NEW YORK STATE LIQUOR AUTHORITY
FULL BOARD AGENDA
MEETING OF FEBRUARY 16, 2016
REFERRED FROM: COUNSEL'S OFFICE

2016-00373

REASON FOR REFERRAL
REQUEST FOR DIRECTION

PALATE WIZARDS, LLC

(DECLARATORY RULING)

The Members of the Authority at their regular meeting held at the Zone I New York City office on FEBRUARY 16, 2016 determined:

GRAY | ROBINSON
ATTORNEYS AT LAW

SUITE 2700
401 E. JACKSON STREET (33602)
P.O. BOX 3324
TAMPA, FLORIDA 33601-3324
TEL 813-273-5000
FAX 813-273-5145

BOCA RATON
FORT LAUDERDALE
JACKSONVILLE
KEY WEST
LAKELAND
MELBOURNE
MIAMI
NAPLES
ORLANDO
TALLAHASSEE
TAMPA

813-273-5159
ELIZABETH.DECONTI@GRAY-ROBINSON.COM

December 8, 2015

VIA EMAIL: jacqueline.flug@sla.ny.gov
AND FIRST CLASS U.S. MAIL

Jacqueline Flug, Esq.
Counsel's Office
New York State Liquor Authority
317 Lenox Avenue
New York, NY 10027

Re: Palate Wizards, LLC

Dear Ms. Flug:

Gray Robinson represents Palate Wizards, LLC ("PW"). PW seeks a Declaratory Ruling from the NYSLA pursuant to State Liquor Authority Rule §98.1 *et seq.*

PW does not hold any federal or state level liquor licenses. The company has created a digital smartphone application which consumers may use to learn about artisanal alcohol beverage brands. Because PW plans to work with more than one tier in the alcohol beverage industry, the company engaged us to analyze its business model under the tied house laws of several states, including New York.[1] The purpose of this letter is to share the New York portion of the analysis with you and confirm that PW will not engage in regulated activity in New York, and in fact will function within the bounds of prior rulings of the New York State Liquor Authority (the "Authority").

FACTUAL BACKGROUND

I. Business Model

Our legal analysis includes the following facts. PW has created a digital web-based application for consumer use which may be downloaded on a smart phone or other mobile device (the "App"). PW has created smart phone application technology which it customizes or "skins" for each individual retailer for a fee paid by the retailer. (see further discussion in Section II, *infra*). The App may be used by any and all retailers. The consumer user experience begins when the consumer downloads a store-specific mobile app that PW has customized for the licensed retailer of the consumer's choice. Consumers will learn about the App via advertising from the retailer, which PW does not participate in or control, or from

[1] PW has already obtained approval for its smartphone application from the California Department of Alcoholic Beverage Control. Please see attached letter from Matthew Botting, Esq., General Counsel of the California Department of Alcoholic Beverage Control dated July 13, 2015. PW seeks to operate in New York the same way it does in California.

word of mouth from other consumers who shop in the same store. Once downloaded, the App performs three functions:

1. Retailers who have contracted with PW for creation of the App will offer the App to their own customers through various means, including in-store posters, brochures and email solicitation. When a consumer sees an alcohol beverage product they enjoy or are interested in learning more about, they can use their store App to take a photo of the product. The store App then has the ability to offer the consumer the opportunity to request their store to try to find and then reserve the product for potential purchase at a later point in time. The consumer chooses his or her preferred retailer for purchases. If the consumer subsequently elects to follow through from the reservation to actually make a purchase, s/he must go to the licensed premises to complete the sales transaction. <u>Neither PW nor its store-specific "skinned" App are involved in the actual sale or in product fulfillment; the financial transaction and age/identity verification is between the consumer and the retailer and PW is not even or ever informed if that transaction ultimately occurred.</u>[2]

Additionally, PW is not involved with, responsible for, or made aware of the follow-up email or text communication from the retailer to the consumer advising the consumer if and when the product will be available in the store; this communication process from the retailer to the consumer once a reservation is made with the App, happens outside of the App in the form of a separate email or push notification from the retailer to their customer.

2. Secondly, based upon the pictures the user takes, the store App can recommend similar, artisanal brands that the retailer has selected or approved with comparable palate profiles. Again, the retailer is exclusively responsible for: (1) notifying the consumer about the product's availability; (2) offering the consumer the option of reserving the newly-identified recommendations for future purchase; and (3) announcing date when the recommended product will be available for the consumer to come to the store to purchase.

3. Finally, the consumer has the option to take surveys for beer, wine, and spirits using the App. Using PW's proprietary profiling engine, the consumer can create a unique personal palate profile, which gives the retailer an additional method to further customize recommendations to offer artisanal brands matching the consumer's palate profile and, again, offer the consumer the option to reserve new products.

II. <u>Revenue Stream</u>

PW charges fees to licensed manufacturers and retailers of alcohol beverages for discrete services in connection with the App. <u>There are no financial exchanges between any manufacturer and any retailer</u>.

Manufacturers pay PW: (1) for pictures of labels which act as advertisements, and which appear in the App as product recommendations, and (2) a flat reservation fee of up to $1.40 for each consumer reservation generated through the App, regardless of the number of products reserved. Retailers pay PW: (1) a one-time fee for customizing the App's skin (visual style) to be store-specific; and (2) an annual subscription fee per store of $385.00.

[2] Please note that the App does not have the capability to record or learn if a transaction ever occurred.

ANALYSIS

We reviewed New York's alcohol beverage laws and regulations as well as published decisions by the Authority in order to determine the viability of PW's business model in New York. We focused our attention on two issues: (1) whether PW's business model raises tied house concerns in New York; and (2) whether the reservation capability of the App could be construed as an unlicensed sale of alcohol beverages, or an "unlawful availment" of any retail license. The results of our analysis follow below.

I. PW's Business Model Does Not Raise Tied House Concerns

As a threshold matter, we analyzed PW's business model to determine if it provides an illegal "thing of value" to retailers under state tied house laws. Secondly, we analyzed whether the business model would result in prohibited exclusion. Finally, we analyzed the business model under New York's gifts and services laws.

Based on PW's business model and revenue stream described above, we do not believe that the App generates tied house concerns. Manufacturers do not pay retailers in any way when they participate in the App. Furthermore, PW does not illegally "pass through" funds from manufacturers to retailers by virtue of its position as an unlicensed third party. Most importantly, manufacturers and retailers engage PW separately and each tier member pays for separate services.

Furthermore, App does not direct consumer traffic to certain retailers at the exclusion of others, as all retailers in a market can participate in the Palate Wizards App program, which is to PW's benefit and desired outcome over time. We do not think the principle of tied house exclusion applies here because: (1) by contract, manufacturers will be required to participate with all retailers using the App through reservations and advertisements; (2) all retailers may purchase a customized version of the App and pay the related subscription fee to PW on the same terms and conditions if they wish to participate; and (3) consumers, not manufacturers, identify their retail store of choice on the App by virtue of which store(s) App they select to download and use.

Finally, the App does not run afoul of New York's gifts and services laws, summarized in N.Y. Alc. Bev. Con. §101(1)(c), which restricts the gifts and services manufacturers and wholesalers may provide to retailers. That section states in pertinent part that upper tier industry members may not:

> ...Make any gift or render any service of any kind whatsoever, directly or indirectly, to any person licensed under this chapter which in the judgment of the liquor authority may tend to influence such licensee to purchase the product of such manufacturer or wholesaler.

As stated above, PW is not a licensed industry member. PW's business relationships with manufacturers and retailers are completely separate, and so a manufacturer cannot use the App to influence a retailer because the manufacturer never interfaces with the retailer. More importantly, PW's business model does not enable any manufacturer or wholesaler to render any gift or service to a retailer which would influence that retailer's purchasing decisions.[3] First, participating manufacturers must advertise throughout PW's entire retailer network; the manufacturers may not pick and choose which retailers they advertise to. Second, the retailers do not have a role in choosing or controlling which manufacturers advertise with PW other than merely confirming to PW whether a particular product is carried in inventory. Under these circumstances, the manufacturers could not use the App to influence retailer purchasing.

II. <u>PW does not engage in any sales of alcohol beverages and therefore is not engaging in the unlicensed sale of alcohol beverages.</u>

PW's activities lack the elements of a "sale", as defined by New York law. Furthermore, PW does not share in the profits retailers make from alcohol beverage sales.

New York law defines "sale" to mean "any transfer, exchange or barter in any manner or by any means whatsoever for a consideration, and includes and means all sales made by any person, whether principal, proprietor, agent, servant or employee of any alcoholic beverage and/or a warehouse receipt pertaining thereto." N.Y. Alco. Bev. Cont. Law § 3(28). Additionally, the law defines the activity of selling to include "to solicit or receive an order for, to keep or expose for sale, and to keep with intent to sell and shall include the delivery of any alcoholic beverage in the state." *Id.* PW does not make sales of alcohol beverages under New York law because it does not: exchange alcohol beverages for consideration, possess or take title to any product, or process transactions, payments, or deliveries. Moreover, PW is not soliciting or receiving orders because PW's platform merely facilitates reservations.

With the above as background, the crucial consideration in New York involves the state's prohibition on "unlawful availment" (prohibiting an unlicensed entity from using a retailer's license to obtain revenue from alcohol beverage sales). The law on availment emerges from two statutory provisions: sections 111 and 110(1)(g) of New York's Alcoholic Beverage Control Laws. Section 111 prohibits a licensee from making its license available to an unlicensed person. *See* N.Y. Alco. Bev. Cont. Law. § 111 ("A license issued to any person . . . for any licensed premises shall not be transferable to any other person or to any other premises or to any other part of the building containing the licensed premises except in the discretion of the [SLA]. It shall be available only to the person therein specified, and only for the premises licensed and no other except if authorized by the authority.").

Section 110(1)(g) requires disclosure of any individual with an economic interest in the licensed establishment. *See id.* § 110(1)(g) (required information on a license includes "[a] statement that the applicant has control of the premises to be licensed by ownership of a fee interest or via a leasehold, management agreement, or other agreement giving the applicant control over the food and beverage at the premises . . . ."). The regulatory issue concerning the App, then, is whether it gives PW sufficient economic interest in the retailer to justify invoking these provisions. We do not believe it does.

The Authority usually considers a commercial relationship in which an unlicensed entity receives a percentage of proceeds from alcohol beverage sales to constitute a transfer of a financial interest in the licensed premises or an availment. *See, e.g.*, NYSLA, *Declaratory Ruling 2011-03001*, "Application of

[3] Please note that PW's business model in New York does not involve wholesalers.

Alcoholic Beverage Control Law with respect to on-line coupons," (Oct. 5, 2011), *available at* https://www.sla.ny.gov/system/files/2011-03001_Online_Coupon_-_Groupon-revised.pdf. In the Groupon matter, an unlicensed company earned a fee which was an insignificant percentage of the amount that the consumer paid the retailer for a meal package coupon. The Authority determined that the fee was not significant enough to constitute an unlawful availment. Here, PW's situation is further removed from the facts of Groupon. The reservation fees PW receives are paid by the manufacturer – they do not come from the retailer's revenue from the sale of alcohol. Therefore, PW has no interest in the retailer's license and there is no unlawful availment. Two subsequent Declaratory Rulings issued by the Authority clarify this point further.

Shortly after the Groupon decision, the Authority issued a declaratory ruling concerning Living Social, an online company which provides limited time deals to consumers at various establishments, including licensed retailers. *See* NYSLA, *Declaratory Ruling 2011-03527C* "Application of Alcoholic Beverage Control Law with respect to on-line coupon service by Living Social," (Nov. 30, 2011), *available at* https://www.sla.ny.gov/system/files/2011-03527C-On-line%20coupon-LivingSocial.pdf. Living Social offers coupon promotions to consumers to purchase alcohol beverages on licensed premises and, in turn, receives a fee from the retailers based on a percentage of amount paid by the consumers. Citing the Groupon decision, the Authority determined that Living Social's business model was also not an unlawful availment. The Declaratory Ruling lays out several factors that, if followed, remove any availment problem. For the purpose of this discussion, the notable factors are: (1) the unlicensed company does not have any interest in the ownership, management, or business operations of the retail licensee, including, without limitation, decisions related to the purchase and/or sale of alcohol beverages by a licensee; and (2) retail licensees can pay a reasonable marketing fee to the unlicensed companies provided the payment does not represent more than 10% of the licensee's annual revenue and is not based on a percentage of the license's revenues. PW's business model is consistent with these factors because: (1) PW has no ownership interest in the ownership, management, business operations, or purchasing decisions of retailers; (2) the payments made by retailers to PW are for software and have nothing to do with sales of alcohol beverages; (3) the reservation fees paid to PW by manufacturers do not come from sales of alcohol beverages and are paid to PW regardless of whether a sale actually takes place between the retailer and the consumer.

Furthermore, another Declaratory Ruling involving the Drizly app may be the most analogous to PW's business. The decision should be the dispositive agency policy on this issue to justify the compliant nature of PW's business model. *See* NYSLA, *Declaratory Ruling 2013-02526*, "Operation of smartphone/web application Drizly," (Sept. 23, 2013), *available at:*

https://www.sla.ny.gov/system/files/2013-02526_-_Operation_of_smarphone-web_application_Drizly.pdf.

In that case, the Authority analyzed a business model in which a company with a smartphone application acts as third-party intermediary between retailers and consumers to actually consummate transactions by accepting and processing orders on behalf of a licensed retailer, and then allows the retailer to make physical deliveries of the products ordered via the app. The retailers pay the company a flat monthly fee along with a flat fee per order placed via the app. Although the Drizly app involves a much more involved ordering process than PW's reservation system, and facilitates the financial transaction (which PW does not and cannot do), the Authority still concluded that the trade practice neither involved an unlawful availment or a financial interest in a licensee.

> When determining if a retail licensee has made their license available to another, the [SLA] Members examine the role of the licensee in the operation of the premises. The Members ask: (1) whether the licensee is playing a passive role and if an unlicensed person is acting in their place; and (2) does an unlicensed party have an ownership or financial interest in the licensed premises.
>
> To answer the first question the Board has reviewed the role and functions of the licensed retailer who participates with Drizly. The licensed retailer selects the products to be sold, the price it is sold at and whether or not to accept an order. The licensed retailer delivers the product, ensures that customers are of a legal age and processes and collects all the funds for each sale. A retailer participating with Drizly retains total control of their products, service and finances. Accordingly, retailers participating with Drizly are not passive agents but active retailers responsible for all business functions. There is no argument to be made that Drizly controls any portion of the licensed business.
>
> In response to the second question of whether or not Drizly has a financial or ownership interest in a licensed premises, the Board answers this question in the negative. All funds go directly from the customer to the retailer. The retailer is the only one with access to these funds. Drizly and the licensee do not maintain escrow accounts. Rather, Drizly is paid a flat fee for their services provided. Drizly does not receive a portion of the licensed retailer's profits. Accordingly, it cannot be argued that Drizly possess a financial interest or ownership interest in the licensed retailer's business.

Id. at 2–3.

Even though Drizly took an active role in the ordering process, and even tracked consumer orders via GPS technology, the Authority still concluded that Drizly never took over the retailer's functions so as to avail itself inappropriately of the retailer's business and license. Compared to Drizly, PW's interactions with the retailer are minimal. The only function PW has relative to the retailer is making a reservation. PW has no role in the order process or the communications between the retailer and consumer about the order, and never learns whether an order and sale occurs after a given reservation is made. As a result, the PW business model does not remove any operational control from the licensed retailers. The PW app facilitates interactions between retailers and consumers, and enables the retailer to control completely any subsequent sale of alcohol beverages resulting from a reservation. Thus, as in these Declaratory Rulings, there is not an unlawful availment because the licensed retailer exercises total control over the products, sales, and finances, and actively manages the entire transaction without interference by PW, and without PW managing any funds involved in the sale. Consequently, PW's business model appears compliant with the Authority's policy regulating the sale of alcohol beverage products via mobile apps.

CONCLUSION

Based on the above, we believe that PW's business model is consistent with the prior decisions of the Authority involving unlicensed companies using mobile applications to interact with consumers and licensed industry members. Thank you in advance for your review of the information contained in this letter. Please do not hesitate to contact me directly with any questions you may have.

Sincerely,

Elizabeth A. DeConti

Elizabeth A. DeConti

EAD/mjs
Enclosure

6143420 v4

NEW YORK STATE LIQUOR AUTHORITY
FULL BOARD AGENDA
MEETING OF FEBRUARY 16, 2016
REFERRED FROM: COUNSEL'S OFFICE

2016-00397

REASON FOR REFERRAL
REQUEST FOR DIRECTION

NEW YORK TIMES
WINE CLUB SALES

(DECLARATORY RULING)

The Members of the Authority at their regular meeting held at the Zone I New York City office on FEBRUARY 16, 2016 determined:

SKENE LAW FIRM, P.C.

A NEW JERSEY PROFESSIONAL CORPORATION
2614 ROUTE 516, 2ND FLOOR • OLD BRIDGE, NEW JERSEY • 08857
PHONE: 732-727-5030 • FAX: 732-727-5028
WWW.SKENELAWFIRM.COM

ROBERT D. SKENE * +

RICHARD D. NASCA * +
LISA M. MILLER * + ^

* NEW JERSEY BAR ADMISSION
\+ NEW YORK BAR ADMISSION
^ PENNSYLVANIA BAR ADMISSION

JOHN F. VASSALLO, JR., OF COUNSEL
ANNE MARIE VASSALLO, OF COUNSEL

November 25, 2015

VIA EMAIL AND OVERNIGHT MAIL
Attn: Jacqueline Flug, General Counsel
New York State Liquor Authority
80 S. Swan Street
Albany, NY 12210

Re: PTP Marketing, LLC
Request for Declaratory Ruling

Dear Ms. Flug:

Please be advised that we represent both PTP Marketing, LLC ("PTP") and Global Wine Company ("Global Wine") in their alcoholic beverage regulatory matters.

PTP recently purchased an existing package liquor store (Serial #315669 d/b/a Boomtown Wine and Spirits) located at 415 Denise Road in Rochester and is currently operating at the premises pursuant to a 90 Day Temporary Retail Permit. In addition, PTP now wishes to be the exclusive operator of the New York Times Wine Club and other similar wine clubs in New York State. Bearing this in mind, PTP wishes to obtain a Declaratory Ruling with respect to its method of operation to ensure that it is fully complying with NY Alcoholic Beverage Control ("ABC") Law.

Prior to its acquisition of the above discussed package store, PTP served as a marketing company for Global Wine in New York, which, through a New York State licenses package store, Wine Legacy, marketed for various wine clubs in New York State, (which are further discussed below). Sometime in February of 2015, Wine Legacy, and the New York State wholesaler that was moving Global Wine product, Classic Wines terminated their agreement with Global Wine. After discussions with the Authority's Legal and Enforcement personnel, such wine club activity ceased for a period of time in New York State to ensure compliance with state laws.

Parties:

PTP is a California based advertising and marketing company that primarily designs and operates web sites for wine clubs that feature Global Wine products. It was originally founded by Peter Paul, who is also the owner of Global Wine. Sometime in 2013, ownership of PTP was transferred to Jessica Paul, who is Peter Paul's daughter and now the sole owner of PTP. There is no direct or indirect ownership interest between PTP and Global Wine.

Global Wine is a California based alcoholic beverage supplier. Global Wine holds a California ABC 17-20 permit, which is both a beer and wine wholesaler permit and an off-sale beer and wine permit restricted to internet sales. Global Wine is also a California ABC licensed importer. In addition, Global Wine holds basic wholesaler and importer permits from the Federal Alcohol and Tobacco Tax and Trade Bureau (TTB).

Global Wine's primary business is to supply wines for certain wine clubs, which are sold over the internet through wine club websites. At the present time, Global Wine's wine club partners (collectively, the "Wine Clubs") are: (a) The New York Times; (b) The Washington Post; (c) Williams-Sonoma; (d) Michael Mina (restauranteur); and (e) More Uncorked Wine Club. Sales of wine through the Wine Clubs are conducted utilizing a network of licensed wholesalers and retailers, in compliance with the applicable laws of each state in which the Wine Clubs conduct business (which at the present time amounts to a total of 30 states).

We Ship Express, Inc. (WSE), located in New Windsor, NY, maintains a New York Warehouse permit for the storage of alcoholic beverages and are in the business of providing warehousing and fulfillment services. PTP has entered into an agreement with WSE for the provision of such warehousing and fulfillment services. Please see the attached draft agreement between PTP and WSE regarding same.

Absolute Wine & Spirit Company ("Absolute") is a licensed New York wholesaler located in Suffern, New York. Global Wine has appointed Absolute to be the exclusive New York wholesaler of Global Wine's products.

Proposed Method of Operation:

PTP has decided to pursue procurement of its own Package Liquor Store License in New York, and was recently issued a 90 Day Temporary Retail Permit for the operation of same. In addition, PTP now wishes to operate the aforementioned Wine Clubs in New York State, pursuant to the following method of operation:

- PTP will directly contract with the aforementioned brands for the limited use of their trademarks in connection with wine club operations in New York State.

- Each Wine Club website will have a separate page for New York State where it will clearly and unambiguously state that PTP is the licensed package store which is selling such wine, and plainly identify PTP's serial number and premises address. Please see attached "screen shots" of same.
- All alcoholic beverage orders placed by customers within New York State will be directed to PTP's licensed premises, where PTP will either decline or accept such orders. PTP will operate the New York State portion of the wine clubs' websites and will be responsible for processing all credit card orders. Although customers may place orders via the respective Wine Club website at any time of day, all such orders will only be processed by PTP during regular business hours. All monies collected for such sales will be deposited in PTP's bank account.
- PTP will order a sufficient amount of alcoholic beverage product for its Wine Club sales so that there will be no regular just-in-time delivery. All products regularly ordered through the Wine Clubs will be present in New York State, either at PTP's licensed premises, at the public warehouse space it will lease at WSE's licensed public warehouse location, or at some other public warehouse location.
- With respect to the Wine Club operations, all prices for New York State sales will be set by PTP, and PTP will chose which products to offer for sale.
- For each individual customer of the respective Wine Club, the Wine Club trademark owners will receive compensation for the use of the trademark by PTP via three separate tiers of membership. The Wine Club trademark owners will receive on a flat rate basis for each individual member, and the applicable rate will be determined by the tier of membership selected by such customer. At no time will any Wine Club trademark owner share in any percentage of profit from the Wine Club product sales. Please see the attached draft of the trademark license agreement between PTP and the New York Times as a sample of such contracts.
- With respect to its package store operations, PTP will stock a diverse amount of wine and spirit products and will in no way limit such stock to Global Wine product only. Such alcoholic beverage products will be purchased from a variety of licensed New York State wholesalers.
- With respect to Global Wine's operations in New York State, PTP believes that Global Wine will market its products to other New York State package stores.

<u>Compliance with NY ABC Law:</u>

Section 105.14 of the ABC Law prohibits liquor stores from: (1) operating on Sundays before noon and after 9 p.m.; (2) operating between midnight and 8 a.m. on any day; (3) operating on Christmas; and (4) selling alcoholic beverages at any time that the store is closed to the public. Section 105.15 of the ABC Law requires all package liquor stores to maintain adequate books and records at the licensed location. As indicated above, PTP will only operate the Wine Clubs during legal operating hours for package

store licensees and all sales of alcoholic beverages will occur only during such hours. Moreover, all books and records will be kept at PTP's New York State licensed location.

SLA Rule §99.2 prohibits retailers from engaging in any deceptive or misleading advertising. As indicated above, for all New York State orders, the respective Wine Club's website through which the order is placed will clearly state that the sale will be made by PTP as well as identify its license number and store address. As such, there will be no instance of deceptive or misleading advertising.

Section 111 of the Alcoholic Beverage Control Law states that a license "...shall not be transferable to any other person or to any other premises...it shall be available only to the person therein specified . . . ." As set forth above, PTP: (i) will be setting the applicable prices for all alcoholic beverages offered for sale in New York on each Wine Club website; (ii) will be the party selecting which wine will be offered for each wine club website in New York; (iii) will be the party marketing and advertising the selected wines on the wine club websites for New York; (iv) will be collecting all monies for such sales of wine; and (v) will not be sharing any percentage of gross or net profit from the sale of alcoholic beverages with any other party, including but not limited to Global Wine or any of the Wine Club trademark owners. As such, no other party will have an interest in PTP's alcoholic beverage license. PTP is an independent operator and is not contractually bound to any other party with respect to sharing alcoholic beverage sales profits, setting prices or carrying any particular brand of alcoholic beverage product. As such, there will be no availing of PTP's license by any third party.

Section 100.1 of the Alcoholic Beverage Control Law states that no person shall sell alcoholic beverages in New York without obtaining the appropriate license. Considering the foregoing, it is evident that PTP will be the only party selling alcoholic beverages in New York State via the aforementioned Wine Clubs. No other party will have an interest in any such sales. As PTP is currently operating pursuant to a 90 Day Temporary Retail Permit and anticipates receiving final approval of its permanent alcoholic beverage license application in the very near future, it has properly obtained the appropriate licensing to engage in the foregoing method of operation.

Conclusion:

PTP is in no way a "passive participant" in the sale of wine through the aforementioned Wine Clubs. PTP will hold the limited trademark right to use each of the applicable Wine Club names in New York State and will contract directly with the respective trademark owners for such right. PTP alone chooses the products to be sold in New York State and sets the applicable pricing for all such product. The inventory for all regular wine club purchases will derive directly from PTP's stock on hand (either at its licensed package store or at the public warehouse space it leases) and there will be no regular just-in-time delivery of same. All monies obtained from the sale of alcoholic beverages will be received by PTP and deposited in its bank account. PTP will not share any portion of its profits from alcoholic beverage sales with any other party. Finally, PTP will maintain a bona fide package store which will have a diversity of wine and spirits products available for purchase.

For the foregoing reasons, we respectfully request that the Full Board of Commissioners provide its approval of PTP's proposed method of operation.

Very Truly Yours,

SKENE LAW FIRM, PC

By: ______________________
Robert D. Skene, Esq.

RDS/vfr

Cc: Kerri O'Brien, CEO (Via email only)
Jacqueline Held, Secretary to the Authority (Via email only)