



U.S. Department of Justice

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Please respond to: Harrisburg

July 19, 2017

Andrew M. Lankler, Esquire
Baker Botts, L.L.P.
30 Rockefeller Plaza
New York, NY 10112

Re: Breakthru Beverage Pennsylvania
Formerly known as Capital Wine & Spirits, LLC

Dear Mr. Lankler:

The United States Attorney's Office of the Middle District of Pennsylvania ("USAO-MDPA") and Breakthru Beverage Pennsylvania formerly known as Capital Wine & Spirits, L.L.C., ("Breakthru Beverage Pennsylvania" or the "Company"), by its undersigned representatives, pursuant to authority granted by the Company's governing agreement, enter into this Non-Prosecution Agreement ("Agreement"). Breakthru Beverage Pennsylvania's owner, Breakthru Beverage Group, LLC, by its undersigned representatives, pursuant to authority granted by Breakthru Beverage Group Managers, also agrees to certain terms and conditions of the Agreement as set forth below.

USAO-MDPA enters into this Agreement based on the individual facts and circumstances presented by this case and the Company, including:

- (a) the Company has engaged in extensive remedial measures, including: devoting significant internal and external resources to remediating compliance violations identified by the Pennsylvania Ethics Commission Investigation ("PA-Ethics") into the improper providing of things of value to decision makers at the Pennsylvania Liquor Control Board ("PA-LCB"); eliminating its practice of providing things of value to decision makers at the PA-LCB that posed a heightened risk for public corruption which form the focus of the instant prosecutorial action; and enhancing its compliance program and internal controls over marketing and entertainment expenditures;
- (b) the Company has received credit for its cooperation with USAO-MDPA's investigation because the Company provided cooperation that was timely, substantial, and that identified relevant facts that allowed USAO-MDPA to conduct the remaining investigation in an efficient manner. The Company's cooperation included providing records, facilitating interviews with witnesses, and making factual presentations to USAO-MDPA;
- (c) by the conclusion of the investigation, the Company and Breakthru Beverage Group provided to USAO-MDPA all relevant facts known to it, including information about the individuals involved in the conduct described in the Statement of Facts;
- (d) the nature and seriousness of the conduct, including that employees of the Company provided and were aware that Breakthru Beverage Pennsylvania was engaged in a practice of providing things of value to PA-LCB decision makers who were involved in making official decisions beneficial to the Company;
- (e) the Company has no prior criminal history;

(f) the Company and Breakthru Beverage Group have agreed to continue to cooperate with USAO-MDPA in any investigation of the conduct of PA-LCB employees and former employees, and others in the industry for potential violations of federal public corruption laws.

The Company admits, accepts, and acknowledges that it is responsible under United States law for the acts of its officers, directors, employees, and agents as set forth in the attached Statement of Facts, and that the facts described therein are true and accurate. While the Company and Breakthru Beverage Group denies criminal liability for the conduct, the Company and Breakthru Beverage Group recognize and acknowledge that the USAO-MDPA believes that the facts described in the attached Statement of Facts establish a pattern of gratuities to public officials which, if given in quid pro quo exchange for official decisions, would constitute violations of federal law, specifically honest services bribes and kickbacks (18 U.S.C. §§1341, 1343, 1346). The Company and Breakthru Beverage Group expressly agree that they shall not, through present or future attorneys, officers, directors, employees, agents, or any other person authorized to speak for the Company or Breakthru Beverage Group make any public statement, in litigation or otherwise, contradicting the acceptance of responsibility set forth above or in the facts described in the attachment Statement of Facts. The Company agrees that if it, Breakthru Beverage Group or any of its direct or indirect subsidiaries or affiliates issues a press release or holds a press conference in connection with this Agreement, the Company shall first consult with the USAO-MDPA to determine (a) whether the text of the release or proposed statements at the press conference are true and accurate with respect to matters between the USAO-MDPA and the Company, and (b) whether the USAO-MDPA has any objection to the release.

The Company and Breakthru Beverage Group obligations under this Agreement shall have a term of one-year from the date on which the Agreement is fully executed (the "Term"). The Company and Breakthru Beverage Group agree, however, that, in the event USAO-

MDPA determines, in its sole discretion, that the Company or Breakthru Beverage Group has knowingly violated any provision of this Agreement or has failed to completely perform or fulfill each of the Company's and Breakthru Beverage Group obligations under this Agreement, an extension or extensions of the Term may be imposed by USAO-MDPA, in its sole discretion, for up to a total additional time period of one year, without prejudice to USAO-MDPA's right to proceed as provided in the breach provisions of this Agreement below.

The Company and Breakthru Beverage Group shall cooperate fully with USAO-MDPA in any and all matters relating to the conduct described in this Agreement and the attached Statement of Facts and other related conduct under investigation by USAO-MDPA or any other component of the Department of Justice involving public corruption investigations at any time during the Term until the later of the date upon which all investigations and prosecutions arising out of such conduct are concluded, or the Term. At the request of USAO-MDPA, the Company and Breakthru Beverage Group shall also cooperate fully with other domestic or foreign law enforcement and regulatory authorities and agencies in any investigation of the Company, Breakthru Beverage Group, their officers, directors, employees, agents, business partners, distributors, and consultants, or any other party, in any and all matters relating to the conduct described in this Agreement and the attached Statement of Facts. The Company and Breakthru Beverage Group agree that their cooperation shall include, but not be limited to, the following:

a. The Company and Breakthru Beverage Group shall truthfully disclose all factual information not protected by a valid claim of attorney-client privilege or attorney work product doctrine with respect to their activities, and those of Breakthru Beverage Group and its subsidiaries and affiliates, and those of their present and former directors, officers, employees, agents, and consultants, including any evidence or allegations and internal or external investigations, about which the Company or Breakthru Beverage Group have any knowledge or about which USAO-MDPA may inquire which are related to this Agreement and the attached Statement of Facts. This obligation of

truthful disclosure includes, but is not limited to, the obligation of the Company and Breakthru Beverage Group to provide to USAO-MDPA, upon request, any document, record or other tangible evidence about which USAO-MDPA may inquire of the Company or Breakthru Beverage Group which are related to this Agreement and the attached Statement of Facts.

b. Upon request of USAO-MDPA, the Company and Breakthru Beverage Group shall designate knowledgeable employees, agents, or attorneys to provide to USAO-MDPA the information and materials described above on behalf of the Company or Breakthru Beverage Group. It is further understood that the Company and Breakthru Beverage Group must at all times provide complete, truthful, and accurate information.

c. The Company and Breakthru Beverage Group shall use their best efforts to make available for interviews or testimony, as requested by USAO-MDPA, present or former officers, directors, employees, agents, and consultants of the Company or Breakthru Beverage Group. This obligation includes, but is not limited to, sworn testimony before a federal grand jury or in federal trials, as well as interviews with domestic or foreign law enforcement and regulatory authorities. Cooperation shall include identification of witnesses who, to the knowledge of the Company or Breakthru Beverage Group, may have material information regarding the matters under investigation.

d. With respect to any information, testimony, documents, records or other tangible evidence provided to USAO-MDPA pursuant to this Agreement, the Company and Breakthru Beverage Group consent to any and all disclosures, subject to applicable law and regulations, to other governmental authorities of such materials as USAO-MDPA, in its sole discretion, shall deem appropriate, if such materials have been requested by those authorities.

e. During the Term, should the Company or Breakthru Beverage Group learn of any evidence or allegation of a violation of federal public corruption laws by the Company or Breakthru Beverage

Group, they shall promptly report such evidence or allegation to USAO-MDPA. Thirty days prior to the end of the Term, an officer of the Company and Breakthru Beverage Group, will certify to USAO-MDPA that the Company and Breakthru Beverage Group have met their disclosure obligations pursuant to this Agreement. A similar certification will be made on the last day of the Term. Each certification will be deemed a material statement and representation by the Company and Breakthru Beverage Group to the executive branch of the United States for purposes of 18 U.S.C. § 1001.

As a result of the Company's conduct and to resolve the USAO-MDPA investigation into the conduct set forth in the Statement of Facts, the Company agrees to pay a monetary penalty in the amount of \$2,000,000 ("Monetary Penalty") to the United States Treasury. The Company shall pay the Monetary Penalty, plus any associated transfer fees, within five days of the date on which this Agreement is signed by all parties. The Monetary Penalty is based upon a portion of the Company's profits arising, in part, from the offense conduct. The Company and Breakthru Beverage Group shall not seek or accept directly or indirectly reimbursement or indemnification from any source with regard to the Monetary Penalty that the Company pays pursuant to this Agreement or any other agreement entered into with an enforcement authority or regulator concerning the facts set forth in the attached Statement of Facts. Additionally, the Company and Breakthru Beverage Group agree that they shall not claim, assert, or apply for, either directly or indirectly, any tax deduction, tax credit, or any other offset with regard to any U.S. federal, state, or local tax or taxable income the Monetary Penalty paid pursuant to this Agreement.

USAO-MDPA agrees, except as provided herein, that it will not bring any criminal or civil case (except for criminal tax violations, as to which USAO-MDPA does not make any agreement) against the Company or Breakthru Beverage Group or their respective current or former officers, directors, managers, or employees for any of the conduct described in this Agreement or the attached Statement of Facts. To the extent there is conduct disclosed by the Company that is not described in the preceding sentence, such conduct will not be exempt from

prosecution and is not within the scope of or relevant to this Agreement. USAO-MDPA, however, may use any information related to the conduct described in the attached Statement of Facts against the Company or Breakthru Beverage Group: (a) in a prosecution for perjury or obstruction of justice; (b) in a prosecution for making a false statement; (c) in a prosecution or other proceeding relating to any crime of violence; or (d) in a prosecution or other proceeding relating to a violation of any provision of Title 26 of the United States Code. This Agreement does not provide any protection against prosecution for any future conduct by the Company or any of its present or former parents or subsidiaries.

If, during the Term of this Agreement (a) the Company commits any felony under U.S. federal law; (b) the Company or Breakthru Beverage Group provides in connection with this Agreement deliberately false, incomplete, or misleading information, including in connection with their disclosure of information about individual culpability; (c) the Company or Breakthru Beverage Group fails to cooperate as set forth in this Agreement; or (d) the Company or Breakthru Beverage Group otherwise fails to completely perform or fulfill each of their obligations under the Agreement, regardless of whether USAO-MDPA becomes aware of such a breach after the Term is complete, the Company shall thereafter be subject to prosecution for any federal criminal violation of which USAO-MDPA has knowledge, including, but not limited to, the conduct described in the attached Statement of Facts, which may be pursued by USAO-MDPA in any appropriate venue. Determination of whether the Company or Breakthru Beverage Group has breached the Agreement and whether to pursue prosecution of the Company shall be in USAO-MDPA's sole discretion. Any such prosecution may be premised on information provided by the Company, Breakthru Beverage Group, their subsidiaries or affiliates, or their personnel. Any such prosecution relating to the conduct described in the attached Statement of Facts or relating to conduct known to USAO-MDPA prior to the date on which this Agreement was signed that is not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against the Company, notwithstanding the expiration of the statute of limitations, between the signing of this Agreement and

the expiration of the Term plus one year. Thus, by signing this Agreement, the Company agrees that the statute of limitations with respect to any such prosecution that is not time-barred on the date of the signing of this Agreement shall be tolled for the Term plus one year. In addition, the Company agrees that the statute of limitations as to any violation of U.S. federal law that occurs during the Term will be tolled from the date upon which the violation occurs until the earlier of the date upon which USAO-MDPA is made aware of the violation or the duration of the Term plus five years, and that this period shall be excluded from any calculation of time for purposes of the application of the statute of limitations.

In the event USAO-MDPA determines that the Company or Breakthru Beverage Group has breached this Agreement, USAO-MDPA agrees to provide the Company and Breakthru Beverage Group with written notice of such breach prior to instituting any prosecution resulting from such breach. The Company and Breakthru Beverage Group shall have 30 days upon receipt of notice of a breach to respond to USAO-MDPA in writing to explain the nature and circumstances of such breach, as well as the actions the Company and Breakthru Beverage Group have taken to address and remediate the situation, which explanation USAO-MDPA shall consider in determining whether to pursue prosecution of the Company.

In the event that USAO-MDPA determines that the Company or Breakthru Beverage Group has breached this Agreement: (a) all statements made by or on behalf of the Company to USAO-MDPA or to the Court, including the attached Statement of Facts, and any testimony given by the Company before a grand jury, a court, or any tribunal, or at any legislative hearings, whether prior or subsequent to this Agreement, and any leads derived from such statements or testimony, shall be admissible in evidence in any and all criminal proceedings brought by USAO-MDPA against the Company; and (b) the Company shall not assert any claim under the United States Constitution, Rule 11(f) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal rule that any such statements or testimony made by or on behalf of the Company

prior or subsequent to this Agreement, or any leads derived therefrom, should be suppressed or are otherwise inadmissible. The decision whether conduct or statements of any current director, officer or employee, or any person acting on behalf of, or at the direction of, the Company or Breakthru Beverage Group, will be imputed to the Company or Breakthru Beverage Group for the purpose of determining whether the Company or Breakthru Beverage Group has violated any provision of this Agreement shall be in the sole discretion of USAO-MDPA.

Except as may otherwise be agreed by the parties in connection with a particular transaction, the Company agrees that in the event that, during the Term, it undertakes any change in corporate form, including if it sells, merges, or transfers business operations that are material to the Company's consolidated operations, or to the operations of any subsidiaries or affiliates involved in the conduct described in the attached Statement of Facts, as they exist as of the date of this Agreement, whether such change is structured as a sale, asset sale, merger, transfer, or other change in corporate form, it shall include in any contract for sale, merger, transfer, or other change in corporate form a provision binding the purchaser, or any successor in interest thereto, to the obligations described in this Agreement. The purchaser or successor in interest must also agree in writing that USAO-MDPA's ability to determine there has been a breach under this Agreement is applicable in full force to that entity. The Company agrees that the failure to include this Agreement's breach provisions in the transaction will make any such transaction null and void. The Company shall provide notice to USAO-MDPA at least 30 days prior to undertaking any such sale, merger, transfer, or other change in corporate form. If USAO-MDPA notifies the Company prior to such transaction (or series of transactions) that it has determined that the transaction(s) has the effect of circumventing or frustrating the enforcement purposes of this Agreement, as determined in the sole discretion of USAO-MDPA, the Company agrees that such transaction(s) will not be consummated. In addition, if at any time during the Term USAO-MDPA determines in its sole discretion that the Company has engaged in a transaction(s) that has the effect of circumventing or frustrating the enforcement purposes

of this Agreement, it may deem it a breach of this Agreement pursuant to the breach provisions of this Agreement. Nothing herein shall restrict the Company from indemnifying (or otherwise holding harmless) the purchaser or successor in interest for penalties or other costs arising from any conduct that may have occurred prior to the date of the transaction, so long as such indemnification does not have the effect of circumventing or frustrating the enforcement purposes of this Agreement, as determined by USAO-MDPA.

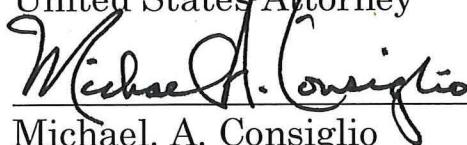
This Agreement is binding on the Company, Breakthru Beverage Group, and USAO-MDPA, but specifically does not bind any other component of the Department of Justice, other federal agencies, or any state, local or foreign law enforcement or regulatory agencies, or any other authorities, although USAO-MDPA will bring the cooperation of the Company and Breakthru Beverage Group and its compliance with its other obligations under this Agreement to the attention of such agencies and authorities if requested to do so by the Company or Breakthru Beverage Group.

It is further understood that the Company, Breakthru Beverage Group, and USAO-MDPA may disclose this Agreement to the public.

This Agreement sets forth all of the terms of the agreement between the Company, Breakthru Beverage Group, and USAO-MDPA. No amendments, modifications or additions to this Agreement shall be valid unless they are in writing and signed by USAO-MDPA, the attorneys for the Company and Breakthru Beverage Group, and a duly authorized representative of each.

Very truly yours,

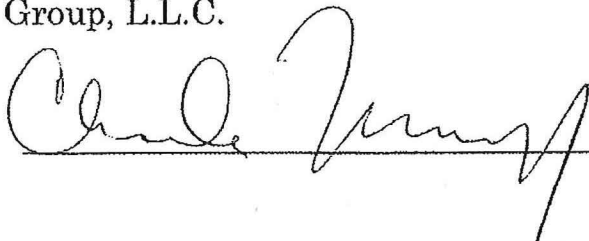
BRUCE D. BRANDLER
United States Attorney

A handwritten signature in black ink, reading "Michael A. Consiglio", is written over a horizontal line.

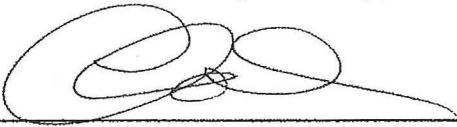
Michael. A. Consiglio
Assistant United States Attorney

AGREED AND CONSENTED TO:

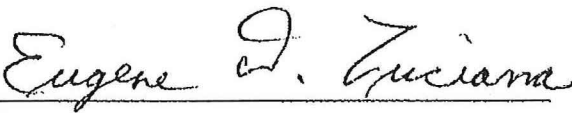
Breakthru Beverage Group, L.L.C.

Date: 7/20/17 By: 

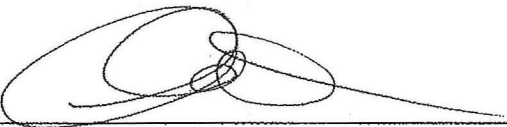
Breakthru Beverage Group, L.L.C.

Date: 7/20/17 By: 
Andrew M. Lankler, Esq.
Baker Botts, L.L.P.

Breakthru Beverage Pennsylvania, L.L.C.

Date: 7/20/17 By: 

Breakthru Beverage Pennsylvania

Date: 7/20/17 By: 
Andrew M. Lankler, Esq.
Baker Botts, L.L.P.

STATEMENT OF FACTS

1. Breakthru Beverage Group, LLC, limited liability company organized in 2016 under the laws of Delaware. Breakthru Beverage Group, LLC, is a successor in interest to Charmer Sunbelt Group, a privately owned business involved in marketing and distributing alcohol throughout North America.

Breakthru Beverage Pennsylvania is a limited liability company organized under the laws of Pennsylvania and is in business of brokering and distributing and marketing wine and spirits within the Commonwealth of Pennsylvania. Breakthru Beverage Pennsylvania is a successor in interest to Capital Wine & Spirits, LLC. Capital Wine & Spirits, LLC, was a successor in interest to Superior Wine & Spirits. Hereinafter they are cumulatively referred to as "Breakthru Beverage Pennsylvania" or "the Company."

Breakthru Beverage Pennsylvania's primary business activity in Pennsylvania is marketing, brokering and distributing wine and spirits to the Pennsylvania Liquor Control Board ("PA-LCB"). Breakthru Beverage Pennsylvania represented numerous manufacturers of wine and spirits before the PA-LCB. (Cumulatively referred to as "Breakthru Suppliers.") Breakthru Beverage Pennsylvania was one of the largest brokers of wine and spirits to the PA-LCB. Breakthru Beverage Pennsylvania annually brokered over \$500M in wine and spirits sales to the PA-LCB per year during the relevant time period.

2. The PA-LCB is a government agency created by Pennsylvania statute that is responsible for regulating the sale of alcohol, educating consumers on the responsible use of alcohol and working to prevent underage use of alcoholic beverages. The PA-LCB controls the purchase, transportation, warehousing, and distribution of alcohol in the Commonwealth of Pennsylvania through over 500 stores. With approximately \$2 billion in generated sales in fiscal year 2012-2013, the PA-LCB is one of the largest purchasers of wine and spirits in the world.

3. The United States Attorney's Office for the Middle District of Pennsylvania (USAO-MDPA") and the Federal Bureau of Investigation ("FBI") have determined that from 2000 through 2012, the Company through its supervisors and employees gave over ten thousands of dollars' worth of things of value to the Director of Marketing for the PA-LCB and others at the PA-LCB.

During this time period, Company representatives provided free meals and hospitality to the Director of Marketing and others. The meals and hospitality were often given in conjunction with representatives of Breakthru's Suppliers.

Beyond meals, this practice of entertaining decision makers at the PA-LCB included trips, tickets to sporting events, golf outings, hospitality, entertainment, car service, and gift cards.

Between 2007 and 2011, a Company sales representative gave gift cards varying in value up to \$500 to the Director of Marketing and other public officials at the PA-LCB.

Between 2007 and 2012, a Company sales representative arranged for meals, entertainment, car service and on occasion hotel rooms, to public officials at the PA-LCB.

In February 2010, a Company sales representative attended an all-expenses paid golf trip to Bonita Springs, Florida, given to the Director of Marketing and another PA-LCB employee. During the three-day trip, a Company supplier paid for all of PA-LCB officials' food, lodging, expenses, hospitality, and the private jet used to fly the participants.

On December 2011, a Company sales representative attended an all-expenses paid golf trip to Bonita Springs, Florida, given to the Director of Marketing and another PA-LCB employee. During the three-day trip, a Company supplier paid for all of PA-LCB officials' food, lodging, expenses, hospitality and commercial airfare.

The stream of benefits continued until approximately the summer of 2012, when media reports indicated that the Pennsylvania Ethics Commission was conducting an investigation into the payment of things of value to PA-LCB officials.

4. Meanwhile, as these things of value were being provided to PA-LCB officials, the Company worked through standard protocols with these officials to have their products sold in PA-LCB stores (a process otherwise known as “listing”), to have the PA-LCB make one-time purchases of their wine and spirits, and to keep their products from being removed from sale in PA-LCB stores (a process known as delisting”), which created a heightened risk for public corruption.

5. Unknown to officers, managers and employees of the Company, from 2000 through 2012, none of the PA-LCB officials reported these things of value in their annual statements of financial interest reports. Nor did the PA-LCB officials recuse themselves from making official decisions on the matters pending before them. Instead, the PA-LCB officials made listing, delisting, marketing, and one-time purchasing decisions beneficial to the Company and the Company’s suppliers.

6. A corporation is deemed to act through its officers, employees and agents, and their conduct will be imputed to the business organization so long as the officers, employees and agents were acting within the scope of their authority and their conduct is beneficial to the business organization. A limited liability company can be criminally liable for the conduct of any employee regardless of the employee's status or position within the business; even the lowest ranking employee may bind the business by his acts if they are committed within the scope of employment. Although a limited liability company is a legal entity and cannot be incarcerated, such a business organization if convicted of bribery could incur severe financial penalties and collateral consequences.

7. The USAO-MDPA and the FBI have determined that the aforementioned conduct of certain Company employees likely resulted in:

- (i) Inadequate supervision and due diligence of sales and marketing expenditures in Pennsylvania;
- (ii) Failure to effectively monitor and investigate appropriations that were suspect;
- (iii) Failure to have an effective, on-going training

program for sales personnel; and

(iv) Failure to take appropriate action as to senior supervisors and sales personnel when they learned of the payment of things of value to public officials.

8. Since disclosure of these activities in 2012, the Company and Breakthru Beverage Group cooperated and continues to cooperate with law enforcement. Through organizational and program changes, the Company and Breakthru Beverage Group have shown a commitment to compliance improvements and a dedication to effectively complying with their responsibilities. Since 2012 when public disclosures of the Pennsylvania Ethics Commission's investigation into some of these activities was unearthed, the Company and Breakthru Beverage Group have engaged in structural reorganization and have provided regular education and training programs designed to address these deficiencies.