

# **LIQUID ASSET STORAGE**

*a division of Sokolin LLC*

12 FOSTER AVENUE, P.O. BOX 1206, BRIDGEHAMPTON, NY 11932

PHONE: (631) 613-6315 FAX: (631) 613-6316

## **LIQUID ASSET STORAGE AGREEMENT**

This Liquid Asset Storage Agreement (this “Agreement”), dated as of the date set forth on signature page to this Agreement, is entered into between Liquid Asset Storage, a division of Sokolin LLC, a New York Limited Liability Company (“Sokolin” or “we”), and the undersigned customer identified on the signature page to this Agreement (“Customer”).

### **RECITALS**

WHEREAS, Sokolin, through its Liquid Asset Storage division, is in the business of storing wine for its customers;

WHEREAS, Customer owns wine that Customer wishes to store at Sokolin’s wine storage facility, upon the terms and subject to the conditions of this Agreement; and

WHEREAS, Sokolin, through its Liquid Asset Storage division, is willing to store Customer’s wine upon the terms and subject to the conditions of this Agreement.

### **AGREEMENT**

Now, therefore, in consideration of the above premises, the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the Customer and Sokolin hereby agree as follows:

Section 1. General Terms. The following terms apply to this Agreement:

(a) The hours of operation of Sokolin’s wine storage facility shall be Monday through Friday 9:00 A.M. to 5:00 P.M., New York time. Saturday hours are by appointment only. If Customer desires to examine Customer’s stored wine or retrieve stored wine, Customer must schedule an appointment forty-eight (48) hours in advance.

(b) Customer must notify Sokolin at least forty-eight (48) hours in advance of Sokolin receiving wine to be stored for Customer at Sokolin’s storage facility. A separate handling charge will be imposed for all wine received by Sokolin for which Sokolin did not receive timely advance notice.

(c) Forty-eight (48) hour notice is required for an appointment for all withdrawals. All withdrawals must be accompanied by a written release, satisfactory in form and substance to Sokolin, which Customer must deliver to Sokolin by mail or facsimile prior to or at the time of a withdrawal being made.

Section 2. Storage Fees and other Charges.

Storage fees consist of a fixed component and a variable component, in addition to handling and other charges.

(a) Fixed component: The fixed component of the storage fees equals \$1.35 or \$1.20 per case per month (as determined in accordance with Exhibit A) with a monthly minimum of \$23.00. This charge is for any size case or box, whether full or partially full, up to 9 liters per box (the equivalent of twelve (12) 750 ml bottles of wine).

(b) Variable component: The variable component of the storage fee equals an amount per month equal to 1/12 of 1.5% of the aggregate cash value of Customer's wines stored with Liquid Asset Storage per calendar year, determined as follows: an actual physical inventory taken of the contents of the containers as provided for below under "Inventory." Customer shall supply Sokolin with a value of the inventory (stated value). Sokolin offers professional wine appraisal upon Customer's request. Such stated value will be the value used for the foregoing 1.5% variable component on a pro rata basis for the remaining months of the calendar year. For each additional case or box stored during the calendar year, a cash value will be established as provided above and the inventory list will be modified and mailed to Customer. A pro rata 1.5% variable component will then be billed for such additional stored wines for the remainder of the calendar year. Each annual 1.5% variable component will be based on the latest stated cash value reflected on the list.

(c) In-Out Charges: A one-time in-charge of \$3.50 per case or box (with the minimum charge being \$17.50 per shipment) will be billed for the acceptance of all wines coming into the storage facility (includes: receiving, verification of contents by opening each case, updating computer inventory and one time removal). If Sokolin determines that cartons are in unsatisfactory condition for proper wine storage, a one time packaging charge of \$5.00 will be assessed per carton. A separate handling charge of \$50 also will be imposed for all wine received by Sokolin for which Sokolin did not receive timely advance notice as required under Section 1(b) above. No additional charges will be assessed for removal of stored wine; however, in the event that individual bottles are picked out of a case, a charge of \$5 for each case from which bottles were drawn but not wholly removed will be assessed.

(d) Other charges: See the Liquid Asset Storage Fees and Services statement, attached hereto as Exhibit A.

### Section 3. Inventory

(a) Inventory. Sokolin normally will mail or email Customer a receipt of the number of cases/boxes placed into Sokolin's storage facility within ten (10) business days of receipt of the stored wine. This receipt will reflect an inventory of the wine accepted into the storage facility.

### Section 4. Indemnification and Limitation of Liability.

(a) Except as provided in this Section 4, Customer is solely responsible for risk of loss of wine stored at Sokolin's wine storage facility pursuant to this Agreement.

(b) *Subject to the limitations set forth in clause (c) below and elsewhere in this Agreement*, Sokolin agrees to indemnify Customer from and against any actual loss incurred by Customer as a direct result of damage or loss to Customer's stored wine from breakage, theft, temperature extremes or fire while in Sokolin's possession and stored at Sokolin's storage facility.

**(c) In addition to any limitations set forth elsewhere in this Agreement (including, without limitation, any exhibit hereto), Sokolin's liability under this Agreement shall be limited as follows:**

**(i) in the event of any such damage or loss, in no event shall Sokolin's aggregate liability under this Agreement exceed the most recent stated value of the Customer's stored wine as reflected on the books of Sokolin. Customer understands that it is Customer's responsibility to assure that the stated value of Customer's stored wine is current;**

**(ii) any such actual loss claimed by Customer under this Section 4(c) shall be net of any insurance proceeds payable to Customer in respect of such damage or loss; and**

**(iii) Customer agrees that Customer's sole remedy with respect to any such actual loss is indemnification as provided in this Section 4 of this Agreement, and Customer hereby waives any other claim or remedy against Sokolin or its shareholders, directors, officers, employees, agents or other representatives with respect to any such actual loss. Any claim for indemnification by Customer shall be brought within one (1) year after the claim has accrued.**

Section 5. Terms and Conditions of Payment.

(a) All payments under this Agreement are due within thirty (30) days of invoicing. Sokolin reserves the right to deny any services, including withdrawal, or additional deposits, of stored wine, under the terms of this Agreement, if all outstanding invoices are not paid at the time any additional service is requested.

(b) Monthly storage charges are payable in advance, in six-month increments, on January 1<sup>st</sup> and July 1<sup>st</sup> of each year. Upon any receipt of any cases or boxes, the charge will be pro rated only for the number of months remaining in the current half-year period. Thereafter, storage will be due semi-annually.

(c) Any unpaid amounts owing by Customer to Sokolin for wine storage services received by Customer prior to the date of this Agreement (whether pursuant to a prior storage agreement or otherwise) are specifically acknowledged by Customer, included within this Agreement, and shall be paid by Customer within thirty (30) days of the date of this Agreement. Upon request, Sokolin will provide Customer with an invoice for any such unpaid amounts.

(d) Unless Sokolin and Customer agree on another method of payment, any amounts invoiced by Sokolin to Customer under this Agreement shall be due and payable to Sokolin in U.S. dollars via either check, credit card or wire transfer of immediately available funds to the following account: Citizens Bank, Albany, NY 12207, Routing #021313103, for credit to the account of: Sokolin LLC, P.O. Box 1206, Bridgehampton, NY 11932, A/C # 400109044 (or such other account(s) Sokolin may designate in writing to Customer from time to time).

(e) If any past due unpaid amount is delinquent by more than thirty (30) days, a late charge equal to 1.5% of the delinquent amount per month shall apply until the past due unpaid amount is paid as contemplated in this Agreement. This late charge is intended to reimburse Sokolin for costs associated with the delinquency.

(f) Customer agrees that, to the fullest extent permitted or not prohibited under applicable law, Sokolin may (at its sole discretion) set-off or offset amounts due but unpaid by Customer to Sokolin under this Agreement, or any other agreement between Customer and Sokolin, against amounts due but unpaid by Sokolin to Customer under this Agreement, or any other agreement between Customer and Sokolin, without

notice to Customer. Customer agrees that any such amounts payable by Sokolin to Customer which are set-off against amounts payable by Customer to Sokolin shall be considered paid in full by Sokolin.

(g) In addition to any other lien, right or remedy available to Sokolin under applicable law, as collateral for Customer's obligations under this Agreement, Customer hereby grants to Sokolin a first lien security interest under Article 9 of the Uniform Commercial Code as enacted in the State of New York (as amended from time to time, the "UCC") in each bottle of wine stored under this Agreement. Customer hereby authorizes Sokolin to, and appoints Sokolin as its agent and attorney-in-fact to, execute, deliver and file such financing statements and other instruments or documents as necessary or appropriate to perfect and enforce such security interest and lien. Customer agrees that such financing statements may be filed without Customer's signature to the fullest extent permitted or not prohibited by applicable law. Sokolin shall have all the rights and remedies available to Sokolin, and shall be entitled to collect its costs and expenses of enforcing this Agreement, as a secured party to the fullest extent under the UCC and other applicable law. Upon the termination of this Agreement, and the full and final payment of all amounts owing by Customer to Sokolin in connection with this Agreement, upon request from Customer, and at Customer's expense, Sokolin shall execute, deliver and file such termination statements or other instruments or documents necessary to remove the lien and security interest granted to Sokolin in this Section 5(g).

Section 6. Representations and Warranties. Customer represents and warrants to Sokolin as of the date of this Agreement, and as of each day Sokolin stores wine on behalf of Customer, as follows:

(a) If Customer is other than a natural person, Customer is duly organized, validly existing and in good standing under the applicable laws of its jurisdiction of incorporation/organization.

(b) If Customer is other than a natural person, Customer has the power and authority to execute, deliver and perform under this Agreement. If Customer is a natural person, Customer is of legal age and has the capacity and authority to execute, deliver and perform under this Agreement. Customer shall comply, and is in compliance, with applicable law in connection with Customer's execution, delivery and performance of this Agreement.

(c) This Agreement constitutes a valid and legally binding obligation of Customer, enforceable against Customer in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, involuntary transfer, moratorium or similar laws affecting creditor's or counterparty's rights generally, equitable principles or public policy.

(d) Sokolin may rely on Customer's instructions or directions relating to the receipt, storage and shipment of wine, whether given or purported to be given by Customer to Sokolin in writing, electronically or orally, without Sokolin having to verify the authenticity of such instructions and directions.

Section 7. Term and Termination.

(a) This Agreement shall become effective as of the date of this Agreement, and shall remain in effect for one year. The term of this Agreement shall automatically renew for successive one-year terms unless this Agreement is terminated by either party as provided in this Agreement.

(b) Either party may terminate this Agreement by providing a written notice of termination to the other party. Any such termination shall be effective 30 days after receipt of such a termination notice. If Customer terminates this Agreement, Customer shall provide Sokolin with instructions as to where to ship any remaining stored wine in Customer's termination notice. If Sokolin terminates the Agreement, unless Customer otherwise instructs Sokolin in writing within 10 days of Customer receiving Sokolin's termination

notice, Sokolin will ship any remaining stored wine to Customer's last address as it appears on Sokolin's records. Sokolin's obligation to ship any remaining stored wine shall be subject to Sokolin's rights and remedies under this Agreement and applicable law for non-payment by Customer of any amounts owing to Sokolin under this Agreement.

(c) The termination of this Agreement, or any provision hereof or thereof, shall not affect the rights and obligations of the parties with respect to actions taken or omissions made, or purchases or sales consummated, prior to the date of termination.

(d) Notwithstanding any other provision in this Agreement, the provisions of Sections 2, 4(a), 4(c), 7(c), 7(d), 8(a)(i), 8(b), 8(c) and 9 shall survive the termination of this Agreement or the Storage Agreement.

## Section 8. Indemnity; Standard of Care, Limitations of Liability; Disclaimers

### (a) Indemnification.

(i) Customer agrees to indemnify and hold harmless Sokolin, and Sokolin's shareholders, directors, officers, employees, agents and other representatives, from and against any loss, liability, damage, cost or expense (including, without limitation, reasonable attorney's fees) actually incurred or suffered by Sokolin, or Sokolin's shareholders, directors, officers, employees, agents or other representatives, arising out of or relating to a breach of this Agreement by Customer or otherwise arising out of or relating to the storage of Customer's wine.

(ii) Sokolin agrees to indemnify and hold harmless Customer from and against any loss, liability, damage, cost or expense (including, without limitation, reasonable attorney's fees) actually incurred or suffered by Customer arising out of or relating to a breach of this Agreement by Sokolin. This indemnification obligation by Sokolin does not cover matters intended to be within the scope of the indemnification provided under Section 4 above.

(b) Standard of Care. Notwithstanding any other provision of this Agreement to the contrary, in performing any services under this Agreement, Sokolin shall use commercially reasonable efforts and, to the fullest extent permitted or not prohibited under applicable law, Sokolin shall not be liable under this Agreement, unless an actual loss incurred or suffered by Customer results from a breach of this Agreement caused by Sokolin's gross negligence, willful misconduct or bad faith.

### (c) Limitations of Liability; Disclaimers

(i) ***Notwithstanding any other provision of this Agreement, to the fullest extent permitted or not prohibited by applicable law, the parties agree that:***

***(A) Neither party shall be liable for any indirect, special, incidental, consequential, punitive or other damages (other than direct, actual damages), including, without limitation, for lost profits, in connection with any wine stored for Customer or this Agreement, or any statement, representation, warranty, course of conduct, course of performance, course of dealing, action, omission or event in connection herewith or therewith, even if a party was advised of the possibility of such damages. Each party agrees not to bring any claim against the other party, or its shareholders, directors, officers, employees, agents or other representatives, for any such indirect, special, incidental, consequential, punitive or other damages, including, without limitation, for lost profits (but not including direct, actual damages).***

**(B) Sokolin does not make in this Agreement, and Sokolin shall have no liability with respect to and hereby expressly disclaims, any other express or implied representations or warranties (whether arising at law, through course of dealing, course of performance, usage of trade or other course of conduct, or otherwise) regarding Sokolin, this Agreement, Sokolin's storage facility or otherwise, including, without limitation, any representation or warranty of merchantability, fitness for a particular purpose or title or against infringement.**

**(C) Customer agrees that Customer's sole remedy with respect to any breach of this Agreement by Sokolin is indemnification as provided in Section 8(a)(ii) above of this Agreement, and Customer hereby waives any other claim or remedy against Sokolin or its shareholders, directors, officers, employees, agents or other representatives with respect to any such actual loss. Any claim for indemnification by Customer shall be brought within one (1) year after the claim has accrued.**

**(D) In no event shall Sokolin's liability to Customer in connection with this Agreement (whether under Section 4(b) or Section 8(a)(ii) or otherwise) exceed in the aggregate the amount specified in Section 4(c)(i) of this Agreement.**

**(ii) Neither party (nor its shareholders, directors, officers, employees, agents or other representatives) shall be liable to the other party for any default or delay in the performance of obligations under this Agreement if such default or delay is caused, directly or indirectly, by revolution or other civil disorders, wars, acts of enemies, acts of terrorism, strikes, labor disputes or other labor unrest, fires, floods, acts of God, federal, state, or municipal action, changes in applicable law or, without limiting the foregoing, any other causes not within the reasonable control of the breaching or non-performing party, and which is not preventable by the exercise of reasonable diligence. This limitation of liability shall not apply to Sokolin's obligations under Section 4 of this Agreement.**

Section 9. Miscellaneous.

(a) Amendments. This Agreement shall not be amended or waived in any respect (whether by course of performance, course of dealing, usage of trade, other course of conduct or otherwise) except as provided in this Section 9(a). No amendment to or waiver of any provision of this Agreement, and no consent to any departure by any party from the terms and conditions hereof, shall in any event be effective unless in a writing signed by or on behalf of each party. Any such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. Notwithstanding the foregoing, Customer agrees that Sokolin shall have the right to amend or otherwise change the terms of this Agreement (including the fee provisions) by providing thirty (30) days prior written notice to Customer.

(b) No Implied Waiver; Remedies Cumulative. No delay or failure of either party in exercising any right or remedy under this Agreement, or, in the case of Sokolin, under applicable law, shall operate as a waiver thereof; nor shall any single or partial exercise of any such right or remedy preclude any other or further exercise thereof or the exercise of any other available right or remedy. Except as provided in Section 4(c)(iii) and Section 8(c)(i)(C) above, the rights and remedies of the parties under this Agreement are cumulative and not exclusive of any other rights or remedies available hereunder, under any other agreement, at law, in equity, or otherwise.

(c) Notices. Except to the extent, if any, otherwise expressly provided herein, or required by applicable law, or for routine business communications between the parties, all notices and other communications (collectively, "notices") under this Agreement shall be in writing, and shall be sent by first-class mail, by nationally-recognized overnight courier, by personal delivery, or by facsimile

transmission or email (with confirmation of receipt/reading), in all cases with charges prepaid. All notices shall be sent to Sokolin at the address specified at the beginning of this Agreement and to the Customer at the address for such party set forth on the signature page to this Agreement, or, in either case, to such other address as shall have been designated by such party in writing to the other party. Sokolin may rely on any notice (whether or not made in a manner contemplated by this Agreement) purportedly made by or on behalf of Customer, and Sokolin shall have no duty to verify the identity or authority of the person giving such notice.

(d) Entire Agreement. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof, and (except as contemplated in Section 5(c) above) supersede all prior and contemporaneous statements, representations, warranties, actions, omissions, arrangements, understandings or other agreements of the parties in connection therewith.

(e) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all such counterparts shall constitute but one and the same agreement.

(f) Successors and Assigns; Assignment. This Agreement shall be binding upon each party and their respective permitted successors and permitted assigns and shall inure to the benefit of and be enforceable by the other party and its permitted successors and permitted assigns (and no other third-party). Customer may not assign or otherwise transfer (by operation of law, stock sale or otherwise) this Agreement, or delegate any rights of obligations hereunder, without the prior written consent of Sokolin. Sokolin may assign or otherwise transfer (by operation of law, stock sale or otherwise) this Agreement, or delegate any rights of obligations hereunder without the prior consent of Customer.

(g) Severability. In the event that any one or more of the provisions contained in this Agreement or the application thereof in any circumstances, is held invalid, illegal, or unenforceable in any respect for any reason, the validity, legality, and enforceability of any such provision in every other respect, and of the remaining provisions contained herein or therein, shall not be in any way impaired thereby, it being intended that all of the rights, duties, obligations and privileges of the parties hereto shall be enforceable to the fullest extent permitted by applicable law.

(h) Relationship. Except as specifically contemplated by this Agreement, the relationship between Sokolin and Customer shall be solely that of independent contractors and this Agreement shall not be deemed to create any relationship of agency, employment, partnership or joint venture between the parties.

(i) Certain Legal Matters.

(i) Governing Law. This Agreement (and all statements, course of conduct, course of performance, course of dealing, actions, omissions, events, claims and other matters relating hereto) shall be governed by and construed in accordance with the laws of the State of New York, exclusive of and without regard to choice of law principles.

(ii) *Submission to Jurisdiction and Venue; Waiver of Jury Trial; etc.* *To the fullest extent permitted or not prohibited by applicable law, each of Sokolin and Customer hereby:*

(A) *agree that any action, suit or proceeding by any person or entity arising from or relating to this Agreement, or any statement, course of conduct, course of performance, course of dealing, action, omission, event, claim or other matter relating to any of the foregoing (collectively, "Related Litigation") may be brought in any state or federal court of competent jurisdiction sitting in New*

*York, New York or Suffolk County, New York, submits to the jurisdiction of such courts, and agree not to bring any Related Litigation in any other forum (but nothing herein shall affect the right of Sokolin as a secured party to bring any Related Litigation in any other forum in order to enforce its security interest and lien);*

*(B) waive the right to trial by jury in any Related Litigation.*

In Witness Whereof, each of the parties, having read this Agreement, and having understood the terms and conditions hereof (including, without limitation, the disclaimers, limitations of liability, consents and waivers included in Sections 4(c), 8(c) and 9(i) of this Agreement), hereby executes and delivers this Agreement as of the first date set forth below.

**CUSTOMER:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Customer Address

\_\_\_\_\_  
Customer E-Mail Address

\_\_\_\_\_  
Print Customer Name

**Authorization for Credit Card Payment of Storage Fees**

If Customer wishes to have the storage fees automatically charged to Customer's credit card, complete the following information and sign on the signature line provided. The storage fees will be not be credited to your credit card until at least 10 days after you receive an invoice for the storage fees as contemplated in the Agreement:

\_\_\_\_\_  
Credit Card Number

\_\_\_\_\_  
Expiration Date

\_\_\_\_\_  
Visa/Mastercard/American Express

\_\_\_\_\_  
Authorizing Signature

Accepted this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

**Sokolin LLC, on behalf of its  
Liquid Asset Storage Division**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## EXHIBIT A

### LIQUID ASSET STORAGE

*a division of Sokolin LLC*

12 FOSTER AVENUE, P.O. BOX 1206, BRIDGEHAMPTON, NY 11932

PHONE: (631) 613-6315 FAX: (631) 613-6316

## FEES & SERVICES

Effective April 1, 2009

### STORAGE

#### Fixed Component

1-99 Boxes at \$1.35 per box per month,

100+ Boxes at \$1.20 per box per month,

#### Variable Component

1.5% of the aggregate cash value of Customer's wines stored with Liquid Asset Storage per calendar year.

#### In/Out Charges

\$3.50 per case – includes: receiving, verification of contents by opening each case, updating computer inventory and \*one-time removal. A \$17.50 minimum charge for each receipt of wine. If cartons are in unsatisfactory condition for proper wine storage, a one-time packaging charge of \$5.00 will be assessed per carton.

#### \*Bottle Picking Charges

\$5 will be charged for each case from which bottles were drawn but not wholly removed.

### TRANSPORTATION

#### Air Freight

Overnight Delivery - will be assessed at \$95 per box,

Two Day Delivery – will be assessed at \$55 per box,

Ground Delivery – will be assessed at \$45 per box,

#### Hamptons

\$25 for up to 4 cases, plus \$5 per additional case.

#### New York City

\$35 for up to 4 cases, plus \$8 per additional case.

### Other Areas

1-10 boxes will be assessed at \$30 per box,  
11-25 boxes will be assessed at \$25 per box,  
25-75 boxes will be assessed at \$20 per box,  
76+ boxes will be assessed at \$18 per box.

\*These prices exclude weekend deliveries. For weekend deliveries please call to check price and availability. Rush deliveries, which are defined as delivery requests without 24-hour notice, will be assessed additional fees.

## **PACKING MATERIAL**

### Styrofoam Boxes

12-bottle box will be assessed at \$15 per box,  
6-bottle box will be assessed at \$10 per box,  
3-bottle box will be assessed at \$8 per box,  
1-bottle box will be assessed at \$7 per box.

### Bordeaux full case shippers\*

12-bottle box will be assessed at \$20 per box.

\* **Disclaimer** - The Bordeaux full case shippers do not protect against the elements, nor do we provide any guarantee thereof. This type of packaging is not recommended and will be used only at the sole discretion of the customer.

### Cardboard heavy-duty

12-bottle box will be assessed at \$12 per box,  
6- bottle box will be assessed at \$8 per box,

## **WINE APPRAISAL**

### **Assigning market value, as of date of appraisal, to Customer's collection**

\$3 per wine/line item listed on the inventory. Minimum of \$75 charge per appraisal.

## **WINE INSPECTION**

### **Visual condition reports describing: Level, Capsule, Label & General Appearance**

\$65 per hour. Billed in 15 minute increments. Minimum \$65 per Inspection