to purchase and sell grapes for the _____ crop years between non-renewal and termination in accordance with the provisions of this Agreement.⁶

⁶There may be multiple years of notice required to terminate the Agreement if there is no specific termination date in the Agreement. The termination period may have some relationship to whether the Winery expects the vineyard to go into a vineyard-designated wine or will make other efforts to market the specific vineyard. Care should be taken to calculate exactly how and when notice should be given of termination and careful documentation should be established for any termination notices and any agreements to modify the termination provision if, for example, the Grower agrees to allow the Winery to terminate early so long as the Grower has alternative market. On occasion, attempts to accommodate or modify these specific provisions result in misunderstandings as harvest approaches. Take care to assure that a mutually acceptable pricing structure applies through the end of the Agreement. Provisions that are essentially "agreements to agree" or "agreements to establish a mutually acceptable fair market value" may not be enforceable.

QUALITY AND DELIVERY

2.01 Viticultural Practices. Grower recognizes that Winery is the producer of premium wines whose long term success is based on Winery's ability to secure a supply of grapes which closely corresponds to Winery's quality standards. Therefore, Grower shall use its reasonable best efforts to cooperate with the Winery in implementing and maintaining the viticultural techniques mutually agreed to by Winery and Grower. In addition, Winery shall advise the Grower concerning recommended mutual efforts to obtain an acceptable quality level for the

Grapes. In this regard, Winery shall make recommendations to the Grower concerning cultivation, pruning, thinning, irrigation, pest, mold, and disease control, overall production levels and other techniques and practices conducive to obtaining production of premium quality grapes and Grower agrees to implement such recommendations so long as, in the Grower's sole discretion, the request is practicable and economically reasonable.⁷

{Agreement may also use Exhibit C that contains agreed upon additional viticultural and farming efforts and activities.}

⁷Misunderstandings and failures to communicate about viticultural practices are perhaps the greatest source of dispute arising from grape contracts. Obviously, the grape quality standards set forth in the Agreement will establish the anticipated goals. However, there are a number of specific viticultural practices the Winery may want to impose, as well as requiring specific procedures for communication with the Winery. Some wineries establish annual plans with the Grower. In all events, during the course of the growing season full communication between the Winery and the Grower is beneficial. An Agreement can establish certain guidelines; however, there must be communication during each growing season.

2.02 Harvest and Delivery. Grower agrees to harvest all or a portion of the Grapes on the harvest date(s) as determined by Winery. Winery will give consideration in selection of the time and date of harvest to Grower's availability of manpower and equipment. Winery will give Grower reasonable prior notice (not less than ___ hours) of the projected harvest date of the Grapes. The harvest date(s) determined by Winery are based on a combination of factors: the relationship of Brix (sugar count), pH, and TA (total acidity), flavor, overall condition of the Grapes, upcoming weather factors, tank availability at the Winery's premises, and prior grape delivery schedules. After such notice has been given, Winery and Grower will, as soon as practical, provide a schedule for harvesting and delivery of Grapes that is mutually acceptable to both Winery and Grower. Winery agrees to report to Grower at regular intervals as to the condition of the Grapes. Winery will have the right at any time to reschedule delivery in light of the condition of the Grapes. Winery will provide a representative on site to coordinate with Grower the harvesting and delivery of Grapes. Winery's representative will specify the priority for harvesting specific vineyard blocks or rows.

Winery will receive Grapes only in half-ton boxes provided by Winery or in boxes of similar capacity and dimensions. Winery agrees to haul all Grapes to Winery's facility at Winery's expense; however, if Winery is subject to either a manpower or equipment shortage, Grower will assist in hauling.⁸

⁸There is a wide range of potential specifications for harvest and delivery imposed by the Winery. These might include types of bins, harvest procedures, etc. Increasingly, because of labor shortages, there is receptivity to mechanical harvesting, consistent with premium or ultra-premium grapes. Occasionally, an Agreement may contain provisions for adjusting the price based on the decision of the Winery to leave the grapes on the vine past a certain point of maturity (this presumably reduces the weight and therefore the price of the grapes).

2.03 Grape Quality.

All Grapes delivered by Grower shall be sound, merchantable and suitable for the making of quality wine, and shall satisfy the following specific standards and the standards set forth in this Agreement. The general guidelines with respect to the acceptable levels of sugar, acid, and pH for Grapes sold under this Agreement are contained in Exhibit A to this Agreement. Winery may, at its discretion, reject any container of grapes whose sugar levels do not reach the Minimum Brix set forth in Exhibit A to this Agreement.

All Grapes are to be mature, first crop, free of mildew and rot (not more than *two percent (2%)* by weight as measured by the California Department of Agriculture), free of filth and insect infestation, free from material other than grapes (not more than *two percent (2%)* by weight as measured by the State of California Department of Food and Agriculture), free of raisining and sulphur, and in generally accepted tonnages per acre given the variety and vineyard location for the production of premium quality wine. All grapes shall be delivered in containers containing only one grape variety, unless otherwise expressly agreed by Grower and Winery.

Winery shall not be obliged to accept any Grapes which have been treated with any pesticide, herbicide, fungicide (including, but not limited to, sulfur and sulfur-based compounds), insecticide or miticide, the application of which does not conform to all local, state and federal laws and regulations. Grower shall maintain complete and accurate written records with respect to all chemical applications. At the request of Winery, Grower shall prepare and deliver a written report each year showing all chemical treatments, soil amendments and other materials applied to the Vineyards during the one year period preceding the harvest.⁹

⁹There is controversy about the appropriate indicators of grape quality. Brix is the most common indicator of maturity. However, Exhibit A permits the Winery and the Grower to agree on other standards, such as ph, total acidity and estimated tonnages per acre. Ultimately, however, most wineries want to maintain quality control over maturity beyond what might be indicated by these standards. This discretion should be clearly agreed between the Grower and the Winery. The chaos of harvest is not the time to debate what is a quality grape.

2.04 Inspection and Rejection.

In the event that Winery rejects a particular container for sugar content, defects, MOG, second crop or pesticides and Grower does not agree to such rejection, then such container shall be referred in a timely manner to a qualified independent third party for inspection and a conclusive determination as to the quality standards. The parties hereby agree that an inspector from the Grape Inspection Service of the California Department of Food and Agriculture shall be deemed to be a qualified independent third party for such purposes, and his or her findings shall be conclusive and binding on the parties. Winery shall bear the cost of such inspection.¹⁰

¹⁰*Disputes “at the scales” should be avoided if at all possible. Communication and inspection should have occurred between the Winery and the Grower before an attempt is made to deliver unacceptable grapes. Written statements from the Winery to the Grower, should be considered, with sufficient detail and in sufficient time to allow the Grower to adjust (even if it is to sell the grapes elsewhere). If there is to be a dispute at the weigh station, a number of steps need to be taken by each side. An independent inspector or one representing each party should inspect the grapes that are the subject of the rejection. Written and photographic evidence should be taken of the grapes. The rejection must be on a load-by-load basis and not for all Grower grapes. The State of California is increasingly unavailable for inspections and therefore inspections will need to be done by parties other than any State inspectors. The parameters for which the inspectors are examining the grapes should be clearly set forth and a report should be obtained from the inspector, in writing. Any rejection by the Winery should be conveyed to the Grower in writing. Until all grapes subject to the Agreement have been taken to the weigh station and accepted or rejected, the Grower has the obligation to deliver and the Winery has the obligation to inspect all of the grapes. If, on the other hand, there is dissatisfaction by the Winery as to the grapes, Winery and Grower should, if possible, agree on an alternative process for price adjustment, releasing the grapes to be sold elsewhere, or possibly even processing the grapes, subject to further evaluation, without the Winery being deemed to have accepted the grapes.*

The rejection by Winery of any containers of grapes tendered by Grower shall not relieve Grower of his obligation to pick and deliver all other grapes covered by this Agreement and shall not relieve Winery of its obligation to purchase all other grapes tendered by Grower and otherwise acceptable. The failure by Winery to reject any grapes that Winery has the right to reject pursuant to the terms of this Agreement does not constitute a waiver of any right of Winery or obligation of Grower.

2.05 Risk of Loss and Title. Winery will bear all risk of loss, depreciation and damage of any kind to the Grapes until such time as they leave Grower's control. When Grapes are hauled by Winery, title to and risk of loss for each container of Grapes shall pass to Winery when the Grapes have been removed from Grower's premises. When Grapes are hauled by Grower, or a representative for Grower, title to and risk of loss for each container of Grapes shall pass to Winery when they arrive at the crush pad of the Winery's facility or any other facility as directed by Winery and are accepted.

REPRESENTATIONS AND WARRANTIES

3.01 Representations by Grower. Grower represents and warrants to Winery that:

- (a) Grower owns the Vineyard;
- (b) Grower has not entered into any other contracts or agreements, nor made any other commitments, written, or oral, regarding the Grapes except as may be expressly disclosed herein.

- (c) Grower, if a Corporation, is duly organized, validly existing and in good standing under the laws of the State of California.

3.02 Representations by Winery. Winery represents and warrants to Grower that Grower is the beneficiary of a producer's lien pursuant to California Food & Agriculture Code §§55631 et seq. which attaches to the wine produced from the Grapes sold by Grower to Winery pursuant to this Agreement. The security interest in such wine collateral granted hereby does not terminate such producer's lien in favor of Grower which shall continue to be in full force and effect until all indebtedness of Winery to Grower which may arise pursuant to this Agreement has been completely paid and, pursuant to California Food & Agriculture Code §55638, Winery may not sell or transfer such wine produced from Grapes purchased from Grower to any third party without using the sale proceeds to pay to Grower the amount due for the grapes so purchased. ¹¹

¹¹The Winery may want to represent that the grapes and the payments to the Grower have not been pledged or subordinated to others.

The California Food and Agriculture Code provides for a statutory grower's lien to attach to the grapes when they are transferred from the Grower to the Winery. The lien is only satisfied by payment and the lien attaches to the wine product from the grapes. Because this is a "statutory lien," it does not require agreement of the parties and does not require the secured party to take any filing or notice actions. However, the only way for a Grower to enforce a grower's lien is through judicial action, either an injunction against selling the wine prior to payment for the grapes, or other litigation to force payment. On the other hand, the Grower and the Winery could agree on additional "security" that is based on the Uniform Commercial Code. This would require specific provisions within the Agreement or in some other document. It would provide the Grower somewhat more enforcement flexibility, i.e., seizing and/or selling the grapes or the wine pursuant to the Uniform Commercial Code. It requires the filing of a UCC-1 Financing Statement. There is some concern with a grower's lien that if the Winery has not paid the Grower pursuant to the Agreement and then enters into a promissory note that allows the wine to be sold without payment to Grower, that the Grower would thereafter not be entitled to the grower's lien.

TERMINATION

4.01 Termination. Upon the occurrence of any of the following, and upon prior written notice to Winery, Grower may terminate this Agreement and shall be released from all future obligations to deliver grapes hereunder:

- (a) Winery shall fail to pay when due any amount payable under this Agreement, after five (5) days prior written demand from Grower.
- (b) The commencement by or against Winery of a voluntary or involuntary case under the federal bankruptcy laws, as now constituted or hereafter amended, or an other

applicable federal or state bankruptcy, insolvency or similar law; or the consent by Winery to the appointment of or the taking possession with or without Winery's consent of a receiver, liquidator, assignee, trustee, custodian, or other similar official for Winery or for any substantial part of its property.¹²

¹²A grape contract usually allows termination by Grower if there is a failure to pay. However, an Agreement may also permit termination by Winery if, for example, the grapes do not meet the qualitative standards.

ALTERNATIVE DISPUTE RESOLUTION

5.01 Disputes and Litigation Costs. No dispute arising under this Agreement will relieve Grower of its obligation to deliver and sell, or Winery of its obligation to accept and pay for Grapes under this Agreement pending disposition of the dispute. If a dispute arises out of or relating to this Agreement or an alleged breach thereof, the parties agree to endeavor in good faith to settle the dispute without litigation (except to enforce compliance with this Section). However, in the event that the parties cannot settle such dispute arising out of this Agreement through direct negotiations, Winery and Grower agree to submit the matter to binding arbitration. Such arbitration shall be in accordance with and under the rules of the American Arbitration Association, and shall be conducted by a single arbitrator designated by the above association in Napa County. In addition, in the event of any legal action or arbitration between the parties for the enforcement of this Agreement or because of any alleged dispute, breach, default or misrepresentation in connection with any other provisions of this Agreement, the successful or prevailing party will be entitled to an award or judgment of reasonable attorneys fees and other costs incurred by reason the action or arbitration, in addition to any other relief to which the party may be entitled.¹³

¹³It is common to include so-called "alternative dispute resolution" provisions in an Agreement. These might be implemented in three stages: 1) the parties meet and confer to address any issues; 2) mediation by a third party; or 3) arbitration. Mediation is not binding and the mediator does not render a decision, but rather tries to find common ground between the parties. Arbitration is most commonly binding and may be judicially enforced. Alternative dispute resolution does give up some of the procedural protections and procedural clarity that apply to litigation. Note that, even if alternative dispute resolution is utilized, it is still important to follow the other procedural requirements of the agreement in terms of notice, rejection, etc.

GENERAL PROVISIONS

6.01 Force Majeure or Conditions Beyond the Parties Control. In the event that the business of either Grower or Winery is interrupted or interfered with, including but without limitation, fire; flood; continued and damaging wind, rain or hail storm; bird or insect infestation; excessive mold, disease, and rot; strikes; earthquake and explosion; acts of God; civil disturbances, quarantine, or any governmental law, directive, or regulation to an extent making it unreasonable or impossible to perform its obligations under this Agreement; then the party affected by any such event may at its option cancel the Agreement with respect to any

undelivered Grapes which are affected by the event. If this Agreement is canceled by either party under this Section, the canceling party will promptly give notice to the other party. From and after the date on which such notice is given, the party receiving the notice, and, if the cancellation was caused by an event falling within this Section, the party giving notice will be released from all obligation to deliver or pay for any Grapes affected by the cancellation and from all liability for any claims for loss of market, loss of price, or any other claim of any nature arising from the cancellation. If such an event occurs in only one year and this Agreement is canceled, such cancellation shall be for that year only and not affect any subsequent years.¹⁴

¹⁴In the agricultural context, it is sometimes unclear what would be considered a "force majeure," vs. the reasonable expectation of the Winery with regard to viticultural practices. Bird or insect infestation, excessive mold, disease, rot, or even strikes, could be prevented under some circumstances, by the parties. Thought should be given to what conditions are controllable or not controllable.

6.02 Successors and Assigns. Neither party may assign its rights under this Agreement in whole or in part without the prior written consent of the other party, which shall not be unreasonably withheld. Grower agrees that it will not sell, transfer, or otherwise dispose of all or any portion of the Vineyard to any person or entity unless that person or entity expressly assumes in writing all of the obligations of Grower under this Agreement, or such portion thereof as may apply to the portion of the Vineyard transferred. Winery agrees that it will not sell substantially all of its business, whether by merger, stock purchase or sale of all or substantially all of its assets to any person or entity unless that person or entity expressly assumes in writing all of the obligations of Grower under this Agreement. Subject to the foregoing, this Agreement will be binding upon and inure to the benefit of the parties, their assigns and successors in interest.¹⁵

¹⁵There are at least three types of ownership changes that could occur and affect the relationship: 1) a change of ownership of the vineyard; 2) a change of ownership of the Winery; and 3) a change of ownership of the parties. If the vineyard is sold, and the Agreement contains no language to the contrary, the Agreement is terminated. An Agreement may provide that there may not be an assignment without consent, and in the absence of such consent, the Agreement shall continue. Thought should be given as to whether control of the Grower or the Winery, even though the entity itself remains, would give rise to the right to terminate for the other party.

6.03 Right to Resell Grapes. Winery has the right to resell these Grapes to third parties at Winery's discretion. Winery, however, is still obligated to pay Grower for these Grapes for the affected crop year at the negotiated price.

6.06 Use of Vineyard Name. Winery may wish to place the name of the Vineyard on the wine produced by Winery. The name of the Grower or name of the Vineyard ("_____") can be used on the label of Winery only upon obtaining prior written consent of Grower, which Grower can withhold in their sole discretion.¹⁶

¹⁶Agreements increasingly address the issue of vineyard-designated wines. Some

growers have registered trademarks in connection with their vineyards. Sometimes the Grower licenses the trademark or agrees to an exclusive use of the name by the Winery. Wineries are subject to certain regulatory restrictions before they can use vineyard designations on a bottle. Wineries prefer to maintain the discretion to use or not use vineyard designation based on quality. Once it has created a vineyard designation, a Winery may feel that it has established a value for the Grower and the Winery may require payment if the Agreement is terminated by the Grower. The Grower may want to participate in the decision about whether its grapes are used in a vineyard-designated wine and the Grower may even retain the right to terminate the Agreement if vineyard designation is not developed by the Winery.

6.05 Notices. Except for notices expressly provided in this Agreement to be given orally or to be effective upon receipt, all notices, requests, demands or other communications called for or given under this Agreement must be in writing and will be deemed effectively given on the date of service if served personally and on the third day after mailing by first class United States mail (registered or certified if to addresses in the United States), postage prepaid, properly addressed as follows:

Grower: _____

Winery: _____

Any party may change its address for purposes of this section by giving the other party written notice of the new address in the manner provided above, except that such notices will be effective only upon receipt by the other party.¹⁷

¹⁷Sections 6.05 through 6.12 are generally considered to be “boiler plate.” This does not mean that they are unimportant. It does mean that most of these provisions are standardized in most grape contracts, if not contracts in general, in California.

6.06 Amendment and Waiver. This Agreement can be amended only by the written agreement of the parties. No waiver of any of the provisions of this Agreement will be deemed a waiver of any other provision, whether or not similar, nor will any waiver constitute a continuing waiver.

6.07 Modification. This Agreement constitutes the entire agreement among the parties hereto pertaining to the subject matter hereof and supersedes any and all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, of the parties. No supplement, modifications, waiver or termination of this Agreement or any provisions hereof shall be binding unless executed in writing by the party or parties to be

bound thereby.

6.08 Severability. Whenever possible, each provision of this Agreement shall be interpreted so as to be effective and valid under applicable law. If any provision of the Agreement is determined to be invalid or unenforceable, this Agreement will be deemed to be modified to exclude any such provision, and the remainder of the Agreement will continue in effect. This Agreement will also be deemed modified to the extent necessary to comply with any state and federal laws, rules, regulations or other actions by any state or federal regulatory authority, and any valid marketing order or agreement issued under the authority of any state or federal law.

6.09 Further Assurances. Each party agrees to execute such documents and perform such acts as may be necessary or desirable to effectuate the purposes of this Agreement.

6.10 Counterparts. This Agreement may be executed in any number of counterparts, and each such counterpart shall be deemed to be an original instrument. All such counterparts together shall constitute one and the same Agreement.

6.11 Governing Law. The parties hereto agree that this agreement has been executed in the state of California and shall be governed by the laws thereof.

6.12 Entire Agreement. This Agreement contains the entire understanding of the parties and supersedes any prior written or oral understanding or agreement between or among the parties relating in any way to the sale of Grapes by Grower to Winery.

[SIGNATURES CONTAINED ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement in duplicate counterparts, each of which will be deemed to be an original, as of the day and year appearing next to their signatures.

Winery _____

Grower: _____

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT B

Determination of Price for Grapes Covered by This Agreement

{Describe the how the price per ton for the Grapes to be covered by this Agreement is determined}

Options include:

1. Mutually negotiated price per ton between Winery and Grower determined no later than _____ of each year. Negotiated prices should have “fallback” formula/mechanism in case Grower and Winery cannot reach agreement.
2. Fixed price per tons for each year of the term of the Agreement.
3. Prior year’s Price paid under this Agreement plus an agreed upon escalator *{fixed percent or index such as CPI}*
4. Prior year’s Price paid under this agreement increased or decreased by the change in the average grower price per ton as determined for District ____ from Table 10 in the Final CA Grape Crush Report for the past 2 years *{not to exceed ____% in any year}*.
5. Prior year’s average grower price per ton as determined for District ____ from Table 10 the Final CA Grape Crush report plus/minus _____ %.
6. _____th percentile price per ton as determined for District ____ from Table 8 of the prior years Final CA Grape Crush Report.
7. A multiplier of bottle prices as listed on, say, the Massachusetts Alcoholic Beverage Commission’s approved list.

As an example of Option 1:

“The annual Price for all Grapes sold under this Agreement shall be negotiated annually between Winery and Grower, and agreed to, in writing, no later than April 1 of each year for which this Agreement is in effect. If Winery and Grower do not or cannot agree on each year's price per ton by said date, the price per ton to be paid for the varieties subject to this Agreement shall be the 90th percentile, as a percentage of the total tons purchased, for the same subject varieties grown in the Napa Pricing District (District 4) as published in the Final Grape Crush Report prepared by the California Department of Food and Agriculture (Table 8) for the immediately preceding year. The 90th percentile shall be determined by adding the tonnage listed starting from highest price per ton listed until the tonnage exceeds 10% of the total tonnage for that variety as listed in Table 8. The exact price per ton to be paid for the Grapes shall be that price per ton from Table 8, as determined above, that causes the tons to exceed 10% of the total tons.”]

EXHIBIT C

Description of Agreed Upon Viticultural Practices

{Describe the Viticultural Practices agreed upon between Grower and Winery}