

Owen, Wickersham & Erickson, P.C.

*Intellectual Property Law Since 1933*

455 Market Street, 19th Floor ~ San Francisco, California 94105  
415/882-3200

J. SCOTT GERIEN

Fax 415/882-3232  
sgerien@owe.com

December 9, 2003

Commissioner for Trademarks  
BOX: RESPONSES - FEE  
2900 Crystal Drive  
Arlington, VA 22202-3514

Re: Response to Office Action Dated September 3, 2003 and  
Allegation of Use Under 15 U.S.C. § 1051(c) or (d)  
Applicant: Napa Valley Vintners Association  
Mark: **100% NV NAPA VALLEY & Design**  
Serial No.: 78/222659

Dear Sir:

On behalf of our client, Napa Valley Vintners Association, a California nonprofit corporation, please file the enclosed against the application for **100% NV NAPA VALLEY & Design**, Serial No. 78/222659, filed on March 6, 2003.

Enclosed are the following:

- 1) Response to Office Action Dated September 3, 2003;
- 2) Allegation of Use Under 15 U.S.C. § 1051(c) or (d);
- 3) One specimen;
- 4) Check for \$100 filing fee; and
- 5) Return postcard.

Please reference our File No. **NAPA 00008** on all correspondence relating to this application.

Very cordially,

OWEN, WICKERSHAM & ERICKSON, P.C.

By



J. Scott Gerien



JSG/kjw  
Enclosures  
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12-11-2003

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #7

Certificate of Mailing

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to Commissioner for Trademarks, BOX RESPONSES - FEE, 2900 Crystal Drive, Arlington, VA 22202-3514 on September 9, 2003. Signed Kathleen J. Warman  
Kathleen J. Warman

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Certification Mark application of

Applicant: Napa Valley Vintners Association

Serial No.: 78/222,659

Mark: 100% NV NAPA VALLEY and Design

Filed: March 6, 2003

Examining Attorney: Raul Cordova, Law Office 114

TO THE COMMISSIONER FOR TRADEMARKS:

**RESPONSE TO OFFICE ACTION MAILED SEPTEMBER 3, 2003**

Applicant, Napa Valley Vintners Association, hereby submits the following response to the Examining Attorney's Office Action dated September 3, 2003.

**AMENDMENTS**

Please amend the application as follows:

1. Replace the certification clause in the original application with the following:

The certification mark, as used by persons duly authorized by Certifier, certifies that the goods meet the Certifier's production specifications and emanate from a specific geographic region, namely, the Napa Valley American Viticultural Area located in California.

2. Replace the identification of goods with the following:

Grape wine, sparkling grape wine and carbonated grape wine from the Napa Valley American Viticultural Area

3. Insert the following additional statement as to claim of ownership:

Applicant is the owner of Registration No. 1,405,339

4. Insert the following additional statement as to the description of the mark:

The mark consists, in part, of the stylized letters NV

5. Please amend the application to allege use. Applicant submits herewith its Allegation of Use, along with one specimen, namely, a wine label, evidencing use of the mark.

### REMARKS.

#### I. Request For Disclaimer of A Geographic Term Is Improper Where The Geographic Term Is In A Certification Mark And Indicates Geographical Origin

Pursuant to Section 1306.02 of the TMEP "[w]hen a geographical term is used in a composite certification mark to certify regional origin, the examining attorney *should not require a disclaimer* or refuse registration of the composite mark on the ground that the mark is primarily geographically descriptive" As evidenced by the certification clause, the "Napa Valley" portion of the mark clearly indicates geographic origin of the goods and is used in the 100% NV NAPA VALLEY and Design composite certification mark. Thus, the request for disclaimer of "NAPA VALLEY" based on geographic descriptiveness is improper.

The request for disclaimer of "100%" is also unwarranted. The term "100%" as used in association with "NAPA VALLEY" could have a wide variety of meanings. For instance, it could mean that 100% percent of the product emanates from Napa Valley. However, 100% is also understood to mean "perfect," and therefore it could mean that the product is perfect, or "100%," and also emanates from Napa Valley. Thus, since the meaning of "100%" is not clear, the term is suggestive and need not be disclaimed.

#### II. Prior Registration

As indicated by the amendment above, Applicant has claimed ownership of the cited prior registration.

#### III. Recitation

As indicated by the amendment above, Applicant has limited the scope of its identification of the goods.

#### IV. Description of the Mark

As indicated by the amendment above, Applicant has inserted the description of the mark

requested by the Examiner.

V. Signed Declaration for 1(b) Application


Although not noted by the examining attorney, Applicant did not submit a signed declaration with the original application. Submitted herewith, and attached hereto, is a signed declaration of the Applicant attesting to the facts set forth in the original application.

Applicant acknowledges with gratitude the Examining Attorney's search of the office records and the finding of no similar registered or pending marks which would bar registration under Trademark Act Section 2(d), 15 U.S.C. Section 1052(d). If the Examining Attorney has any questions, a call to the undersigned would be appreciated.

Date: 12/9/03

Respectfully submitted,

OWEN, WICKERSHAM & ERICKSON, P.C.

By   
J. Scott Gerien  
Attorneys for Applicant

455 Market Street, 19th Floor  
San Francisco, CA 94105  
(415) 882-3200  
sgerien@owe.com

**DECLARATION**


All statements made in the original application were true. Applicant had a bona fide intention to exercise legitimate control over use of the certification mark in commerce by its authorized persons on or in connection with the identified goods or services listed in the application as of the filing date of the application. That applicant will not be engaged in the production or marketing of the goods or services to which the mark is to be applied was also a true statement as of the filing date of the application.

The undersigned being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the original applicant; he/she believes the applicant to have been the owner of the trademark/service mark sought to be registered, or, if the application was filed under 15 U.S.C. § 1051(b), he/she believes applicant to have been entitled to use such mark in commerce as of the filing date of the application; to the best of his/her knowledge and belief, as of the filing date of the application no other person, firm, corporation, or association had the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

OWEN, WICKERSHAM & ERICKSON  
A PROFESSIONAL CORPORATION  
TRADEMARK, COPYRIGHT & PATENT LAW  
455 MARKET STREET, 19TH FLOOR  
SAN FRANCISCO, CALIFORNIA 94105  
(415) 882-3200

Napa Valley Vintners Association

Dated: 12.6.03

By:   
Linda Reiff  
Executive Director

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OWEN, WICKERSHAM & ERICKSON  
A PROFESSIONAL CORPORATION  
INTELLECTUAL PROPERTY LAW  
455 MARKET STREET, 19<sup>TH</sup> FLOOR  
SAN FRANCISCO, CALIFORNIA 94105  
(415) 882-3200

Certificate of Mailing

I hereby certify that this correspondence is being deposited with the United States Postal Service as first-class mail in an envelope addressed to Commissioner for Trademarks, BOX RESPONSES, FEE, 2900 Crystal Drive, Arlington, VA 22202-3514 on 12/9/03 Signed [Signature]

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
**CERTIFICATION MARK ALLEGATION OF USE**  
**UNDER 15 U.S.C. § 1051(c) or (d)**

Mark: **100% NV NAPA VALLEY and Design**

Serial No.: 78/222,659

Class: A

TO THE COMMISSIONER FOR TRADEMARKS:

Napa Valley Vintners Association, a California nonprofit corporation

Address: P.O. Box 141  
St. Helena, California 94574

Notice of Allowance: NO

The owner is exercising legitimate control over the use of the certification mark in commerce by its authorized persons on or in connection with all goods and/or services listed in the application or Notice of Allowance. The owner is not engaged in the production or marketing of the goods and/or services to which the certification mark is applied.

The owner first exercised legitimate control over the use of the certification mark by authorized persons on or in connection with the goods/services at least as early as May 14, 2003; The owner first exercised legitimate control over the use of the certification mark in commerce by authorized persons on or in connection with the goods/services at least as early as May 14, 2003.

1 Applicant requests registration of the above-identified certification mark in the  
2 United States Patent and Trademark Office on the Principal Register established by the Act  
3 of July 5, 1946 (15 U.S.C. §1051 et seq. as amended). Applicant is the owner of the  
4 certification mark sought to be registered, and is exercising legitimate control over use of  
5 the certification mark in commerce by authorized persons on or in connection with the  
6 goods/services identified in the application, as evidenced by the attached specimen  
7 showing the certification mark as currently used in commerce.

8  
9 Pursuant to 37 C.F.R. §2.45, Applicant is submitting herewith a copy of the  
10 standards that determine whether others may use the certification mark on the goods and/or  
11 in connection with their services.

12  
13 The undersigned being hereby warned that willful false statements and the like are  
14 punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and that such willful  
15 false statements and the like may jeopardize the validity of the document, declares that  
16 he/she is properly authorized to execute this document on behalf of the Owner, and all  
17 statements made of his/her own knowledge are true and that all statements made on  
18 information and belief are believed to be true.

19 Napa Valley Vintners Association

20  
21  
22 Dated: 12.4.03

23 By 

Linda Reiff  
Executive Director

24 Please reference our File No. NAPA 00008 on all correspondence related to this  
25 document.  
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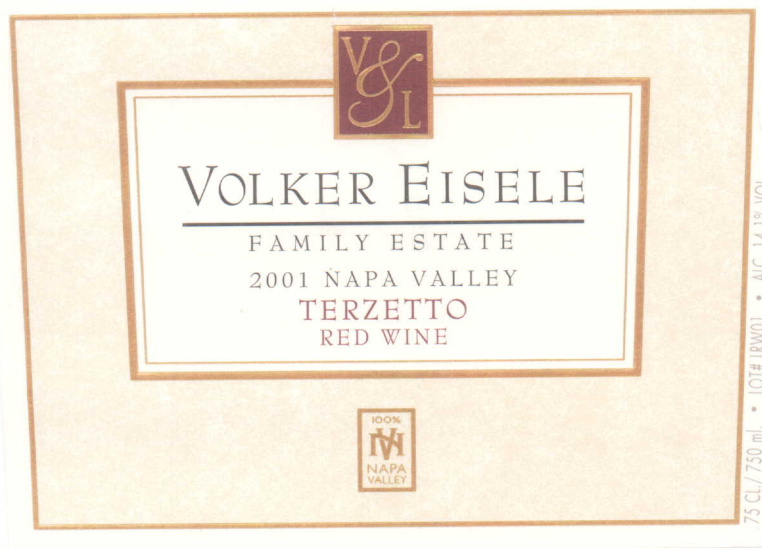
1 Please direct all correspondence regarding this document to the following:

2 J. Scott Gerien, Esq.  
3 Owen, Wickersham & Erickson, P.C.  
4 455 Market Street, Suite 1910  
5 San Francisco, CA 94105  
6 Tel: (415) 882-3200  
7 Fax: (415) 882-3232  
8 E-mail: sgerien@owe.com

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A PROFESSIONAL CORPORATION  
INTELLECTUAL PROPERTY LAW  
455 MARKET STREET, 19<sup>TH</sup> FLOOR  
SAN FRANCISCO, CALIFORNIA 94105  
(415) 882-3200





Specimen for Application

Applicant: Napa Valley Vintners Association  
Mark: **100% NV NAPA VALLEY and Design**  
Class: A

## **100% Napa Valley Certification Mark**



### **Terms and Conditions**

**100% NAPA VALLEY CERTIFICATION MARK**  
**TERMS AND CONDITIONS**  
**APRIL 2003**

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## **Article I. INTRODUCTION**

### **Section 1.01 Historical Background**

Naming wines by their place of origin is an ancient practice, dating back at least 3,000 years. In the United States the use of wine appellations to identify the origin of a wine was largely unregulated until the 1970s. In 1978, the federal Bureau of Alcohol Tobacco and Firearms (recently reorganized as the Alcohol and Tobacco Tax and Trade Bureau or TTB, which acronym is used throughout these Terms and Conditions to refer to both of these federal agencies<sup>1</sup>) established a formal appellation of origin system for wines. Appellations include the country, states, counties and certain American Viticultural Areas (AVAs) established by TTB as geographically and viticulturally distinctive grape growing areas.<sup>2</sup> According to the regulations adopted by TTB, petitions to establish AVAs must include evidence that the name of the proposed AVA is locally or nationally known, that the proposed boundaries are justified in historical or current terms, and that the physical features of the proposed AVA (soil, climate, physical features, etc.) distinguish it viticulturally from surrounding areas.<sup>3</sup>

Napa Valley was established by TTB as an AVA in 1981.<sup>4</sup> Its formal boundaries and a map of the AVA are set forth in the attached Appendix A. Federal labeling regulations presently provide that an AVA, such as Napa Valley, may be used on a wine label if at least 85% of the wine is derived from grapes grown within the boundaries of the AVA.<sup>5</sup>

The 100% Napa Valley Certification Program, as described in these Terms and Conditions, certifies that 100% of the wine is derived from grapes grown in the Napa Valley AVA and that 100% of the winemaking, from the crushing of the grapes to the bottling of the wine, occurs in the Napa Valley AVA. The other certification standards and provisions concerning the use of the 100% Napa Valley Certification Mark ("Certification Mark") are set forth in detail below.

The Certification Program is open to any Brand Name Owner whose wine meets the Certification Standards, whether or not that person or entity is a member of the Napa Valley Vintners Association ("NVVA"). Use of the Certification Mark is strictly voluntary and in no

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<sup>1</sup> This and other defined terms in these Terms and Conditions are set forth at Section 2.06 below.

<sup>2</sup> See Title 27, Code of Federal Regulations (CFR) Part 4, Section 4.25a(e)(1) and Part 9, Section 9.3.

<sup>3</sup> 27 CFR Section 9.3(b).

<sup>4</sup> 27 CFR Section 9.23.

<sup>5</sup> 27 CFR Section 4.25a(e)(3)(ii).

way affects the right of any winery or brand owner to use the Napa Valley AVA on its label or in its advertising in accordance with applicable laws and regulations. These Terms and Conditions contain all of the governing rules relating to the Certification Mark.

### **Section 1.02 Decision Making Structure**

The Certification Program will be administered and enforced by the NVVA which owns the Certification Mark. The NVVA Board of Directors shall appoint an Advisory Panel comprised of five (5) persons. The NVVA Board, in its discretion, may appoint a General Program Administrator, Compliance Administrator, and/or Expert Compliance Examiner with duties and responsibilities as directed by the NVVA Board.

## **Article II. DEFINITIONS**

When used in these Terms and Conditions, the following terms shall have the meaning described in this Section:

APPLICANT: shall mean a Brand Name Owner who has submitted an Application, Affidavit and the fees required by Section 3.02(b).

BRAND NAME: shall mean that brand name, or the name deemed to be a brand name under 27 CFR Section 4.33, used on any label submitted to the NVVA for use with the Certification Mark and which appears at Section 3 of the COLA issued by the TTB.

BRAND NAME OWNER: shall mean the legal owner or authorized user of the Brand Name.

CERTIFICATION MARK: shall mean the 100% Napa Valley Certification Mark registered with the United States Patent and Trademark Office and more fully described in Section 3.03 of these Terms and Conditions.

CERTIFICATION PROGRAM: shall mean the 100% Napa Valley Certification Program by which Applicants are approved to use the Certification Mark and the Certification Standards are enforced.

CERTIFICATION STANDARDS: shall mean those standards as set forth in Section 3.01 of these Terms and Conditions.

COLA: shall mean an Application for and Certification/Exemption of Label/Bottle Approval issued by the TTB.

CONDITIONALLY APPROVED WINE: shall mean wine that is identified in an Application and that has been conditionally approved by the NVVA for bottling with the Certification Mark



but which may not be sold or title thereto otherwise transferred without a Notice of Compliance.

NAPA VALLEY OR NAPA VALLEY VITICULTURAL AREA: shall mean the Napa Valley American Viticultural Area as defined at 27 CFR Section 9.23, as amended from time to time.

NVVA: shall mean the Napa Valley Vintners Association.

PARTICIPANT: shall mean an Applicant who has been approved for conditional use of the Certification Mark under the terms of Section 3.02(e).

RESPONSIBLE PERSON: shall mean that party designated to be the contact person with the NVVA as further described in Section 3.11.

TTB: shall mean the Alcohol and Tobacco Tax and Trade Bureau.

### **Article III. CERTIFICATION**

#### **Section 3.01 Certification Standards**

The Certification Mark certifies that 100% of the wine is derived from grapes grown in the Napa Valley AVA and that 100% of the winemaking, from the crushing of the grapes through the bottling of that wine, occurred in the Napa Valley AVA. Use of the Certification Mark is limited to wine identified as Class 1 (Grape Wine), Class 2 (Sparkling Grape Wine), or Class 3 (Carbonated Grape Wine) as defined at Title 27, Chapter 4, Section 4.21 of the Code of Federal Regulations. Any spirit which is added to these wines shall be derived from grapes grown in the Napa Valley AVA and/or from wine which meets the above standards, and the distilled spirits operations as defined at Title 27, Part 19, Section 19.11 of the Code of Federal Regulations shall occur in the Napa Valley AVA. Finally, the labels of certified wine must include Napa Valley as the appellation of origin, either alone or in conjunction with another qualifying appellation (e.g., Stags Leap District – Napa Valley), in accordance with applicable laws and regulations. Collectively, these are referred to as the Certification Standards.

### **Section 3.02 Certification Procedure**

#### **(a) Contact Information**

All correspondence and communication should be directed as follows:

100% Napa Valley Certification  
c/o NVVA  
Post Office Box 141  
St. Helena, CA 94574  
Fax: 707/963-3488  
Telephone: 707/963-3388

#### **(b) Application**

A Brand Name Owner must submit an Application for each vintage of every label that the Brand Name Owner desires to be certified as 100% Napa Valley. A form of the Application is attached hereto as Appendix B (the "Application"). An Application may be submitted on-line ([www.100percentnapa.com](http://www.100percentnapa.com)), via US Mail, or by facsimile. However, to be complete, the Application must be accompanied by an Application Fee (see Section 4.01), fifty percent (50%) of the Case Fee (see Section 4.02), and an originally signed Affidavit (Appendix C) in which the Applicant attests that the wine meets the Certification Standards and agrees, among other things, to abide by the certification rules and procedures and to use the Certification Mark as authorized by the NVVA. **The Compliance Administrator will select each year for each Brand Name Owner at least one Application, or one label for which a Notice of Compliance has been issued, for an inspection to ensure that the Certification Standards have been met. This inspection may occur as part of the Application (see sub-sections (d) and (f) below) or at any time thereafter.**

#### **(c) Review of Application**

The NVVA Compliance Administrator will review all Applications in the order received, and no other priority will be given to any Application. An Application will be deemed complete when the Applicant has submitted the Application, Affidavit and applicable fee to the NVVA. Within five (5) business days of receiving a complete Application, the NVVA will notify the Applicant that (i) the wine identified in the Application is Conditionally Approved Wine, in which case the Applicant may proceed to prepare a label proof and/or apply for a COLA, if necessary, in accordance with applicable laws and regulations; or (ii) the Application is rejected; or (iii) the Applicant has been selected for a Certification Inspection (as defined below).



**(d) Certification Inspection**

After receiving notice that an Application has been selected for a Certification Inspection, which may occur following submission of an Application as set forth above or at any other time in the discretion of the NVVA, an Applicant must submit, within fourteen (14) business days of receipt of the notice, copies of records that fully substantiate that the wine identified in the Application meets the Certification Standards. A list of records that may aid in substantiating that the Certification Standards have been met is attached as Appendix D ("Substantiating Records"). At least one label per Brand Holder will be subject to a Certification Inspection annually.

The Compliance Administrator, or his or her appointee, will thoroughly review the Application, Affidavit and Substantiating Records submitted with those Applications selected for a Certification Inspection. The Compliance Administrator may take any or all of the following actions: (i) request further Substantiating Records; (ii) request written clarification of any fact or matter contained in the Application, Affidavit or Substantiating Records; (iii) request third party verification of any fact attested to by the Applicant in the Affidavit which is not supported by the Substantiating Records submitted by the Applicant; and/or (iv) request a personal meeting between the Compliance Administrator, or his or her appointee, and the Responsible Person (see Section 3.11 below), or other authorized representatives of the Applicant, which may include visits to the vineyard(s) where the grapes were grown and/or to the production, bottling or warehousing facilities. A Certification Inspection will be conducted in a reasonably expeditious manner. However, the NVVA will not be responsible for an Applicant's untimely response or refusal to respond during a Certification Inspection, and any such delay or refusal will constitute grounds for rejection of the Application. At the conclusion of the Certification Inspection, the NVVA will review the Application and any other pertinent documents as described above (see Review of Application) or take any other action which it deems appropriate (see Enforcement below).

**(e) Conditionally Approved Use of Certification Mark**

After receiving notice that the wine identified in the Application is Conditionally Approved Wine, all Participants must submit to the NVVA a label proof that meets all of the label requirements (see "Use of the Certification Mark" below) along with the remaining fifty percent (50%) of the Case Fee. The label proof must be an actual-size, full-color laser printed



proof of the proposed label showing the placement, size and color of the Certification Mark. Within five (5) business days after the NVVA receives such label proof and Case Fee, it will (i) approve the label in writing so that the Participant can proceed to apply for a COLA, if necessary; or (ii) request that the Participant make necessary changes to the label and resubmit the label proof for reexamination. All Applicants and Participants agree that they will not print or apply any label until the label proof has been approved by the NVVA. Participant further agrees to provide the NVVA with an original label within thirty (30) days following printing.

**(f) Complete or Partial Bottling Notice**

After obtaining a COLA, if necessary, and after bottling any or all of the Conditionally Approved Wine, the Participant must file with NVVA a Complete or Partial Bottling Notice (Appendix E). The notice shall be a Complete Bottling Notice if all of the Conditionally Approved Wine has been bottled or a Partial Bottling Notice if less than all of the wine has been bottled (each of which is referred to as a "Bottling Notice"). The Bottling Notice will set forth the actual number of cases of Conditionally Approved Wine that have been bottled and requires the Participant to attest that the Certification Standards were followed through bottling. When the wine referenced in the Bottling Notice was subject to a Certification Inspection, **or at any other time upon the request of NVVA**, the Participant shall submit Substantiating Records that support the facts set forth in the Bottling Notice. The NVVA will review the Bottling Notice and any Substantiating Records submitted therewith, and, within five (5) business days following receipt of the Bottling Notice and/or the Substantiating Records, will issue a Notice of Compliance with respect to the wine actually bottled; or notify the Participant of any deficiencies in the Bottling Notice or Substantiating Records, in which case the Participant will have seven (7) business days to remedy the deficiencies; or take any other action which it deems appropriate, including but not limited to revoking the status of the Conditionally Approved Wine and refusing to issue or invalidating a Notice of Compliance. No wine bearing the Certification Mark may be sold, nor may title thereto be transferred from the Brand Name Owner, without a Notice of Compliance.

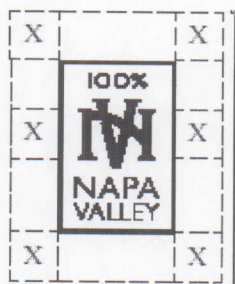
**Section 3.03 Use of the Certification Mark**

The Certification Mark may only be used as part of a label approved by the NVVA and may not be reproduced or distributed except as specifically authorized by the NVVA. The Certification Mark may only be used on a certified label and may not be reproduced in any other

form including, but not limited to, advertising, promotional material, or point of sale material unless the use of the Certification Mark is limited to a reproduction of the label. The NVVA created a marketing piece which describes the purpose of the Certification Mark which Participants may use, in its entirety, in their marketing materials. The marketing piece is available from the NVVA.

Precise and consistent presentation of the Certification Mark is critical. Its function is to assure both the trade and consumers that 100% of the wine is derived from grapes grown in the Napa Valley AVA and that 100% of the winemaking, from the crushing of the grapes through bottling, occurred in the Napa Valley AVA.

It is important that the Certification Mark not appear cluttered or crowded by other elements. A minimum required clear space has been established to ensure the prominence and clarity of the mark. As a unit of measure, "X" equals the height of "N" of the NV mark. The minimum required clear space is a distance of "X" surrounding each side of the Certification Mark.



To communicate effectively while maintaining the integrity of the Certification Mark, restrictions in reproduction size of the Certification Mark are necessary. The minimum reproduction size of the Certification Mark is 11mm in height from the top to the bottom edge of the frame. There is no maximum size. Do not reproduce the Certification Mark smaller than 11mm in height.

There are four colors in which the Certification Mark may be printed/produced: black, white, gold and silver. These choices were established to provide maximum flexibility. Use whichever color is most compatible with your label design, whether in positive or negative form. The color must be printed at 100% value. These colors may be reproduced in any printing process consistent with your label production.

The typeface utilized to identify "Napa Valley" in the Certification Mark is Gill Sans Light. While the Certification Mark is not to be altered in any way, using the various forms of



the Gill Sans family for any label graphics in which the Certification Mark appears is one way to build consistency and is therefore recommended.

No one authorized to use the Certification Mark shall:

- \* Reduce the Certification Mark to smaller than 11mm
- \* Use colors other than the four approved
- \* Substitute the typestyle
- \* Extract elements from the Certification Mark for use elsewhere
- \* Add or subtract elements to/from the Certification Mark
- \* Distort the Certification Mark
- \* Shift elements within the Certification Mark

### **Section 3.04 Disclaimer**

The NVVA and its respective agents, affiliates, officers, directors, members and employees make no representations or warranties of any kind, express or implied, with respect to the ability of any Applicant or Participant to obtain a COLA using the Certification Mark or with respect to the quality, character or marketability of the wine approved for use with the Certification Mark. Representations to the contrary are prohibited.

The Certification Mark has not been approved for use on any particular label. All Applicants and Participants in the 100% Napa Valley Certification Program are responsible for complying with all Federal, State, and local laws and regulations which govern the production, labeling, distribution, marketing and sale of wine and the use of the Certification Mark. Participants are reminded that they may be asked by any authorized governmental authority to substantiate any and all label claims. Certification by the NVVA is not a defense to any inquiry, investigation or claim by such governmental authorities. The Certification Mark is not a substitute for applying to the TTB for a COLA, as and where required by federal law, and such COLAs must include the Certification Mark if it is proposed for use on said wine.

### **Section 3.05 Change of Ownership**

When a label that has been certified as 100% Napa Valley is sold or otherwise transferred to any third party, the Brand Name Owner transferring the label, prior to said sale or transfer, must notify the NVVA in writing and obtain an executed Assumption Agreement (to be provided by the NVVA upon request) whereby the transferee expressly assumes the obligations under these Terms and Conditions and the Affidavit. Until such Assumption Agreement is delivered to

the NVVA, the Brand Name Owner of record remains responsible to ensure compliance with the Certification Standards and the Certification Program.

### **Section 3.06 Enforcement**

#### **(a) Investigations**

The NVVA may investigate any Participant's or Applicant's activities pertaining in any way to the Certification Standards set forth herein or to the use of the Certification Mark. The NVVA will conduct investigations in a timely manner and confidentially (as governed by Section 3.09). During any investigation, the NVVA may request that the Applicant or Participant provide documents or participate in meetings as described in Section 3.02(d) (Certification Inspection). If a Participant or Applicant refuses to cooperate in an investigation, the NVVA may deem this sufficient cause to revoke the Participant's use of the Certification Mark on any or all labels or reject the Applicant's Application(s).

#### **(b) Remedies**

It is the responsibility of all parties participating in the Certification Program to understand and comply with all of the applicable standards for certification and the rules and procedures set forth in these Terms and Conditions. Subject to the provisions of Section 3.07(b) below, the NVVA may take any or all actions in law or in equity which it deems appropriate, including but not limited to suspension or revocation of a Participant's right to use the Certification Mark or to participate in the Certification Program, or the recall of any wine which bears the Certification Mark but does not conform to the Certification Standards. The NVVA shall be entitled to recover all costs and attorneys fees which it incurs in connection therewith.

### **Section 3.07 Disputes between the NVVA & Participants or Applicants**

#### **(a) Process**

Any decision made or any action taken by the NVVA may be contested only and exclusively by the Brand Name Owner whose use of the Certification Mark is affected by such decision or action. Disputes will be reviewed by the General Program Administrator to verify that the dispute is adequately documented. Disputes that are deemed to contain the appropriate information will be reviewed by the NVVA.

#### **(b) Mediation / Arbitration**

Except for injunctive relief, any and all disputes between or among the NVVA; its agents, affiliates, officers, directors, members and employees; and/or a Brand Name Owner who is either



### **Section 3.09 Confidentiality Policy**

Except for Public Information, as defined below, all information submitted by an Applicant or a Participant is considered proprietary and will be held in the strictest confidence. The NVVA may make the following "Public Information" available to the public: an Applicant's or Participant's operation name, address, phone, copies of certified labels and the effective date of certification. Additional information may be made public with the consent of the Applicant or Participant. Notwithstanding the foregoing, the NVVA will release information as requested or directed by any local, state or federal government or any court with competent jurisdiction, including but not limited to the California Department of Alcoholic Beverage Control, California Department of Food and Agriculture and TTB.

### **Section 3.10 Notices**

All notices required to be provided under the terms of these Terms and Conditions shall be deemed to have been received by the recipient five (5) days after the postmark date of the notice if delivered by US Mail, one (1) business day after the mailing date if delivered by overnight courier, or upon receipt in the case of hand-delivery.

### **Section 3.11 Responsible Person**

Each Applicant must designate one individual who is responsible for contacting and communicating with the NVVA, informing the General Program Administrator of changes in the ownership of the Brand Name, and providing records to the NVVA (the "Responsible Person"). The Responsible Person must have access to the production facilities and to all information regarding record keeping and technical aspects of the production operation. Preferably, such person will be knowledgeable about the winemaking practices at the production facility or facilities.

### **Section 3.12 Amendments**

The provisions of these Terms and Conditions may be amended from time to time by the NVVA following reasonable notice to the Participants and Applicants.

### **Section 3.13 Severability**

If any item in these Terms and Conditions or the Affidavit is held by a court of competent jurisdiction to be invalid, void or unenforceable, either in whole or in part, such decision shall not affect the remainder of these Terms and Conditions.

## **Article IV. FEES**

### **Section 4.01 Application Fee**

An application fee of \$100 shall accompany the first application submitted by any Brand Name Owner during any single calendar year and \$25 shall be submitted with each Application for an additional label during the same calendar year (the "Application Fee").

### **Section 4.02 Case Fee**

All Participants will pay a Case Fee equal to fifteen cents (\$.15) per case of 12 750 ml bottles (or the equivalent) of wine labeled with the Certification Mark (the "Case Fee"). Fifty percent (50%) of the Case Fee will be paid when the Application is submitted and fifty percent (50%) will be paid when the label proof is submitted for review. The Case Fee will be based upon the Applicant's estimate of the number of cases (or nine liter case equivalents) of wine that will be labeled with the Certification Mark. After a Final Bottling Notice is received, the NVVA will reconcile any amounts owed to or from the Participant based on the actual number of cases of wine labeled with the Certification Mark. Any deficiencies will be paid promptly by the Participant to the NVVA and any credits will be paid promptly by the NVVA to the Participant.

### **Section 4.03 Non-Payment of Fees**

The failure to pay the Application Fee or the Case Fee in a timely manner will cause the Application or the Notice of Compliance to be held until the applicable fees are paid.

## Appendix A

### §9.23 Napa Valley.

(a) *Name.* The name of the viticultural area described in this section is “Napa Valley.”

(b) *Approved maps.* The maps showing the boundaries of the Napa Valley viticultural area are the:

- (1) “Mt. St. Helena” U.S.G.S. 7.5 minute quadrangle;
- (2) “Detert Reservoir” U.S.G.S. 7.5 minute quadrangle;
- (3) “St. Helena” U.S.G.S. 15 minute quadrangle;
- (4) “Jericho Valley” U.S.G.S. 7.5 minute quadrangle;
- (5) “Lake Berryessa” U.S.G.S. 15 minute quadrangle;
- (6) “Mt. Vaca” U.S.G.S. 15 minute quadrangle;
- (7) “Cordelia” U.S.G.S. 7.5 minute quadrangle;
- (8) “Cuttings Wharf” U.S.G.S. 7.5 minute quadrangle; and
- (9) Appropriate Napa County tax assessor’s maps showing the Napa County-Sonoma County line.

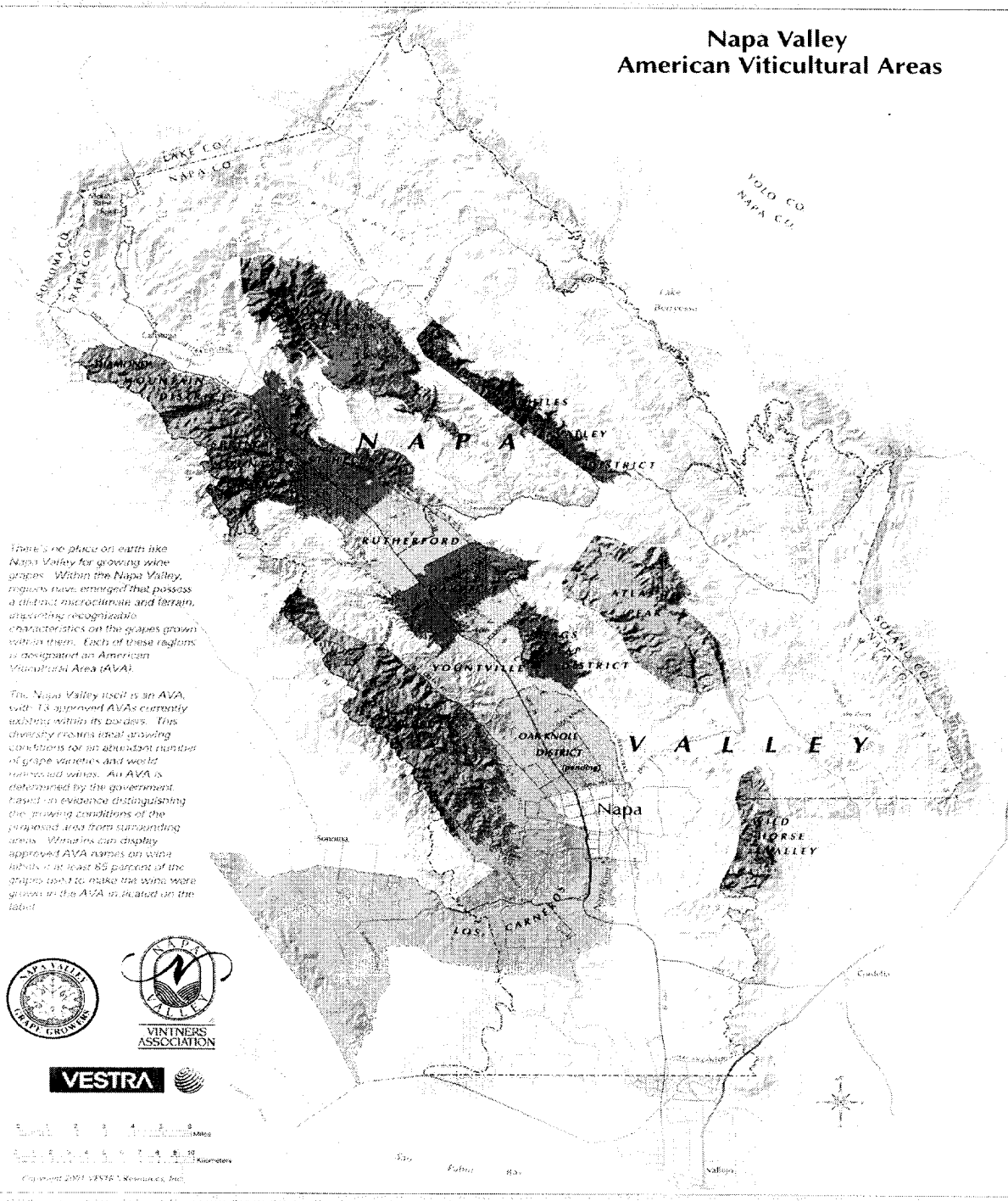
(c) *Boundaries.* The Napa Valley viticultural area is located within Napa County, California. From the beginning point at the conjunction of the Napa County-Sonoma County line and the Napa County-Lake County line, the boundary runs along—

- (1) The Napa County-Lake County line;
- (2) Putah Creek and the western and southern shores of Lake Berryessa;
- (3) The Napa County-Solano County line; and
- (4) The Napa County-Sonoma County line to the beginning point.

[T.D. ATF-79. 46 FR 9063, Jan. 28, 1981, as amended by T.D. ATF-201, 50 FR 12533, Mar. 29, 1985]



# Napa Valley American Viticultural Areas



## Appendix B

### Application for 100% Napa Valley Certification Mark

All Applicants must read the 100% Napa Valley Certification Mark Terms and Conditions before filling out this form. The Terms and Conditions govern the submission and processing of this Application. Only Brand Name Owners (as defined in the Terms and Conditions) are permitted to submit an Application.

\*Required

#### Brand Name Owner

\*Name of Brand Owner: \_\_\_\_\_

\* Brand Owner is a (sole proprietor, partnership, corporation, LLC)

\*Mailing Address: \_\_\_\_\_

\*City: \_\_\_\_\_ St: \_\_\_\_\_ Zip: \_\_\_\_\_

\*Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Winery Website: \_\_\_\_\_

(include if you want us to link to your winery in the future)

**Responsible Person** (must be knowledgeable about winemaking)

\*Responsible Person Name: \_\_\_\_\_ oCheck  
here if your contact address is same as above.

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

Mailing Address: \_\_\_\_\_

City: \_\_\_\_\_ St: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

\*e-mail: \_\_\_\_\_

#### Identification of wine which will use certification mark:

\*Brand or Label Name: \_\_\_\_\_

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

\*Vintage: \_\_\_\_\_

\*Varietal: \_\_\_\_\_

\*Appellation(s) as listed on label \_\_\_\_\_. (The Napa Valley Appellation must be listed on the label, either alone or with another appellation wholly contained within the Napa Valley AVA.)

As of the date of this Application please give the following information relating to the wine:  
Name and address of the facility if the wine is not at your address:

Storage Type: \_\_\_\_\_  
(barrel, tank, bottles)

Barrel or Tank Numbers: \_\_\_\_\_  
(if available)

No. of Gallons: \_\_\_\_\_

Where were the grapes grown (growers' names and addresses): \_\_\_\_\_

\*Where is (or was) your wine produced (facility and address)?

---

\*Where is (or was) your wine bottled (facility and address)?

---

**Annual Fees:**

There is an application fee of \$100 for the first label in any calendar year, \$25 for each additional label during the same calendar year, and a Case Fee of 15 cents per case of twelve (12) 750 ml bottles (or its equivalent) which will bear the Certification Mark. The Application Fee is due when this Application is submitted along with the 50% of the Case Fee. The remaining 50% of the Case Fee is due at the time you submit your label proof.

\*Estimated number of cases of this wine that will use the Certification Mark: \_\_\_\_\_

(Please type numbers only in this field – no commas or letters.)

Bottle Size: \_\_\_\_\_  
i.e., 750 ml, 1.5L, etc.

Application Fee: \$ \_\_\_\_\_

(If this is your first label enter 100 otherwise enter 25. Do not include the \$ sign.)

Hit the calculate button to calculate the amount currently due:

Amount Due: \$ \_\_\_\_\_ includes Application Fee + (1/2 estimate number of cases x .15 cents) ]  
50% of the estimated Case Fee is due now. The remainder of \$ \_\_\_\_\_ is due when your label is submitted for approval.

\*Estimated label proof submission date: \_\_\_\_\_

\*Estimated labeling/bottling date: \_\_\_\_\_

You must hit the submit button for your application to go through.

SUBMIT
--------

**You should receive a confirmation page after you hit the submit button. If you do not, please call the NVVA office at 963-3388.**

## Appendix C



### 100% NAPA VALLEY CERTIFICATION MARK APPLICANT'S AFFIDAVIT

#### **Wine Identification**

Brand or Label Name: \_\_\_\_\_ Fanciful Name: \_\_\_\_\_

Vintage: \_\_\_\_\_ Varietal: \_\_\_\_\_ Appellation: \_\_\_\_\_

This Affidavit must be submitted with a completed Application and must be signed by the Brand Name Owner(s), or the person authorized to act on behalf of the Brand Name Owner(s). All capitalized terms used herein but not otherwise defined are defined in the 100% Napa Valley Certification Mark Terms and Conditions ("Terms and Conditions"), which is incorporated herein by reference as if set forth in full.

#### **Representations**

The undersigned agrees that the following representations are true and correct and shall constitute conditions precedent to the use of the Certification Mark:

1. The wine identified in the Application meets the Certification Standards as set forth in the Terms and Conditions.
2. I (we) have received and fully understand the terms and conditions contained in the 100% Napa Valley Certification Mark Terms and Conditions.
3. The undersigned Brand Name Owner is the owner or lawful user of the Brand Name identified in the Application.

#### **Agreement**

The undersigned agrees that:

1. All provisions of the Terms and Conditions, as amended from time to time, will be strictly adhered to and all applicable fees will be paid in a timely fashion.
2. The Certification Mark may be used only in accordance with the provisions of the Terms and Conditions, as amended from time to time, and the Certification Mark will not be used without the express consent of the Napa Valley Vintners Association, which administers the Certification Program.

3. All on-site inspections by the Expert Examiner following reasonable notice will be allowed and complete access to the production facilities, source vineyards and any pertinent records will be provided at the request of the Napa Valley Vintners Association. All information provided in connection with the Application or any inspections or investigations shall be truthful and accurate.

4. The Certification Mark is owned by the Napa Valley Vintners Association (NVVA), and any unauthorized use of the Certification Mark is an infringement of rights. NVVA reserves all rights in law or in equity to enforce the terms and conditions contained in this Affidavit and in the Terms and Conditions.

5. All disputes between the undersigned and NVVA, other than those involving injunctive relief, will be subject to the mandatory mediation and arbitration provisions set forth in the Terms and Conditions.

6. The undersigned Brand Name Owner on behalf of its partners, respective officers, directors, shareholders, subsidiaries, managers, members, agents and employees (together the "Applicant Parties") shall to the fullest extent allowable by law indemnify, protect, defend and hold NVVA, and its respective agents, permittees, licensees, employees, owners, principals, members, contractors, heirs, successors, directors and officers (together the "Indemnified Parties") harmless from and against any claim, demand, obligation, loss, cost, damage, liability, judgment or expense, including, without limitation, reasonable attorneys' fees, charges and disbursements arising out of or in connection with the aforescribed 100% Napa Valley Certification Program, any of its Terms and Conditions, and the implementation or consequences thereof, including in particular but not limited to: (i) any failure or breach of the representations made herein; (ii) any violation or breach of the terms contained in the Terms and Conditions of the Certification Program or any action taken to enforce said terms or NVVA's rights in and to the Certification Mark; (iii) any action taken by the Indemnified Parties at the request of the Applicant Parties to preserve the confidentiality of information disclosed by the Applicant Parties to the Indemnified Parties; (iv) the sale, storage, distribution or consumption of any wine bearing the Certification Mark; and/or (v) the joinder of the Applicant Parties in any action challenging the validity of the Certification Program or alleging damages or other harm as a result thereof.

I (we) declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: \_\_\_\_\_

[Signature Block]

## Appendix D



### **100% Napa Valley Certification Mark Substantiating Documents**

The following is a partial list of the records that may be presented or required as evidence of compliance with the 100% Napa Valley Certification Mark standards.

#### **Grape Source Records:**

Records showing vineyard source of grapes including vineyard location, varietal and tonnage.

#### **Bulk Still Wine Record:**

A proprietor who produces or receives still wine in bond (including wine intended for use as distilling material or vinegar stock to which water has not yet been added) shall maintain records of transactions for bulk still wine. Records will be maintained for each tax class of still wine including the date the transaction occurred.

#### **Transfer In Bond Record:**

A proprietor who transfers wine in bond shall prepare a transfer record.

#### **Inventory Record:**

A proprietor who files monthly reports shall prepare a record of the physical inventory of all wine and spirits in storage at the close of business for each tax year, or where a different cycle has been established, the inventory will be taken at the end of that annual period.

#### **Label Information Record:**

A proprietor who removes bottled or packed wine with information stated on the label (e.g., variety, vintage, appellation of origin, analytical data, date of harvest) shall have complete records so that the information appearing on the label may be verified by an ATF audit.

#### **Spirits Record:**

A proprietor who received, stores, or uses spirits shall maintain a record of receipt and use. The record will show the date of receipt, from whom received, and the kind and proof gallons. The spirits record will also show by date and proof gallons the spirits used or removed from bonded wine premises and to whom.

#### **Bottled Or Packed Wine Record:**

A proprietor who bottles, packs, or receives bottled or packed beverage wine in bond shall maintain a record, by tax class.

Appendix E

**BOTTLING NOTICE**  
☐ **PARTIAL BOTTLING**  
☐ **COMPLETE BOTTLING**



This Bottling Notice is made by the undersigned Brand Name Owner under the terms of Section 3.02 of the 100% Napa Valley Certification Mark Terms and Conditions. Capitalized terms not otherwise defined in this notice are defined in the Terms and Conditions.

Application No. (application number)

Brand Name: (Brand)

Vintage: (Vintage)      Varietal: (varietal)

Appellation: (Appellation)

Bottling Facility: (Bottling Facility)

Address: (Bottling Facility Address)

The undersigned Brand Name Owner represents and warrants that on \_\_\_\_\_, 20\_\_\_\_, \_\_\_\_\_ (name of Bottling Facility), bottled \_\_\_\_\_ gallons or \_\_\_\_\_ 9L equivalent cases of the above-identified wine.

- ☐ This bottling constitutes all of the wine that was certified under the Napa Valley Certification Mark application number (application number).
- ☐ This is a partial bottling of the wine certified under Napa Valley Certification Mark application number (application number). The remainder of the wine is expected to be bottled on or about \_\_\_\_\_, 20\_\_\_\_. Applicant will complete a Notice of Complete Bottling and provide it to the Napa Valley Vintners Association within 10 days of completion of bottling.

Attached is a copy of the approved federal Application for and Certification/Exemption of Label/Bottle Approval (COLA), or statement from the bottler that no COLA was obtained because the wine was entirely bottled for export.

If the wine being bottled under this Bottling Notice was subject to a Certification Inspection or if otherwise requested by the Napa Valley Vintners Association, Substantiating Records must be submitted which confirm that the above bottling was performed in compliance with the Certification Standards as defined in the Terms and Conditions. Substantiating Records may include Bottled or Packed Wine Records or a letter from the bottler to the Participant (if the Participant is not the bottler) setting forth the date on which the bottles of wine were filled, the brand name, varietal, appellation and vintage of the wine bottled, the number of the tank used to fill the bottles, the size of the bottles filled, the number of cases filled, and the total volume of wine bottled in liters or wine gallons.

I (we) understand that this wine may not be sold, nor may title thereto be transferred from the Brand Name Owner identified above, until I (we) receive a Notice of Compliance from the Napa Valley Vintners Association.

The undersigned declares under penalty of perjury under the laws of the State of California that the information provided in this Notice of Bottling is true and correct, that the records provided herewith are true copies of the originals and that all Substantiating Records to be provided at the request of the Napa Valley Vintners Association will be original documents or true and correct copies of original documents.

Dated: \_\_\_\_\_, 20\_\_

[SIGNATURE BLOCK]