CAUSE NO. 2015-29-5

CHARLES "CHIP" TATE,	§	**IN THE DISTRICT COURT**
	§	
Plaintiff,	§	
	§	
v.	§	
	§	**414TH JUDICIAL DISTRICT**
JARED AND LAURA HIMSTEDT,	§	
	§	
Defendants.	§	
	§	**MCLENNAN COUNTY, TEXAS**

PLAINTIFF'S ORIGINAL PETITION AND REQUEST FOR DECLARATORY RELIEF

COMES NOW Plaintiff Charles "Chip" Tate (hereinafter, "Chip"), complaining of Defendants Laura Himstedt ("Defendant") and Jared Himstedt ("Jared"), and for causes of action and grounds for relief would show the Court as follows:

I.
DISCOVERY LEVEL

1. Pursuant to Texas Rule of Civil Procedure 190.2 discovery will be conducted under Level 2.

II.
PARTIES

2. Plaintiff Chip is a resident of Texas.

3. Defendants Jared and Laura Himstedt are individuals residing in Waco, Texas. Defendants may be served with process at 605 N. 16th Street, Waco, Texas 76707, or wherever else they may be found.

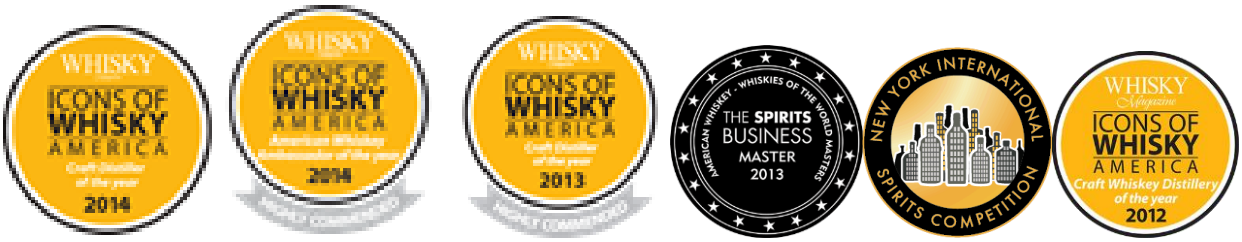
III.
JURISDICTION AND VENUE

4. The Court has jurisdiction over Defendants because they reside in McLennan County. Venue is proper in McLennan County, Texas pursuant to section 15.002(a)(2) of the Texas Civil Practice and Remedies Code because McLellan County, Texas is the county where the Defendants are located and is also the county where all or a substantial part of the events or omissions giving rise to the claims occurred. TEX. CIV. PRAC. & REM. CODE § 15.002.

IV.
FACTS

5. Chip, a long-time resident of Waco, had a dream to make whisky and more specifically, Texas Whisky. Chip founded and created Balcones Distilling, LLC ("Balcones") in an old welding shop under a bridge on 17th Street in Downtown Waco. Over the course of six (6) hard years, lots of sacrifices and endless hours of hard work, Chip and Balcones accomplished exactly what they set out to do – create a Texas Whisky tradition.

6. Chip and Balcones reached unprecedented levels of success by winning over 140 awards, hundreds of accolades and approvals from the industry, critics, and the Whisky drinking public. As the old saying goes, "a picture is worth a thousand words":



7. As the Court is likely aware from the very public dispute between Chip and his unruly Investors[1] in Balcones, as part of his efforts to grow his successful, fledgling company, Chip needed money. As part of his efforts, Chip first turned to those he considered his family and friends and then turned to outside investors.

8. Jared Himstedt ("Jared"), formerly a manager of the Dancing Bear Pub craft beer bar, was a friend who originally met Chip through a beer homebrewing club. Chip would later go on to hire Himstedt to work for Balcones as the Production Manager. It is clear that Jared believed that he was not getting the recognition he felt that he deserved and that feeling apparently multiplied with each award and accolade garnered by Chip. Jared not only wanted the awards and accolades for himself, but was "persuaded" that Chip was no longer a necessary ingredient for the success of Balcones. Ironically, when Jared became concerned that Chip's ouster might only be temporary and that Chip might regain control of Balcones, he persuaded a third party to approach Chip about his desire to work for Chip again.

9. Chip and the Defendant, Jared's wife, Laura Himstedt, discussed the financial needs of the company. Ultimately, Defendant Laura offered to loan $10,000.00.

[1] The Investors in Balcones included PE Investors II, LLC ("PE Investors"), Greg Allen ("Allen"), Noell Michaels ("Michaels"), Robert McLaughlin ("McLaughlin"), and Michael Rockafellow ("Rockafellow").

10. The terms of the loan were clearly spelled out for both sides and, unlike many personal friendly loans, were memorialized in an agreement. A true and correct copy of the May 22, 2013 Clarification Agreement and the Initial Agreement ("Agreement") are attached hereto as **Exhibit "1"** and incorporated herein for all purposes. Defendant Laura and Chip agreed that she would provide $10,000.00 in funding. The loan was "booked" as a personal loan, although it is undisputed that the money was for and went into Balcones. The terms of the loan provided that Chip would only repay Defendant Laura if/when Chip received *profit sharing cash distributions* from Balcones and that he would repay Defendant from any *profit sharing cash distributions* he received as a member of Balcones using a calculation equal to a 1% interest in Balcones. "I agree to pass on to you a portion of any profits deriving from my interest in Balcones Distilling, LLC ... Of course, if Balcones Distilling fails before any investor distributions are make, you would receive nothing…" [*See* Agreement] Chip clearly stated in the Agreement that the repayment was tied to a distribution of profits as a member, noting that the company planned to reinvest profits as long as possible to help grow the business and that it would be several years before any cash distributions would be made. [*See* Agreement]

11. Unfortunately, as we all know now, Chip was ultimately to be betrayed by his Investors in Balcones and, even more shockingly, betrayed by his old friend, Jared, who conspired with the Investors to push Chip out of his own company.

12. In 2014, Jared began holding clandestine meetings with Allen, the leader of the Investor group, to remove Chip from his leadership position in Balcones. Without Chip, Jared would finally be able to step out of Chip's large and successful shadow. Jared went so far as to invent a claim that Chip threatened one of the investors — a claim the Investors would later use to force Chip out and "fire" him after buying his units in Balcones. Jared continues to defame

Chip to this date. Specifically, in articles published since the settlement occurred, Jared claims that in July 2014, "Tate threatened to shoot Allen and burn down the distillery." *See, ex.* Dallas Morning News, *Good Whiskey, Bad Blood: Waco Craft Distiller, money man don't mix*, published December 28, 2014, http://www.dallasnews.com/news/state/headlines/20141228-good-whiskey-bad-blood-waco-craft-distiller-money-man-prove-to-be-volatile-combination.ece; New York Times, *How Dreams and Money Didn't Mix at a Texas Distillery*, published December 27, 2014, http://www.nytimes.com/2014/12/28/business/how-dreams-and-money-didnt-mix-at-a-texas-distillery.html?_r=0. These statements are either outright false or omit material facts to such an extent that the statements create a false impression and are rendered false. Jared certainly didn't feel that Chip was a threat to anyone, or that he created an abusive or hostile atmosphere, when he chose to remain employed under Chip for over 5 years and then begged for his job when he believed that Chip might regain control of Balcones. "Judas," sorry, Jared, clearly did not believe his own statements when made.

13. Despite Jared's published statements that Chip allegedly committed the crime of assault (a potential felony) by allegedly threatening to shoot Allen and further published statements alleging that Chip threatened commit another crime (arson), no one seemed in the least concerned by these alleged threats in July, when they allegedly occurred. It is only when parties became embroiled in litigation that these alleged "threats" became useful to the Investors and/or Jared.

14. Partially as a result of the invented threat and partially as a result of just pure greed on the part of the Investors, in August 2014, Chip and the Investors became locked in a tenacious, ugly and very public legal battle. In November 2014, Chip was granted summary judgment that the Balcones Board could not take action without him and that the alleged

Balcones internal funding was improper. In fact, even the very act of suspending Chip and filing a lawsuit against him in the name of Balcones was without authorization and wholly improper. On December 2, 2014, Chip and the Investors reached a confidential settlement in their lawsuit in the 170th Judicial District Court of McLennan County, Texas, Cause No. 2014-3272, wherein the Investors purchased Chip's Units in Balcones. This "confidential" settlement with Balcones, a company that employed Laura's husband and the traitor Jared as an officer, was the apparent basis upon which Laura sprang into action in sending the below-referenced improper demand.

15. The distribution of the profits of a company is a taxable and legally recognized event and is generally governed by a company agreement. Balcones, like most companies, had a clear profit distribution plan in its Company Agreement. A true and correct copy of the Company Agreement is attached hereto as **Exhibit "2"** and is incorporated herein for all purposes. The profit distribution plan, located in Article IV, Section 4.1 of the Company Agreement, laid out a specific plan for when profits and losses of Balcones for any relevant fiscal period are to be allocated to a Member. [*See* Company Agreement, Section 4.1] First, distributions, which are a recognizable tax event, are only to be made as determined by the Board of Directors for Balcones. [*See* Company Agreement, Section 4.2(a)] Second, distributions occur only on a set schedule, first to certain other investors, then to Chip and Rockafellow, last to all other Members. Further, allocation of any profits or losses with respect to units that have been transferred are allocated among the persons wo hold the units during the specific Fiscal Year in question — in other words, only the holders of the units are entitled to share in any company profits. [*See* Section 4.3] Allocations of profit to a member cannot occur without a Board-sanctioned distribution.

16. When Chip transferred his units to Balcones on December 2, 2014, he relinquished his right to share in the profits of the company pursuant to Section 4.3 of the Company Agreement. At no time before and during his transfer of units, had Chip received a distribution of profit from Balcones. To date, Chip has never received a distribution of profit from Balcones pursuant to the Company Agreement.

17. On December 9, 2014, Defendant Laura wrote Chip a demand letter, claiming to be owed the value of Chip's shares multiplied by 1,000 to "equal 1% of the outstanding shares in Balcones." A true and correct copy of the Demand Letter is attached hereto as **Exhibit "3"** and is incorporated herein for all purposes. Defendant Laura seeks to hold Chip responsible for the value of 1% of the Company's units. "[T]he amount you were to pay me was to be equivalent to a 1% ownership interest in Balcones." [*See* Demand Letter] Defendant Laura seeks this money in clear contravention of the Agreement language, which specifically states that Chip is only required to pay Defendant Laura upon his receipt of *profit sharing cash distributions* from Balcones. To date, as already stated, Chip has never received a distribution of profit from Balcones. Thus, Chip owes Defendant Laura no repayment pursuant to the terms of the Agreement.

18. For the foregoing reasons, Chip seeks Court intervention to declare that the Agreement between the parties states: (1) that payment is only due pursuant to the Agreement when cash distributions in the form of profit sharing are paid to Balcones LLC members, and (2) that the buy-out of his interests is not a "profit sharing" event.

19. Chip further seeks relief for the defamatory statements made by Jared.

V.
CAUSES OF ACTION

A. SUIT FOR DECLARATORY RELIEF

20. Chip incorporates by reference the preceding paragraphs as if fully set forth herein.

21. Chip is entitled to a judgment pursuant to Texas Civil Practice & Remedies Code §§37.001-37.004 declaring that the Agreement between Chip and the Defendant states that payment is due pursuant to the Agreement when cash distributions in the form of profit sharing are paid to Balcones LLC members.

22. Chip also seeks a declaration that the buy-out of his interests is not a "profit sharing" event.

B. DEFAMATION

23. Chip incorporates by reference the preceding paragraphs as if fully set forth herein and further asserts a claim for defamation.

24. Jared published multiple statements of fact. Jared defamed Chip when he published a statement of fact that was defamatory and false. Jared acted with actual malice, negligence or is liable without regard to fault. Chip suffered injury as a result of Jared's statements. Jared is liable under a theory of strict liability.

25. Specifically, Jared defamed Chip by implication because he published discrete facts that, while literally true, omitted material facts and juxtaposed Chip's statements, creating a false and misleading impression that Chip actually threatened an investor. A plaintiff may bring a claim for defamation when 'discrete facts, literally or substantially true, are published in such a way that they create a substantially false and defamatory impression by omitting material facts or juxtaposing facts in a misleading way. *Houseman v. Publicaciones Paso Del Norte, S.A. de C.V.*,

242 S.W.3d 518, 524 (Tex. App.—El Paso, 2007, no pet.) (citing *Turner v. KTRK Television, Inc*., 38 S.W.3d 103, 116, Tex. 2000).

26. These statements were *per se* defamation. A statement that falsely charges a person with the commission of a crime is considered libel per se. *Leyendecker & Assocs. v. Wechter*, 6683 S.W.2d 369, 374 (Tex. 1984).

VI.
ATTORNEYS' FEES AND COSTS

27. Chip incorporates by reference the preceding paragraphs as if fully set forth herein.

28. Chip is entitled to recover reasonable and necessary attorneys' fees and costs that are equitable and just under Texas Civil Practice & Remedies Code Section 37.009 because this is a suit for declaratory relief.

VII.
CONDITIONS PRECEDENT

29. Chip incorporates by reference the preceding paragraphs as if fully set forth herein.

30. All conditions precedent to Chip's claims for relief have been performed or have occurred.

VIII.
REQUEST FOR DISCLOSURE

31. Under Texas Rule of Civil Procedure 194, Chip requests that Defendants disclose, within 50 days of the service of this request, the information or material described in Rule 194.2.

IX.
PRAYER

32. For these reasons, Chip asks that Defendants be cited to appear and answer and the Court grant the following relief:

a. A declaratory judgment determining that:

i. payment is due pursuant to the Agreement when cash distributions in the form of profit sharing are paid to Balcones LLC members;

ii. the buy-out of his interests is not a "profit sharing" event;

b. Damages for the *per se* defamation statements published by Jared;

c. A judgment for attorneys' fees, applicable interest and costs; and

d. Such further and other relief, whether in law or in equity, to which Chip is justly and equitably entitled.

Respectfully submitted,

/s/ David R. Clouston
David Clouston, State Bar No. 00787253
Christopher R. Richie, State Bar No. 24002839
Leslye E. Moseley, State Bar No. 24044557
Whitney L. White, State Bar No. 24075269

Sessions, Fishman, Nathan & Israel, LLC
900 Jackson Street
Suite 440
Dallas, Texas 75202
Telephone: 214-741-3001
Facsimile: 214-741-3055

ATTORNEYS FOR CHARLES "CHIP" TATE

EXHIBIT 1

Chip Tate
15313 Old China Spring Road
China Spring, Texas 76633
May 22, 2013

Laura Himstedt
605 North 16th Street
Waco, Texas 76707

Dear Laura,

I hope you are well. This letter is an update on Balcones Distilling, LLC. Balcones is in the process of hopefully attaining additional investors to continue growing the business. I want to thank you for your assistance in helping Balcones grow to where it is today. In order to clarify the ownership of the Company to potential investors, I want to confirm our relationship related to the loan you have provided to me as described in the attached letter.

You have made a personal loan to me in the amount of $10,000.00. I have agreed to pay you a portion of the profits, if any, that I receive from Balcones. The amount will be calculated as if you owned a 1% interest in Balcones, though you do not actually own an interest in Balcones. There is no guarantee of payment. And I have reserved the right to buy you out of this loan arrangement by paying you at total of $40,000.00.

By signing this letter you will assist me in the process of attaining investors in Balcones that will support the growth of the company. Please sign and date below. Your help is greatly appreciated.

Sincerely,

Chip Tate

Please confirm your acceptance of the agreement and terms above by signing and dating below:

Laura Himstedt

Laura Himstedt

5-23-13

Date

Chip Tate
Balcones Distilling
212 S. 17th St.
Waco, TX 76701

Dear _____,

I am writing to clarify the terms the terms of our arrangement in writing. For tax and business purposes, the $10,000 I received from you shall be construed as a personal loan with the following terms. In return for those funds, I agree to pass on to you a portion of any profits deriving from my interest in Balcones Distilling LLC as if you owned 1% of that limited liability corporation. Of course, if Balcones Distilling fails before any investor distributions are made, you would receive nothing, just as in the case for all of the investor / owners of the LLC. However, I hope and trust that this will not be the case and that you will receive your $10,000 back many times over.

With regard to timing, I will pay you as though you were a 1% owner as well. That is to say, when profit sharing (as opposed to "salary" distributions) cash distributions are paid to the LLC member / owners, I will pay you in accordance with the agreement above. The LLC owners have agreed to reinvest profits as long as possible to help grow the business sacrificing short term profit for greater long term profit. Therefore, it will likely be several years before any cash distributions are made.

Further, if the venture is successful, I would like to reserve the right to buy you out of this agreement for the $10,000 sum you originally gave me once you have been paid a cumulative total of four times that original sum ($40,000) or to pay you the difference between $40,000 and what you have been paid to date, as the case may be.

Sincerely,

Chip Tate
President, Balcones Distilling LLC

EXHIBIT 2

THE UNITS OF LIMITED LIABILITY COMPANY INTEREST ISSUED PURSUANT TO THIS AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR UNDER ANY SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION AND ARE BEING OFFERED AND SOLD IN RELIANCE ON EXEMPTIONS FROM THE REGISTRATION REQUIREMENTS UNDER SUCH ACTS. EXCEPT AS SPECIFICALLY OTHERWISE PROVIDED IN THIS AGREEMENT, THESE UNITS MAY NOT BE SOLD, TRANSFERRED, PLEDGED OR HYPOTHECATED WITHOUT REGISTRATION UNDER SUCH ACTS OR AN OPINION OF COUNSEL THAT SUCH TRANSFER MAY BE LEGALLY EFFECTED WITHOUT SUCH REGISTRATION. ADDITIONAL RESTRICTIONS ON TRANSFER AND SALE ARE SET FORTH IN THIS AGREEMENT. PURCHASERS OF UNITS SHOULD BE AWARE THAT THEY WILL BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THEIR INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.

AMENDED AND RESTATED COMPANY AGREEMENT

OF

BALCONES DISTILLING, LLC

(a Texas limited liability company)

TABLE OF CONTENTS

AMENDED AND RESTATED
COMPANY AGREEMENT
OF
BALCONES DISTILLING, LLC

This AMENDED AND RESTATED COMPANY AGREEMENT (the "Agreement") of Balcones Distilling, LLC, a Texas limited liability company (the "Company"), is entered into by and among the Members of the Company listed on Exhibit A attached hereto and the Company, effective as of June 3, 2013 (the "Effective Date").

WHEREAS, the Members and the Company desire to amend and restate in its entirety any prior company agreement of the Company, and to set forth herein their respective rights, duties and responsibilities with respect to the Company.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Members and the Company hereby agree as follows:

ARTICLE I.
DEFINITIONS

As used in this Agreement, the following terms have the following meanings:

"Act" means the Texas Business Organization Code and any successor statute, as amended from time to time.

"Affiliate" means, with respect to any specified Person, any other Person who, directly or indirectly, controls, is controlled by, or is under common control with such Person, including, without limitation, any general partner, managing member, manager, officer or director of such Person or any private equity fund now or hereafter existing that is directly or indirectly controlled by one or more general partners or managing members of, or shares the same management company with, such Person.

"Available Cash Flow" means the gross proceeds (in cash, or, as applicable, or the fair market value of any other property) from the operations of the Company (including Capital Proceeds) less the portion thereof used to pay or establish reasonable reserves for all Company expenses, debt payments, and contingencies, all as determined by the Board.

"Board" means the Company's Board of Managers.

"Business Day" means a day on which banks are open for business in New York, New York (which, for avoidance of doubt, shall not include Saturdays and Sundays).

"Capital Contribution" means the amount of cash and the fair market value of any other property (net of liabilities secured by such property, which the Company is considered to assume) contributed by (or on behalf of) a Member to the capital of the Company.

"Capital Proceeds" means the proceeds (in cash, or, as applicable, the fair market value of any other property (net of liabilities secured by such property which the Member is considered to assume) and net of costs and expenses related to the transaction generating such proceeds, net of such

amounts necessary for the payment of principal and interest on any indebtedness that the Board deems necessary to pay, and net of such financial reserves as the Board deems reasonably necessary to the proper operation of the Company's business or for other corporate purposes) from the sale, exchange or other disposition of all or any portion of the Company's assets, other than in the ordinary course of the Company's business.

"Code" means the Internal Revenue Code of 1986 and any successor statute, as amended from time to time.

"Deemed Liquidation Event" means, unless the Board and the holders of at least a majority of the outstanding Units elect otherwise by written notice sent to the Company prior to the effective date of any such event,

(i) a good faith, arm's length merger, consolidation or share exchange (A) in which the Company is a constituent party or (B) a subsidiary of the Company is a constituent party and the Company issues membership interests pursuant to such merger or consolidation; except any such merger, consolidation or share exchange involving the Company or a subsidiary in which the voting power of the Members and their Affiliates immediately prior to such merger, consolidation or share exchange continue to represent, immediately following such merger, consolidation or share exchange, at least a majority of the voting power of (1) the surviving or resulting entity or (2) if the surviving or resulting entity is a wholly owned subsidiary of another entity immediately following such merger or consolidation, the parent entity of such surviving or resulting entity; or

(ii) the good faith, arm's length sale, lease, transfer, exclusive license or other disposition, in a single transaction or series of related transactions, by the Company or any subsidiary of the Company of all or substantially all the assets of the Company and its subsidiaries taken as a whole, or the sale or disposition (whether by merger or otherwise) of one or more subsidiaries of the Company if substantially all of the assets of the Company and its subsidiaries taken as a whole are held by such subsidiary or subsidiaries, except where such sale, lease, transfer, exclusive license or other disposition is to a wholly owned subsidiary of the Company.

"Depreciation" means, for each year, an amount equal to the depreciation, amortization or other cost recovery deduction allowable with respect to an asset for such year, except that if the Gross Asset Value of an asset differs from its adjusted tax basis at the beginning of the year, Depreciation shall be an amount which bears the same ratio to the beginning Gross Asset Value as the federal income tax depreciation, amortization or other cost recovery deduction for the year bears to such beginning adjusted tax basis; but if the adjusted tax basis of an asset at the beginning of a year is zero, Depreciation shall be determined with reference to the beginning Gross Asset Value using any reasonable method selected by the Board.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"Gross Asset Value" means with respect to any asset, the asset's adjusted basis for federal income tax purposes, except as follows:

(a) The initial Gross Asset Value of any asset contributed by a Member to the Company shall be the gross fair market value of such asset, as determined by the Board;

(b) The Gross Asset Values of all Company assets shall be adjusted to equal their respective gross fair market values, as determined by the Board, as of the following times: (i) the acquisition from the Company of an additional interest in the Company by any new or existing Member in exchange for more than a de minimis Capital Contribution; (ii) the distribution by the Company to a Member of more than a de minimis amount of Company property as consideration for an interest in the Company; (iii) the liquidation of the Company within the meaning of Treasury Regulations § 1.704-1(b)(2)(ii)(g); and (iv) a grant of any interest, other than a de minimis interest, in the Company as consideration for the provision of services to or for the benefit of the Company, provided that an adjustment described in clauses (i), (ii) and (iv) of this paragraph shall be made only if the Board reasonably determines that such adjustment is necessary to reflect the relative economic interests of the Members in the Company;

(c) The Gross Asset Value of any Company asset distributed to any Member shall be adjusted to equal the gross fair market value of such asset on the date of distribution as reasonably determined by the Board; and

(d) The Gross Asset Values of Company assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Treasury Regulations § 1.704-1(b)(2)(iv)(m); provided, however, that Gross Asset Values shall not be adjusted pursuant to this paragraph (d) to the extent that an adjustment pursuant to paragraph (b) is required in connection with a transaction that would otherwise result in an adjustment pursuant to this paragraph (d).

If the Gross Asset Value of an asset has been determined or adjusted pursuant to paragraph (b) or (d), such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset, for purposes of computing Profits and Losses.

"Member" means any Person executing this Agreement as of the Effective Date as a member of the Company or thereafter admitted to the Company as a member as provided in this Agreement, but does not include any Person who has sold or transferred all of such Person's Units pursuant to the terms herein.

"PE Investors" means PE Investors II, LLC, an Oklahoma limited liability company, including any successor or transferee in interest.

"Permitted Transferee" of a Member means (i) in the case of a Member who is an individual, (A) and upon the death of such Member, the estate, personal representatives, spouse, lineal descendants (including adopted), conservators, guardians, executors, administrators, testamentary trustees, legatees or beneficiaries of the Member, or (B) a Permitted Transferee Trust; and (ii) in the case of a Member that is not an individual, (A) an Affiliate, partner, member, shareholder or other equity owner thereof, or (B) Persons who bear a relationship described in clause (i) above to such Affiliate, partner, member, shareholder or other equity owner.

"Permitted Transferee Trust" means, in the case of a Member who is an individual, a limited partnership, limited liability company, trust or custodianship, the beneficiaries of which may include

the Member, the Member's spouse, the Member's lineal descendants (including adopted), or, if such Member has no then-living spouse or lineal descendants, then to the ultimate beneficiaries of any such trust or to the estate of a deceased beneficiary, provided such Member retains the voting control with respect to any Units held by such entity.

"Person" means any individual, corporation, limited liability company, general partnership, limited partnership, joint venture, trust, business trust, unincorporated association, estate or other entity.

"Profits" or "Losses" means, for each year or other relevant period, an amount equal to the Company's taxable income or loss for each year or other applicable period, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments:

(a) Any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Profits or Losses shall be added to such taxable income or loss;

(b) Any expenditures of the Company described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(i), and not otherwise taken into account in computing Profits or Losses, shall be subtracted from such taxable income or loss;

(c) In the event the Gross Asset Value of any Company asset is adjusted pursuant to subparagraph (b) or subparagraph (c) of the definition of Gross Asset Value herein, the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset for purposes of computing Profits or Losses;

(d) Gain or loss resulting from any disposition of Company property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Gross Asset Value of the property disposed of, notwithstanding that the adjusted basis of such property differs from its Gross Asset Value;

(e) In lieu of the depreciation, amortization and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such year or other period, computed in accordance with the terms of this Agreement; and

(f) To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Code Section 734(b) or Section 743(b) is required pursuant to Regulations Section 1.704-1(b)(2)(iv)(m)(4) to be taken into account in determining Capital Accounts as a result of a distribution other than in complete liquidation of a Member's interest in the Company, the amount of such adjustment shall be treated as an item of gain or loss, as the case may be, from the disposition of the asset and shall be taken into account in computing Profits or Losses.

(g) Notwithstanding any other provision of this Agreement, any items which are specially allocated pursuant to Section 4.1(b) shall not be taken into account in computing Profits or Losses.

"Rockafellow" means Michael Rockafellow.

"Secretary of State" means the Secretary of State of the State of Texas.

"SEC" means the Securities and Exchange Commission.

"Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"Transfer" means and includes any sale, assignment, encumbrance, hypothecation, pledge, conveyance in trust, gift, transfer by bequest, devise or descent, or other transfer or disposition of any kind, including but not limited to transfers to receivers, levying creditors, trustees or receivers in bankruptcy proceedings or general assignees for the benefit of creditors, whether voluntary or by operation of law, directly or indirectly, except that a "Transfer" shall not include any transfer of Units, direct or indirect, made (A) pursuant to a Deemed Liquidation Event or a Required Sale; or (B) pursuant to the liquidation, winding up or dissolution of the Company.

"Treasury Regulations" means the federal income tax regulations promulgated under the Code, as such regulations may be amended from time to time, including proposed, temporary and final regulations.

"Units" means Units of limited liability company interest in the Company, which entitle the holder thereof to share in the Profits, Losses and distributions of the Company, to exercise voting rights as a holder thereof, and to have the other rights, preferences and designations set forth herein, in each case, in accordance with the terms herein applicable to Units.

Cross References. Each of the following terms is defined in the Section set forth opposite such term:

Term	Section
Additional Securities	3.11
Advancement of Expenses	5.5(a)
Affiliate Indemnitors	5.5(d)
Agreement	Recitals
Capital Account	3.8
Certificate	2.1
Claim	10.7
Company	Recitals
Company Refusal Period	8.2(b)
Company Sale Proposal	8.3(a)
Corporate Conversion	7.1
Corporate Successor	7.1
Corporate Successor Stockholders Agreement	7.1
Covered Persons	10.13
Dragging Members	8.3(a)
Effective Date	Recitals
Excluded Opportunity	10.13
Fiscal Year	6.2

Term	Section
Founder Manager	5.1(b)
Indemnified Losses	5.5(c)
Indemnitee	5.5(a)
Member's Notice	8.1(c)
Offered Price	8.1(c)
Offered Units	8.1(c)
PE Investors Manager	5.1(b)
PE Investors Indemnified Party(ies)	5.5(c)
Proposed Transferee	8.1(c)
Regulatory Allocations	4.1(b)
Required Sale	8.3(a)
Required Sale Notice	8.3(a)
Sale Proposal	8.3(a)
Takeover Proposals	10.14
Unit Sale Proposal	8.3(a)

ARTICLE II.
ORGANIZATION

Section 2.1 Organization. On May 13, 2008, the Company was formed under the name "Balcones Distilling, LLC" by the filing of its certificate of formation (the "Certificate") in the office of the Secretary of State. By executing this Agreement, the Members hereby adopt and ratify the Certificate, and hereby discharge the organizer named therein from any further obligations, duties or liabilities to the Company as an organizer. If there is any conflict between the terms of this Agreement and the Certificate, the Certificate will control. The rights and liabilities of the Members shall be determined pursuant to the Act and this Agreement. To the extent that the rights or obligations of any Members are different by reason of any provision in this Agreement than they would be in the absence of such provision, this Agreement, to the extent not prohibited by the Act, shall control over the Act. This Agreement shall constitute a "company agreement" (as defined in the Act) of the Company for purposes of the Act.

Section 2.2 Name. The name of the Company is Balcones Distilling, LLC. Company business may be conducted in such name or such other names that comply with applicable law as the Board may select from time to time.

Section 2.3 Registered Office; Registered Agent. The registered office of the Company in the State of Texas will be the registered office designated in the Certificate or such other office (which need not be a place of business of the Company) as the Board may designate from time to time in the manner provided by law. The principal office of the Company will be at such location as the Board may designate from time to time, which need not be in the State of Texas. The Company may have such other offices as the Board determines appropriate.

Section 2.4 Purpose; Powers. The purposes of the Company shall be, whether directly or through one or more subsidiaries, to make, enter into and perform any contracts and other undertakings and to engage in any activities and transactions as may be ancillary to, or necessary or advisable for, carrying out the foregoing business. The Company will have all powers permitted to be exercised by a limited liability company organized in the State of Texas.

Section 2.5 Term. The Company commenced on the date the Certificate was filed with the Secretary of State, and will continue in existence until terminated pursuant to this Agreement.

Section 2.6 Liability to Third Parties. No Member will have any personal liability for any obligations or liabilities of the Company solely on account of such Person being a Member, whether such liabilities arise in contract, tort or otherwise, except to the extent that any such liabilities or obligations are expressly assumed in writing by such Member.

ARTICLE III.
MEMBERS; CAPITAL CONTRIBUTIONS

Section 3.1 Members. The names, addresses, and number of Units of the Members are set forth on Exhibit A attached hereto and incorporated herein. The President, or such other officer designated by the President, is hereby authorized, from time to time, to complete or amend Exhibit A to accurately reflect, in accordance with this Agreement, the admission of additional Members,

the withdrawal of any Member, the change of address of any Member, the classes and number of Units held by any Member, and any other information called for by Exhibit A.

Section 3.2 Units. Except as otherwise approved by the Board, the Units will not be certificated. The total number of Units which the Company has authority to issue shall be determined by the Board from time to time (which determination the Board shall cause to be reflected as a supplement to Exhibit A attached hereto).

Section 3.3 Admission of Additional Members; Issuance of Additional Units. Subject to Section 3.2 and Section 3.11 and upon the approval of the Board, from time to time (i) additional Persons may be admitted to the Company as Members and/or Units (including new classes or series of Units created pursuant to this Agreement) may be issued to such Persons (including existing Members), and (ii) rights or options to acquire Units, securities convertible into Units, or other equity securities or membership interests of the Company may be granted, in each case, on such terms and conditions as the Board may determine at the time of issuance or grant. As a condition to being admitted as a Member of the Company, any Person must agree to be bound by the terms of this Agreement, as amended, by executing and delivering a counterpart signature page to this Agreement, as amended. Additionally, the approval of the Founder Manager will be required for the issuance of any Units which has an implied valuation on the Company of less than $70.00 per Unit (subject to all applicable Unit splits, subdivisions and similar Unit recapitalizations).

Section 3.4 Split or Reverse Split of Units, Etc. The Board will have the authority to approve any split or subdivision of Units, dividend of Units or reverse split or combination of Units. The Company may, but will not be required to, issue fractions of a Unit. If the Company, at the direction of the Board, does not elect to issue fractions of a Unit, it shall pay in cash the fair value of any such fractions of a Unit.

Section 3.5 Capital Contributions by New Members. New Members will make any Capital Contributions required by the Board pursuant to Section 3.3 above.

Section 3.6 Return of Contributions. Except as otherwise provided in this Agreement, a Member is not entitled to the return of any part of such Member's Capital Contributions or to be paid interest in respect of either such Member's Capital Account or such Member's Capital Contributions. An unrepaid Capital Contribution is not a liability of the Company or of the other Members.

Section 3.7 Withdrawal of Capital. Except as otherwise provided herein, no Member has the right to withdraw any part of such Member's Capital Contribution from the Company or receive the return of any part of such Member's interest in the Company prior to the Company's liquidation and termination pursuant to Article IX hereof, unless such withdrawal is provided for in this Agreement or subsequently agreed to by the Board.

Section 3.8 Capital Accounts. Separate capital accounts (a "Capital Account") will be maintained for each Member in accordance with the Treasury Regulations promulgated under Section 704(b) of the Code and will consist of the sum of each Member's Capital Contributions, plus such Member's share of the Profits of the Company, less such Member's share of any Losses of the Company, and less any distributions to or withdrawals made by or attributed to such Member from the Company. In the event of a sale or exchange of some or all of a Member's Units in

accordance with this Agreement, the Capital Account of the transferring Member will become the Capital Account of the assignee to the extent it relates to the portion of the Units transferred.

Section 3.9 Capital Account Deficits. Notwithstanding anything herein to the contrary, this Agreement will not be construed as creating a deficit restoration obligation with respect to any deficit or negative Capital Account.

Section 3.10 Member Representations. Each Member hereby represents and warrants to the Company that:

(a) Such Member has full power and authority to enter into the Agreement. The Agreement, when executed and delivered by such Member, will constitute valid and legally binding obligations of such Member, enforceable in accordance with its terms.

(b) The Units to be acquired by such Member will be acquired for investment for such Member's own account, not as a nominee or agent, and not with a view to the resale or distribution of any part thereof, and that such Member has no present intention of selling, granting any participation in, or otherwise distributing the same. By executing this Agreement, such Member further represents that such Member does not presently have any contract, undertaking, agreement or arrangement with any Person to sell, transfer or grant participations to such Person or to any third Person, with respect to any of the Units. Such Member has not been formed for the specific purpose of acquiring the Units.

(c) Such Member has had an opportunity to discuss the Company's business, management, financial affairs and the terms and conditions of the offering of the Units with the Company's management.

(d) Such Member is an accredited investor as defined in Rule 501(a) of Regulation D promulgated under the Securities Act.

(e) Such Member represents that he, she or it has not granted and is not a party to any proxy or voting trust regarding the Units or any other agreement which is inconsistent with or conflicts with the provisions of this Agreement, and no Member shall grant any proxy or become a party to any voting trust regarding the Units or any other agreement which is inconsistent with or conflicts with the provisions of this Agreement.

(f) Such Member has not looked to, or relied in any manner upon, the Company or any of its Affiliates, managers, officers, employees or representatives for advice about tax, financial or legal consequences of a purchase of or investment in the Units, and none of the Company or any of its respective Affiliates, managers, officers, employees or representatives has made or is making any representations to such Member about, or guaranties of, tax, financial or legal outcomes of a purchase of or an investment in the Units.

(g) Such Member recognizes that the Company was only recently formed and, accordingly, has limited financial or operating history and that the investment in the Company is extremely speculative and involves a high degree of risk.

(h) Such Member specifically acknowledges such Member's understanding that:

(i) the presence of debt the Company may incur creates risks including that (1) although equity investments in leveraged companies such as the Company offer the opportunity for significant capital appreciation, such investments involve risk and can result in the loss of the Member's investment, (2) other general business risks, including the effects of a recession, may have a material adverse effect on the business, and (3) for the Company's debt to be repaid and for the Member's investment in the Company to have any value, the Company must achieve continued growth in financial performance;

(ii) the subscription price for the Units may not be indicative of the fair market value of the Units.

(i) PE Investors or an Affiliate thereof will have the power to designate a majority of the Company's managers.

Section 3.11 Preemptive Rights in Favor of PE Investors. Prior to the Company issuing any additional Units, other equity securities, equity-linked securities, or debt obligations (other than trade payables incurred in the ordinary course of business) (collectively, "Additional Securities"), each Member holding at least 10% of the outstanding Units shall be given the right to purchase the number or amount of Additional Securities in the proportion that its Units bear to the total number of Units issued and outstanding.

ARTICLE IV.
ALLOCATIONS AND DISTRIBUTIONS; DEEMED LIQUIDATION EVENT PROCEEDS

Section 4.1 Allocations of Profits and Losses.

(a) Allocations in General. The Profits and Losses of the Company for any relevant fiscal period shall be allocated to the Capital Accounts of the Members so as to ensure, to the extent possible, that the Capital Accounts of the Members as of the end of such fiscal period, as increased by the Members' shares of "minimum gain" and "partner minimum gain" (as such terms are used in Treasury Regulations Section 1.704-2) not otherwise required to be taken into account in such period, are equal to the aggregate distributions that Members would be entitled to receive if all of the assets of the Company were sold for their Gross Asset Values (assuming for this purpose only that the Gross Asset Value of an asset that secures a non-recourse liability for purposes of Section 1.1001-2 of the Treasury Regulations is no less than the amount of such liability that is allocated to such asset in accordance with Section 1.704-2(d)(2) of the Treasury Regulations), all liabilities of the Company were repaid from the proceeds of sale and the net remaining proceeds were distributed as of the end of such accounting period in accordance with Section 4.2. The allocations made pursuant to this Section 4.1(a) are intended to comply with the provisions of Section 704(b) of the Code and the Treasury Regulations thereunder and, in particular, to reflect the Members' economic interests in the Company as set forth in Section 4.2, and this Section 4.1 shall be interpreted and applied by the Board in a manner consistent with such intention.

(b) Regulatory Allocations. Although the Members do not anticipate that events will arise that will require application of this Section 4.1(b), provisions governing the allocation of income, gain, loss, deduction and credit (and items thereof) are included in this Agreement as may be necessary to provide that the Company's allocation provisions contain a so-called "Qualified Income Offset" and comply with all provisions relating to the allocation of so-called "Nonrecourse Deductions" and "Member Nonrecourse Deductions" and the chargeback thereof as set forth in the

Treasury Regulations under Section 704(b) of the Code ("Regulatory Allocations"); provided, however, that the Members intend that all Regulatory Allocations that may be required shall be offset by other Regulatory Allocations or special allocations of items so that each Member's share of the Profits, Losses and capital of the Company will be the same as it would have been had the events requiring the Regulatory Allocations not occurred. For this purpose the Board, based on the advice of the Company's auditors or tax counsel, is hereby authorized to make such special curative allocations of items of income, gain, loss and deduction as may be necessary to minimize or eliminate any economic distortions that may result from any required Regulatory Allocations.

(c) Tax Allocations.

(i) Allocations pursuant to this Section 4.1(c) are solely for purposes of federal, state and local taxes and shall not affect, or in any way be taken into account in computing, any Member's Capital Account or share of Profits, Losses, distributions or other items of income, gain, loss and deduction pursuant to any provision of this Agreement except as provided in Section 4.2(e).

(ii) The income, gains, losses, deductions and credits of the Company shall be allocated, for federal, state and local income tax purposes, among the Members in the same proportion as the allocations of such income, gains, losses, deductions and credits among the Members for computing their Capital Accounts, except that if any such allocation is not permitted by the Code or other applicable law, the allocation of income, gain, losses, deductions and credits shall be made in accordance with the Code or other applicable law and the Company's subsequent income, gains, losses, deductions and credit shall be allocated among the Members so as to reflect as nearly as possible the allocations set forth herein in computing their Capital Accounts.

(iii) Items of the Company's taxable income, gain, loss and deduction with respect to any property contributed to the capital of the Company shall be allocated among the Members in accordance with Section 704(c) of the Code so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its initial Gross Asset Value (computed in accordance with paragraph (a) of the definition of Gross Asset Value). The Company shall account for such variation under any method approved under Section 704(c) of the Code and the applicable Treasury Regulations as chosen by the Board. In the event the Gross Asset Value of any Company asset is adjusted pursuant to paragraph (b) of the definition of Gross Asset Value, subsequent allocations of income, gain, loss, and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its Gross Asset Value in the same manner as under Code Section 704(c) and the Treasury Regulations thereunder. In the event an election is made under Section 754 of the Code to adjust the value of any Company asset, subsequent allocations of income, gain, loss and deduction with respect to such asset shall take account of the variation, if any, between the adjusted basis of such asset for federal income tax purposes and its value in the same manner as under Section 704(c) of the Code and the applicable Treasury Regulations, consistent with the requirements of Treasury Regulations section 1.704-1(b)(2)(iv)(g), using any method approved under Section 704(c) of the Code and the applicable Treasury Regulations, as chosen by the Board.

(iv) Allocations of tax credits, tax credit recapture, and any items related thereto shall be allocated to the Members according to their interests in such items as

determined by the Board taking into account the principles of Treasury Regulations section 1.704-1(b)(4)(ii).

Section 4.2 Distributions.

(a) Subject to remaining provisions of this Section 4.2, distributions of Available Cash Flow will be made by the Company at such times as may be determined by the Board to the Members as follows:

(i) Distributions of net income (as determined in accordance with GAAP) shall be made to the Members in proportion to their respective Units.

(ii) Distributions not otherwise representing net income (as determined in accordance with GAAP) shall be made as follows:

(A) First, to PE Investors an amount equal to $70.00 per Unit held by PE Investors;

(B) Second, to the Founder and Rockafellow, in proportion to their respective Units, an amount equal to $70.00 per Unit held by each of them; and

(C) Lastly, to all Members in proportion to their respective Units.

(b) Any distributions pursuant to this Section 4.2 made in error or in violation of the Act, will, upon demand by the Board, be returned to the Company.

(c) Notwithstanding the distribution priority set forth in Section 4.2(a) above, for each calendar year, except to the extent that the Board determines that the Company does not have adequate reserves to meet the reasonably anticipated expenses of the Company in the ordinary course of business and/or reasonable reserves for contingencies, or unless the Board determines that any distributions pursuant to this Section 4.2(c) would breach or in any manner violate any covenant of the Company with any creditor or third party, the Company may make a distribution to each Member that is calculated to pay the income taxes on the Member's distributive share of Profits for that year allocated pursuant to Section 4.1 above (taking into account the tax benefit from any current year or unrecaptured prior year ordinary loss or net capital loss allocated as an item of net income). The distribution to pay taxes shall be determined for the Members as a group based on the highest marginal federal income tax rate applicable to individuals. A distribution to a Member made pursuant to this Section 4.2(c) as thus determined shall be reduced (but not below zero) by the amount of all other distributions made by the Company to such Member during that year pursuant to Sections 4.2(a)(iii), but not by any other distributions. If the distribution to pay taxes is not made during the year to which it relates, the distribution shall be completed, subject to the restrictions hereof, after each Member's distributive share of the Profits of the Company is determined by the Company, but in any event before April 15th of the succeeding year to which such taxes relate. The Company may make distributions to pay taxes in quarterly installments on an estimated basis prior to the end of a taxable year

(d) Notwithstanding anything to the contrary in this Section 4.2, any distribution of property other than cash may be made subject to existing liabilities and obligations to the extent approved by the Board.

Section 4.3 Allocation of Profits, Losses, and Distributions in Respect of Units Transferred. Profits or Losses allocable to any Member whose Units have been transferred, in whole or part, during any Fiscal Year, shall be allocated among the Persons who are the holders of such Units during such Fiscal Year in proportion to their respective holding periods, without separate determination of the results of the Company's operations during such periods.

Section 4.4 Deemed Liquidation Event Proceeds. In the event that a Deemed Liquidation Event is in any form described in clause (i) of the definition of Deemed Liquidation Event, the Members hereby agree that the definitive documents governing such Deemed Liquidation Event shall require and the Board shall apportion the aggregate consideration among the Units as if such consideration were instead distributed to the Members pursuant to Section 4.2(a) and each Member shall only be entitled to its relative portion of the aggregate consideration as herein determined.

ARTICLE V.
MANAGEMENT AND OPERATION

Section 5.1 Management.

(a) Board. Except as otherwise specifically provided in this Agreement or by applicable law, the Board will have full, complete and exclusive authority to manage, direct and control the business, affairs and properties of the Company, and to perform any and all other acts or activities customary or incident to the management of the Company's activities. To the extent required by applicable law, no member of the Board has any other duty to the Company, any Member or any other Person. A member of the Board (i) does not violate a duty or obligation under this Agreement or applicable law because such individual's conduct furthers the interest of a Member (including in the case of a member of the Board, the Member that designated the Board member, the Members each acknowledging that such Board member has been appointed a Board member with the expectation that such Board member will represent and serve the interest of the Member appointing him) and (ii) without limiting the foregoing clause (i), has no duty or obligation to consider any interest affecting the Company, any Member or another Person.

(b) Election and Removal of Managers. Each Member agrees to vote all Units over which such Member has voting control and to attend meetings in person or by proxy for purposes of obtaining a quorum and to execute written consents in lieu of meetings, and each Member shall take all necessary and desirable actions within such Member's control, and the Company shall take all necessary or desirable actions within its control (including, without limitation, calling special board and member meetings), so that the Board is comprised of up to five (5) managers and the following persons shall be elected to the Board:

(i) PE Investors, for so long as it is a Member, will be entitled to designate and elect three (3) members to the Board (each, a "PE Investors Manager"). Each PE Investors Manager will serve until such time that his or her successor is elected and qualified. A PE Investors Manager may be removed, with or without cause, solely by PE Investors, for so long as it is a Member. The PE Investors Managers shall initially be Greg Allen, Rob McLaughlin and Noell Michaels, with Mr. Allen serving as the Chairman of the Board. For as long as the Milestones referred to in Exhibit B are met, any replacement of a PE Investors Manger shall require prior approval of the Founder Director (not to be unreasonably withheld); provided that Kelly Grey and Pat Donahue will be permitted alternates to Rob McLaughlin and Noell Michaels.

(ii) The Founder, for so long as he is a Member holding at least 10% of all outstanding Units, will be entitled to serve as a member of the Board (the "Founder Manager").

(iii) Rockafellow, for so long as he is a Member holding at least 10% of all outstanding Units, will be entitled to serve as a member of the Board, and Rockafellow or the successor in interest to all Units held by Rockafellow who is also a Permitted Transferee owning at least 10% of all of the outstanding Units shall have the right to elect or appoint one member of the Board (the "Rockafellow Manager") should Rockafellow elect to discontinue serving or be unable to serve, as long as the Board has no good faith, reasonable objection to Person elected or appointed as the Rockafellow Manager, in which event a new Person shall be appointed or elected to which the Board has no such objection.

(iv) To the extent that clauses (i), (ii) or (iii) shall not be applicable, any member of the Board who would otherwise have been designated, elected and/or removed in accordance with the terms thereof shall instead be designated, elected and/or removed by the Members holding a majority of the total outstanding Units, voting together as a single class.

(v) Notwithstanding anything in this Section 5.1(b) to the contrary, each Manager must otherwise qualify and be permitted to serve in such position with the Company under all laws applicable to the alcohol industry. Each Manager agrees that he will take all reasonable and necessary actions to qualify to serve in such position under all laws applicable to the alcohol industry. Each Manager shall sign a customary confidentiality agreement in favor of the Company.

(c) Vacancies. Vacancies on the Board by reason of death, resignation, retirement, disqualification, removal from office, or otherwise will be filled by vote of the Members entitled to elect such managers pursuant to Section 5.1(b). The managers so chosen will hold office until their successors are duly elected and qualified, unless sooner replaced in accordance with Section 5.1(b).

(d) Regular Meetings. Regular meetings of the Board will be held at such time and place as from time to time may be determined by the Board or the Chairman of the Board.

(e) Special Meetings. Special meetings of the Board may be called by any member of the Board, the Chairman of the Board or the President on at least one (1) Business Days prior notice to each manager, either personally, by facsimile, or by e-mail transmission.

(f) Committees. From time to time, the Board may, by resolution passed by a majority of the whole Board, appoint a committee or committees for any purpose or purposes to the extent permitted by law, which committee or committees will have such powers as specified in the resolution of appointment.

(g) Quorum; Voting. At all meetings of the Board a majority of the total number of managers, which shall include a majority of the PE Investors Managers and shall include the Founder Manager, will be necessary and sufficient to constitute a quorum for the transaction of business, and the act of the managers holding a majority of the total number of votes present at any meeting at which there is a quorum will be the act of the Board, except as otherwise required by applicable law or provided by this Agreement. If a quorum is not present at any meeting of the Board, the managers present thereat may adjourn the meeting from time to time, without notice other

than announcement at the meeting, until a quorum is present. Each manager shall be entitled to one vote on all matters voted on by the Board.

(h) Action Without Meeting. Any action which may be taken at any meeting of the Board, may be taken without a meeting, without prior notice and without a vote, if (i) a consent in writing, setting forth the action so taken, and (ii) a waiver in writing of notice of and of acting at a meeting, is signed, in each case, by the number of members of the Board that would be necessary (in accordance with Section 5.1(g) above) to authorize or take such action at a meeting at which all managers entitled to vote thereon were present and voted. Prompt notice of the taking of Board action without a meeting by less than unanimous written consent will be given to those members of the Board who have not consented in writing.

(i) Meetings by Telephonic or Other Communications Equipment. Managers may participate in any meeting of the Board, or any committee, by means of conference telephone or other communications equipment by means of which all Persons participating in the meeting can hear each other, and such participation in a meeting will constitute presence in person at such meeting.

(j) Manager Compensation. The Company may compensate any manager for his or her role as a manager, as determined in the Board's discretion; provided, however, that the managers shall be entitled to reimbursement of travel expenses reasonably incurred in attending any meeting of the Board.

(k) Actions Requiring Board Notice. The following actions of the Company shall require prompt written notice from the President to the Chairman of the Board:

(i) A cash budget variance at the end of any month that exceeds $100,000;

(ii) Any dismissal or substantial ethical or criminal action of any employee or contracted consultant;

(iii) Any work-related injury of an employee or contracted consultant that requires either ambulance or hospital stay of greater than 24 hours;

(iv) Any revocation of the Company's insurance coverage or any license or permit affecting the Company;

(v) Any damage to facility or equipment that could be expected to suspend production for greater than 10 days; and

(vi) Any lawsuit filed against the Company.

(l) Actions Requiring Board Approval. The following actions (in addition to all other matters properly before the Board) shall require the prior approval of the Board, whether acting pursuant to a duly constituted meeting or by action on written consent:

(i) Hiring of the Chief Financial Officer;

(ii) Confessing a judgment against the Company or otherwise initiating or settling any legal action for or against the Company, in each case in excess of $10,000;

(iii) Approving the Company's annual budget; and

(iv) The incurrence of indebtedness (other than trade payables incurred in the ordinary course of business).

(m) Actions Requiring Board and Founder Director Approval. The following actions shall require the prior approval of the Board (including the Founder Director so long as he is serving as a Manager), whether acting pursuant to a duly constituted meeting or by action on written consent:

(i) Changing the name of the Company;

(ii) Engaging in any business other than the business of producing and selling distilled spirits and related activities;

(iii) For as long as the Milestones referred to in Exhibit B are met, a Required Sale (including for the avoidance of doubt, any Deemed Liquidation Event or Transfer of all or substantially all of the Units in an arm's length transaction or series of related transactions) or dissolution pursuant to Section 9.1(a);

(iv) Any public offering of an equity interest in the Company pursuant to the Securities Act; and

(v) Any service by the Founder on any Person's board of managers (or similar governing body) other than charitable organizations located in Waco, Texas and the American Distilling Institute and American Craft Distillers Association.

(n) Board Observation Rights. As long as PE Investors owns an interest in the Company, the Company shall invite a representative of PE Investors to attend all meetings of its Board in a nonvoting observer capacity and, in this respect, shall give such representative copies of all notices, minutes, consents, and other materials that it provides to its managers at the same time and in the same manner as provided to such managers; provided, however, that such representative shall agree to hold in confidence all information so provided; and provided further, that the Company reserves the right to withhold any information and to exclude such representative from any meeting or portion thereof if access to such information or attendance at such meeting would adversely affect the attorney-client privilege between the Company and its counsel. As long as Rockafellow or his successor in interest who is also a Permitted Transferee have a right to elect or appoint a Rockafellow Manager, the Company shall invite a representative of Rockafellow to attend all meetings of its Board in a nonvoting observer capacity and, in this respect, shall give such representative copies of all notices, minutes, consents, and other materials that it provides to its managers at the same time and in the same manner as provided to such managers; provided, however, that such representative shall agree to hold in confidence all information so provided; and provided further, that the Company reserves the right to withhold any information and to exclude such representative from any meeting or portion thereof if access to such information or attendance at such meeting would adversely affect the attorney-client privilege between the Company and its counsel The initial Rockafellow representative hereunder shall be Jody Wingrove.

Section 5.2 Individual Member Authority. The Chairman of the Board, President and the Secretary, acting individually, and any other officer hereafter appointed by the Board, each has and

will have the authority to bind the Company as an agent in the ordinary course of business. No Member acting solely in such Member's capacity as Member has the authority to bind the Company, unless such action is expressly authorized by this Agreement or by the Board. Each Member shall indemnify the Company for any costs or damages incurred by the Company as a result of any action by such Member purporting to act for or to undertake any obligation, debt, duty or responsibility on behalf of any other Member or the Company, to the extent such action or undertaking is not in accordance with the express authority of this Agreement or express authority granted by the Board or the Members in accordance with this Agreement.

Section 5.3 Members.

(a) Voting. Except as otherwise provided in this Agreement or required by applicable law, the Members will vote together as a single class on all matters submitted to a vote of the Members of the Company, with each such Member entitled to that number of votes equal to the number of Units held by such Members (with fractional Units, if any, rounded up or down to the nearest whole number). Except as otherwise provided by this Agreement, all matters subject to a vote of the Members shall be determined by the Members holding a majority of the total outstanding Units of the Company.

(b) Events Requiring Member Approval. Except as expressly provided in this Agreement or determined by the Board, the Members will not have voting rights in respect of the Units held by them, except in the case of any one of the following events, which will require the approval of the Members holding a majority of the total outstanding Units entitled to vote on such matter, at a meeting of the Members called for such purpose; provided, however, that a liquidation or dissolution of the Company shall require the approval of Members owing 86% or more of the outstanding Units entitle to vote on such matter, at a meeting called for such purpose:

(i) The merger, consolidation, or other statutory business combination of the Company with another entity.

(ii) A Corporate Conversion.

(iii) The sale or other disposition by the Company of all or substantially all of its assets not in the usual and regular course of business, in a transaction or series of transactions.

(iv) The liquidation or dissolution of the Company.

(v) The amendment of this Agreement or the Articles, subject to the provisions of Section 10.5 of this Agreement.

(c) Meetings of Members. Meetings of the Members, for any purpose, or purposes, may be called by the Chairman of the Board, the President, and will be called by the President or Secretary upon the request of Members holding at least fifteen percent (15%) of the total outstanding Units. Such request will state the purpose or purposes of the proposed meeting. Business transacted at any meeting of the Members will be limited to the purposes stated in the notice. Meetings of Members may be held at any place within or outside the State of Texas as set forth in the notice of meeting.

(d) Notice of Meeting. Whenever Members are required or permitted to take any action at a meeting, a written notice of the meeting will be given by the Company to the Members, which notice must state the place, if any, date and hour of the meeting, the means of remote communication by which Members and proxy holders may be deemed to be present in person and vote at such meeting, and the purpose or purposes for which the meeting is called. The written notice of any meeting must be given to each Member entitled to vote at such meeting not less than two (2) days before the date of the meeting.

(e) Quorum. A majority of the total outstanding Units of the Company, the holders of which are present in person or represented by proxy, will constitute a quorum for the transaction of business except as may otherwise be provided by law or by this Agreement.

(f) Fixing Record Date. In order that the Company may determine the Members entitled to notice of or to vote at any meeting of the Members, or any adjournment thereof, or to express consent to Company action in writing without a meeting, or entitled to receive payment of any distribution or allotment of any rights, or for the purpose of any other lawful action, the President may fix a record date which will not be less than ten (10) days before the date of such meeting.

(g) Members Action by Written Consent Without a Meeting. Any action which may be taken at any meeting of the Members, may be taken without a meeting, without prior notice and without a vote, if (i) a consent in writing, setting forth the action so taken, and (ii) a waiver in writing of notice of and of acting at a meeting, is signed, in each case, by Members holding not less than the minimum number of Units that would be necessary to authorize or take such action at a meeting at which all Members entitled to vote thereon were present and voted. Prompt notice of the taking of Member action without a meeting by less than unanimous written consent will be given to those Members who have not consented in writing.

(h) Proxies. At each meeting of the Members, each Member having the right to vote may vote in person or may authorize another Person or Persons to act for such Member by proxy appointed by an instrument in writing subscribed by such Member and bearing a date not more than eleven (11) months prior to said meeting, unless such instrument provides for a longer period. All proxies must be filed with the Secretary of the Company at the beginning of each meeting in order to be counted in any vote at the meeting.

(i) Meetings by Telephonic or Other Communications Equipment. Members may participate in a meeting of the Members by means of conference telephone or other communications equipment by means of which all Persons participating in the meeting can hear each other, and such participation in a meeting will constitute presence in person at such meeting.

(j) Industry Compliance. Each Member agrees that it will take all reasonable and necessary actions to qualify to serve in such position under all laws applicable to the alcohol industry.

Section 5.4 Officers.

(a) Designation of Officers. The Board may, from time to time, (i) designate one or more individuals to be officers of the Company, with such titles as the Board may assign to such individuals; (ii) subject to any agreement between the Company and any such officer, remove any officer, with or without cause; (iii) fill any vacancy of the officers and (iv) set the salaries and other

compensation of the officers from time to time. No officer may be delegated a power or duty in contravention of a specific provision of this Agreement that requires the approval of the Members or a certain class of Members or the approval of the Board or certain managers. The Company may have, at the discretion of the Board, such officers as may be appointed by the Board (including, without limitation, the offices set forth in this Section 5.4). Officers so designated will have such authority and perform such duties as this Agreement provides or as the Board may from time to time delegate to them, subject to express limitations in this Agreement. Any number of offices may be held by the same Person. Any officer may resign as such at any time (except as otherwise provided in any agreement between the Company and such officer).

(b) President. The President will, subject to the powers and directives of the Board, be in general and active charge of the business and affairs of the Company, will be the Company's chief policy-making officer, will have control over the Company's officers, agents and employees, will see that all orders and resolutions of the Board are carried into effect, and will have such other powers and duties customarily exercised by the chief executive officer of business corporations. Absent a Chairman of the Board, the President will preside at all meetings of the Board and Members. The President will have such other powers and duties as may be prescribed by the Board or as may be provided in this Agreement.

(c) Chairman of the Board. The Chairman of the Board, if such officer is appointed, will, if present, preside at all meetings of the Board and the Members, and will have such other powers and duties as may be prescribed by the Board or as may be provided by this Agreement.

(d) Chief Financial Officer. The Chief Financial Officer, if such officer is appointed, will have the general powers and duties of managing the financial affairs of the Company and its financing arrangements. The Chief Financial Officer will keep full and accurate accounts of receipts and disbursements in books belonging to the Company and will deposit all moneys and other valuable effects in the name and to the credit of the Company in such depositories as may be designated by the Board. The Chief Financial Officer will report to the President and the Board and will have such other powers and duties as may be prescribed by the President or the Board or as may be provided in this Agreement.

(e) Vice Presidents. The Vice Presidents, if any such officers are appointed, will have such other powers and duties as may be prescribed by the President or the Board, or as may be provided in this Agreement. In the absence or disability of the President, the Vice Presidents, in order of their rank as fixed by the Board, shall perform all the duties of the President and when so acting shall have all powers of and be subject to all the restrictions upon the President.

(f) Secretary. The Secretary will keep the minutes of all meetings of the Board and Members in appropriate books and will attend to the giving of all notices for the Company. The Secretary will have charge of such books and papers as the Board may direct, will exercise all powers and duties customarily exercised by the secretary of business organizations, and will have such other powers and duties as may be prescribed by the Board or the President, or as may be provided in this Agreement.

Section 5.5 Indemnification; Limitation of Liability.

(a) Indemnification. The Company shall indemnify every Person (the "Indemnitee") who is or was a party or is or was threatened to be made a party to any action, suit, or

proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such Person is or was a manager or officer of the Company, or, while a manager or officer of the Company, is or was serving at the request of the Company as a manager, manager, officer, employee, agent or trustee of another corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise, against any losses, damages or expenses actually and reasonably incurred by the Indemnitee in connection with such action, suit or proceeding, except for liability (i) for any breach of the Indemnitee's duty of loyalty to the Company or its Members, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) for any transaction from which the Indemnitee derived an improper personal benefit or (iv) arising or related to events occurring prior to the effective date. The right to indemnification conferred in this Section 5.5(a) includes the right of the Indemnitee to be paid by the Company, in the Board's discretion, the expenses incurred in defending any such action in advance of its final disposition to the fullest extent permitted by the Act (an "Advancement of Expenses"); provided, however, that the Company will only make an Advancement of Expenses upon delivery to the Company of an undertaking, by or on behalf of such Indemnitee, to repay all amounts so advanced if it is ultimately determined that such Indemnitee is not entitled to be indemnified under this Section 5.5(a) or otherwise.

(b) Limitation of Liability. A manager of the Company will not be personally liable to the Company or its Members for monetary damages for breach of fiduciary duties as a manager, provided that the liability of a manager (i) for any breach of the manager's loyalty to the Company or its Members, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, or (iii) for any transaction from which the manager derived an improper personal benefit will not be eliminated or limited hereby.

(c) PE Investors Indemnification. Without limitation of any other provision of this Agreement, the Company, on its own behalf and on behalf of its successors and assigns, agrees to defend, indemnify and hold PE Investors, its Affiliates (other than the Company and its subsidiaries) and direct and indirect partners (including partners of partners and stockholders and members of partners), members, stockholders, managers, officers, employees and agents and each person who controls any of them within the meaning of Section 15 of the Securities Act, or Section 20 of the Exchange Act (collectively, the "PE Investors Indemnified Parties" and, individually, a "PE Investors Indemnified Party") harmless from and against any and all damages, liabilities, losses, taxes, fines, penalties, reasonable costs and expenses, as the same are incurred, of any kind or nature whatsoever (including all amounts paid in investigation, defense or settlement of the foregoing) ("Indemnified Losses") sustained or suffered by any such PE Investors Indemnified Party, which may be based upon, relating to, arising out of, or by reason of any third party or governmental claims against such PE Investors Indemnified Party relating in any way to such PE Investors Indemnified Party's status as a security holder or controlling person of the Company (including, without limitation, any and all Indemnified Losses under the Securities Act, the Exchange Act or other federal or state statutory law or regulation, at common law or otherwise, which relate directly or indirectly to the registration, purchase, sale or ownership of any securities of the Company or to any fiduciary obligation owed with respect thereto), including, without limitation, in connection with any third party or governmental action or claim against such PE Investors Indemnified Party relating to any action taken or omitted to be taken or alleged to have been taken or omitted to have been taken by any PE Investors Indemnified Party as security holder or controlling person of the Company or otherwise, alleging so called control person liability or securities law liability; provided, however, that the Company will not be liable to any PE Investors Indemnified Party to the extent that such Indemnified Losses are based upon, relate to, arise out of, or by reason of, conduct by such PE

Investors Indemnified Party which constitutes intentional and knowing misconduct or gross negligence or is prohibited by applicable law, rule, regulation or contract.

(d) Indemnification Priority. The Company hereby acknowledges that the rights to indemnification, Advancement of Expenses and/or insurance provided pursuant to this Section 5.5 may also be provided to certain Indemnitees or PE Investors Indemnified Parties by PE Investors and certain of its respective Affiliates (other than direct or indirect subsidiaries of the Company) (collectively, the "Affiliate Indemnitors"). The Company hereby agrees that, as between itself and the Affiliate Indemnitors, (i) the Company is the indemnitor of first resort with respect to all such indemnifiable claims against such Indemnified Persons, whether arising under this Agreement or otherwise (i.e., its obligations to such Indemnified Persons are primary and any obligation of the Affiliate Indemnitors to advance expenses or to provide indemnification for the same expenses or liabilities incurred by such Indemnified Persons are secondary), (ii) the Company shall be required to advance the full amount of expenses incurred by such Indemnified Persons and shall be liable for the full amount of all expenses, judgments, penalties, fines and amounts paid in settlement to the extent legally permitted and as required by the terms of this Agreement (or any other agreement between the Company and such Indemnified Persons), without regard to any rights such Indemnified Persons may have against the Affiliate Indemnitors, and (iii) the Company irrevocably waives, relinquishes and releases the Affiliate Indemnitors from any and all claims against the Affiliate Indemnitors for contribution, subrogation or any other recovery of any kind in respect thereof. The Company agrees to indemnify the Affiliate Indemnitors directly for any amounts that the Affiliate Indemnitors pay as indemnification or advancement on behalf of any such Indemnified Person and for which such Indemnified Person may be entitled to indemnification from the Company in connection with serving as a manager or officer of the Company or its subsidiaries. The Company further agrees that no advancement or payment by the Affiliate Indemnitors on behalf of any such Indemnified Person with respect to any claim for which such Indemnified Person has sought indemnification from the Company shall affect the foregoing and the Affiliate Indemnitors shall be subrogated to the extent of such advancement or payment to all of the rights of recovery of such Indemnified Person against the Company, and the Indemnified Person shall cooperate with the Affiliate Indemnitors in pursuing such rights.

(e) Insurance. The Company shall use commercially reasonable efforts to maintain a directors and officers insurance policy with such limits and other terms as are reasonably prudent in the distilling industry.

(f) Repeal or Modification. Any repeal or modification of this Section 5.5 will not adversely affect any right or protection of any individual existing at the time of such repeal or modification with respect to acts or omissions occurring prior to such repeal or modification.

ARTICLE VI.
FISCAL MATTERS; RECORDS

Section 6.1 Books and Records. Full and accurate books and records of the Company (including, without limitation, all information and records required by the Act) will be maintained at the Company's principal place of business. The Members will have such access to the books and records of the Company as determined by the Board, in its sole discretion.

Section 6.2 Fiscal Year. The fiscal year of the Company (the "Fiscal Year") for financial statement and federal income tax purposes will end on December 31st unless otherwise determined by the Board.

Section 6.3 Tax Status; Elections. Notwithstanding any provision hereof to the contrary, solely for purposes of the United States federal income tax laws, each of the Members hereby recognizes that the Company will be subject to all provisions of Subchapter K of Chapter 1 of Subtitle A of the Code; provided, however, that the filing of U.S. Partnership Returns of Income will not be construed to extend the purposes of the Company or expand the obligations or liabilities of the Members. The Company may file any tax elections permitted or required under the Code or other applicable law. The Company will elect a method of accounting based upon the advice and recommendations of the Company's appointed accountants or counsel.

Section 6.4 Tax Reports to Members. Within a reasonable time after the end of each calendar year, all information necessary for the preparation of the Members' federal, state and local income tax returns will be prepared, at the Company's expense, and will be delivered to each Member.

Section 6.5 Bank Accounts. The Board shall cause the Company to establish and maintain one or more separate bank and investment accounts for Company funds in the Company name with such financial institutions and firms as the Board may select and designate signatories thereon. The Board and the officers of the Company shall not commingle the Company's funds with other funds of any other Person.

Section 6.6 Tax Matters Partner. PE Investors is designated as the "tax matters partner" as that term is defined in Section 6231(a)(7) of the Code, and is authorized to exercise authority as such, subject to the direction of the Board.

Section 6.7 Bonus Pool. The Company shall make available a bonus, phantom equity, or similar plan based on profitability and/or return on assets and/or EBITDA for key employees of the Company and for certain non-employees who contribute substantially to the success of the Company. Payments from the plan will be made at the discretion of the President, subject to a formula to create a maximum available for payment each year to be agreed upon by the Board (including the Founder Manager). Such bonus pool plans will become a documented facet of the annual business plan affording clear financial criteria and as much as possible objective judgment.

ARTICLE VII.
CORPORATE CONVERSION

Section 7.1 Corporate Conversion. Pursuant to terms of this Agreement, the Act, the Code and other applicable law, the Board and the Members may approve the conversion of the Company into a corporation or other entity, whether by way of statutory conversion, merger, consolidation or otherwise (the "Corporate Conversion"; such successor entity, the "Corporate Successor") upon such terms and conditions as the Board and holders of a majority of the Units deem advisable; provided, however, that the Corporate Conversion shall be effected in such a manner so as to not alter the relative equity ownership of the Members in the Company (or any Corporate Successor thereto) and to cause the respective Units of the Company to be exchanged for or converted into shares of corporate stock or other equity interests having substantially the same rights, preferences and obligations as were applicable to such Units exchanged for such shares or

other equity interests as of the time of the Corporate Conversion, except, in each case, for differences that are immaterial or that are consented to by the Members holding greater than eighty six percent (86%) of the class or series of Units to be adversely affected thereby. The Company and all Members shall cooperate in good faith and execute all documents reasonably necessary in connection with the Corporate Conversion, including, without limitation, a stockholders' or similar agreement (the "Corporate Successor Stockholders Agreement") containing, to the extent applicable, the provisions in this Agreement.

ARTICLE VIII.
TRANSFER OF UNITS

Section 8.1 Restrictions on the Transfer of Units.

(a) Except as expressly provided elsewhere herein, the Units of the Company held by Members shall only be Transferred in compliance with this Article VIII. All transferring Members will cause any proposed transferee of the Units (including Permitted Transferees) held by such Member to execute a counterpart of this Agreement and become bound hereby in the same manner as Members. Upon the execution of a counterpart of this Agreement by any Permitted Transferee as an amendment hereto setting out the Units owned by such Permitted Transferee and memorializing the admission of the Permitted Transferee as a Member and compliance with the other provisions of this Section 8.1, the Permitted Transferee shall be admitted as a Member without the need for further action and all of the other Members shall also execute such counterpart of this Agreement.

(b) Before any proposed Transfer of any Units of the Company held by Members, unless there is in effect a registration statement under the Securities Act covering the proposed transaction, the Member holding such Units shall give notice to the Company of such Member's intention to effect such Transfer. Each such notice shall describe the manner and circumstances of the proposed Transfer in sufficient detail and, if reasonably requested by the Company, shall be accompanied at such Member's expense by either (i) a written opinion of legal counsel who shall, and whose legal opinion shall, be reasonably satisfactory to the Company, addressed to the Company, to the effect that the proposed transaction may be effected without registration under the Securities Act, or (ii) any other evidence reasonably satisfactory to counsel to the Company to the effect that the proposed Transfer of Units may be effected without registration under the Securities Act.

(c) Before any Member other than PE Investors may effect any Transfer (other than pursuant to a Sale Proposal) of any Units, such Member must give at the same time to the Company a written notice signed by the Member ("Member's Notice") stating (a) the Member's bona fide intention to Transfer such Units (the Units proposed to be Transferred, the "Offered Units"); (b) the number and class of the Offered Units; (c) the name, profession, employer, address and relationship to the Member, if any, of each proposed transferee (the "Proposed Transferee"); and (d) the bona fide cash price or, in reasonable detail, other consideration, per Unit for which the Member proposes to transfer or sell such Offered Units (the "Offered Price") (and if such consideration consists in part or in whole of property other than cash, the Member will provide a good faith estimate of the fair market value of such non-cash consideration and such information, to the extent reasonably available to the Member, relating to such non-cash consideration as the Company may reasonably request in order to evaluate such non-cash consideration). Upon the

request of the Company, the Member will promptly furnish such information to the Company as may be reasonably requested to establish that the offer and proposed Transfer are bona fide.

(d) Notwithstanding the foregoing, no Transfer which otherwise is made in compliance with this Section 8.1 may be effected by any Member unless:

(i) except as otherwise agreed to by the Board, such Transfer would not cause a termination of the Company within the meaning of Section 708 of the Code;

(ii) the transferring Member and the Proposed Transferee execute and deliver to the Company such instruments of transfer and assignment with respect to such Transfer as are in form and substance reasonably satisfactory to the Board;

(iii) the transferring Member and/or the Proposed Transferee furnish the Company with the name and address of the transferee and such other information as may be required by Section 6050K of the Code and the Treasury Regulations thereunder;

(iv) if so requested by the Board, the transferring Member pays the Company a transfer fee that is sufficient to pay all reasonable expenses of the Company in connection with such Transfer.

Section 8.2 Right of First Refusal.

(a) Notwithstanding anything in this Article VIII to the contrary, with respect to any proposed Transfer of Units by a Member other than PE Investors other than to a Permitted Transferee, the Company shall have the right of first refusal to purchase all or part of the Offered Units, exercisable as set forth in Sections 8.2(b) hereof.

(b) The Company's right of first refusal may be exercised as follows:

(i) The Company, by action of the Board, shall have the opportunity to purchase all or any part of the Offered Units.

(ii) If the Company desires to purchase all or any part of the Offered Units, the Company must, within the twenty (20) day period (the "Company Refusal Period") commencing on the date of receipt of the Member's Notice, give written notice to the Member of the Company's election to purchase the Offered Units. In the event that the Company elects not to purchase all of the Offered Units, the remaining Offered Units may be purchased by PE Investors as set forth in Section 8.2(c) below.

(iii) On or prior to the expiration of the Company Refusal Period, the Company shall give written notice to the Member proposing to Transfer the Offered Units and PE Investors specifying either (A) that all or a portion of the Offered Units will be purchased by the Company pursuant to its right of first refusal, or (B) that the Company waived its right to purchase any of the Offered Units.

(c) The right of first refusal of PE Investors may be exercised as follows:

(i) In the event the Company does not purchase all of the Offered Units, PE Investors shall have the opportunity to purchase some or all of the remaining Offered Units.

(ii) If PE Investors desires to purchase the remaining Offered Units, PE Investors must, within the twenty (20) day period commencing on expiration of the Company Refusal Period, give written notice to the transferring Member and to the Company of the election to purchase some or all of the remaining Offered Units.

(iii) If the Offered Units are held by Rockafellow, then Founder, so long as he is employed by the Company, shall have a pro rata right to participate with PE Investors in the secondary right of first refusal on the same terms as are offered herein to PE Investors.

(d) The purchase price for the Offered Units proposed to be purchased by the Company or PE Investors exercising its right of first refusal under this Agreement will be the Offered Price, but will be payable as set forth in Section 8.2(e) hereof. If the Offered Price includes consideration other than cash, the cash equivalent value of the non-cash consideration will be determined in good faith by the Board of the Company, which determination will be binding upon the Company and the transferring Member absent fraud or manifest error.

(e) Payment of the purchase price for the Offered Units purchased by the Company or PE Investors exercising a right of first refusal will be made by the sixty-first (61st) day after receipt of the Member's Notice. Unless otherwise agreed to by the transferring Member, payment of the purchase price will be made by (i) by cashier's check drawn on a state or national bank reasonably acceptable to the seller of the Offered Units or wire transfer of same day, immediately available funds; (ii) by cancellation of all or a portion of any outstanding indebtedness of the transferring Member to the Company or PE Investors, as applicable; or (iii) by any combination of the foregoing.

(f) If the Company or PE Investors exercises its right of first refusal to purchase the Offered Units, then, upon consummation of such purchase, the Member will have no further rights as a holder of the Offered Units so purchased except the right to receive payment for the purchased Offered Units in accordance with the terms of this Agreement, and the Member will forthwith cause all certificate(s), if any, evidencing such purchased Offered Units to be surrendered to the Company for transfer to the Company or PE Investors, as applicable.

(g) If and to the extent that the Company and PE Investors have not elected to purchase all or part of the Offered Units, then, subject to Section 8.1, the transferring Member may Transfer up to that portion of the Offered Units permitted to be sold by the Member to the Proposed Transferee(s), at the Offered Price or at a higher price, provided that such transfer (i) is consummated within ninety (90) days after the date of the Member's Notice, and (ii) is in accordance with all the terms of this Agreement. Any proposed Transfer on terms and conditions more favorable than those described in the Member's Notice, as well as any subsequent proposed Transfer of any of the Offered Units, shall again be subject to this Agreement and shall require full compliance by the Member with the procedures in this Agreement.

Section 8.3 Drag-Along Rights.

(a) Notwithstanding anything contained in this Agreement to the contrary, but subject to the approvals that may be required by Section 5.1(m), if the holders of a majority of the outstanding Units (collectively, the "Dragging Members") approve a Deemed Liquidation Event (a "Company Sale Proposal") or a bona fide proposal (a "Unit Sale Proposal," and, collectively with a Company Sale Proposal, a "Sale Proposal") to Transfer all or substantially all of their Units in an

arm's length transaction or series of related transactions (in each case, a "Required Sale"), then the Company and/or the Dragging Members, as the case may be, shall deliver a written notice (a "Required Sale Notice") with respect to such Sale Proposal at least ten (10) Business Days prior to the anticipated closing date of such Required Sale to the Company and all other Members.

(b) The Required Sale Notice will include the material terms and conditions of the Required Sale, including (A) the name and address of the proposed buyer or transferee, (B) the proposed amount and form of consideration per Unit, and (C) if known, the proposed Transfer or merger closing date. The Dragging Members and/or the Company will deliver or cause to be delivered to each other Member copies of all transaction documents relating to the Required Sale.

(c) Each Member, upon receipt of a Required Sale Notice, shall be obligated to (i) take all necessary or desirable actions in connection with the consummation of the Sale Proposal as reasonably requested by the Company or the Dragging Members, (ii) sell all of its Units (or in the case of a Unit Sale Proposal, a number of its Units equal to the number of Units owned by the Dragging Members, in aggregate, that are being transferred in such Required Sale, divided by the aggregate number of Units owned by the Dragging Members), and participate in the Required Sale contemplated by the Sale Proposal, (iii) vote their Units in favor of the Required Sale at any meeting of Members called to vote on or approve the Required Sale and/or to consent in writing to the Required Sale, (iv) waive all applicable dissenters' or appraisal rights in connection with the Required Sale, if any, and (v) enter into agreements relating to the Required Sale and to agree (as to itself) to make customary representations, warranties, covenants, indemnities and other agreements, or in the case of a Unit Sale Proposal, make to the proposed purchaser the same representations, warranties, covenants, indemnities and other agreements as the Dragging Members agree to make, in each case in connection with the Required Sale.

(d) Members subject to a Required Sale will bear their pro rata share (based upon the amount of consideration received by such Member for his or its Units in such Required Sale) of the costs of any sale of such Units pursuant to a Required Sale to the extent such costs are not otherwise paid by the Company or the acquiring Person.

(e) Each Member hereby acknowledges and agrees that such Member is not entitled to any dissenter's rights, appraisal rights or similar rights under this Agreement, the Act or otherwise.

(f) Notwithstanding the foregoing, no Member will be required to comply with Section 8.3(c) above in connection with any Required Sale unless:

(i) liability shall be limited to such Member's applicable share (determined based on the respective proceeds payable to each Member in connection with such Required Sale) of a negotiated aggregate indemnification amount that applies equally to all Members but that in no event exceeds the amount of consideration otherwise payable to such Member in connection with such Required Sale, except with respect to claims related to fraud by such Member, the liability for which need not be limited as to such Member;

(ii) upon the consummation of the Required Sale each Member will receive the same form of consideration and the aggregate consideration receivable by all holders of Units shall be allocated among the Units on the basis of the relative liquidation preferences to which the holders of each respective class of Units are entitled in a Deemed Liquidation Event

as provided in Section 4.4 above (assuming for this purpose that the Required Sale is a Deemed Liquidation Event).

The limitations set forth in this subsection (f) shall not be deemed to include any liability of a Member or any Affiliate thereof resulting from the actions of any manager of the Company, and acting in such capacity, that is an Affiliate of such Member.

Section 8.4 Resignation, Withdrawal of Members. No Member shall have the right to resign or withdraw from the Company or terminate all or any portion of its interest in the Company without first receiving the written consent of the Board.

ARTICLE IX.
DISSOLUTION, LIQUIDATION, AND TERMINATION

Section 9.1 Dissolution. The Company will dissolve and its affairs will be wound up upon the first to occur of any of the following:

(a) upon the approval of the Board, subject to the rights of the Members pursuant to Section 5.3(b) and subject to the approvals that may be required by Section 5.1(m); and

(b) the entry of a decree of judicial dissolution or an administrative dissolution of the Company under the Act.

Section 9.2 Liquidation and Termination. Upon dissolution of the Company, the President, subject to the direction of the Board, shall:

(a) promptly notify all Members of such dissolution;

(b) wind up the affairs of the Company;

(c) prepare and file all instruments or documents required by law to be filed to reflect the dissolution of the Company; and

(d) after paying or providing for the payment of all liabilities and obligations of the Company as described below, distribute the assets of the Company as provided by the terms of this Agreement.

Section 9.3 Distribution of Assets. Upon dissolution of the Company, the assets of the Company will be allocated as set forth below:

(a) first, to pay all outstanding liabilities and expenses of the Company;

(b) next, to establish such reserves for unknown or contingent liabilities as the Board may determine; and

(c) lastly, any remaining balance will be distributed to the Members in accordance with Section 4.2(a).

Section 9.4 Waiver of Certain Rights. Except as otherwise set forth herein, to the maximum extent permitted by applicable law, each Member irrevocably waives any right it may

have to maintain any action for dissolution of the Company, or to maintain any action for partition of the property of the Company.

ARTICLE X.
GENERAL PROVISIONS

Section 10.1 Notices. Unless otherwise provided, any notice required or permitted under this Agreement shall be given in writing and shall be deemed effectively given upon the earlier of actual receipt or: (a) personal delivery to the party to be notified, (b) when sent, if sent by electronic mail during normal business hours of the recipient, and if not sent during normal business hours, then on the recipient's next business day, (c) five days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (d) one business day after deposit with a nationally recognized overnight courier, freight prepaid, specifying next business day delivery, with written verification of receipt. All communications shall be sent to the respective parties at their address as noted below or as set forth on Exhibit A, or to such e-mail address or address as subsequently modified by written notice given in accordance with this Section 10.1:

(a) if to the Company, at the Company's principal business address, Attn: Chairman of Board of Managers; and

(b) if to any Member, at the address of such Member set forth in Exhibit A.

Section 10.2 Power of Attorney; Appointment of Attorney-in-Fact.

(a) Each Member hereby irrevocably makes, constitutes, and appoints the President of the Company or any other officer designated by the Board, with full power of substitution and resubstitution, as such Member's true and lawful attorney-in-fact for such Member and in such Member's name, place, and stead and for such Member's use and benefit to sign, execute, certify, acknowledge, swear to, file, and record (i) any amendments to this Agreement that are not required to be approved by the Members pursuant to Sections 10.5(b) and 10.5(c) hereof; (ii) any transfer documents or other documents required to effectuate any purchase and sale of Units pursuant to the terms of Article VIII hereof; (iii) any Corporate Successor Stockholders Agreement required to be executed by the Members following a Corporate Conversion pursuant to Section 7.1 hereof; (iv) the valid exercise by the Board or the officers of the Company of any powers granted under this Agreement; (v) any election of managers nominated in accordance with Section 5.1, to the extent such Member refuses to vote its Units or execute written consents in lieu of meetings as required by Section 5.1; (vi) any amendment admitting a Permitted Transferee as Member pursuant to Section 8.1; and (vii) any certificates, instruments, or documents as may be required by the laws of the State of Texas or any other jurisdiction in which the Company is qualified to do business.

(b) The power of attorney granted pursuant to Section 10.2(a) of this Agreement:

(i) is a special power of attorney coupled with an interest, is irrevocable, and shall survive the death, insanity or incapacity of the granting Member;

(ii) may be exercised by such attorney-in-fact for each Member by listing all of the Members executing any agreement, certificate, instrument or document with the single signature of such attorney-in-fact as attorney-in-fact for all of them; and

(iii) shall survive the delivery of a purported assignment by a Member of the whole or a portion of such Member's Units, except that where the purchaser, transferee or assignee thereof is to be admitted as a substituted Member, the power of attorney shall survive the delivery of such assignment for the sole purpose of enabling such attorney-in-fact to execute, acknowledge and file any such agreement, certificate, instrument or document necessary to effect such substitution.

Section 10.3 Entire Agreement; Supersedure. This Agreement together with any Equity Agreements supersedes all prior agreements, whether written or oral, between the Company and the Members with respect to its subject matter and constitutes a complete and exclusive statement of the terms of the agreement between the parties with respect to its subject matter. The provisions of this Agreement (including Section 5.1(a)) replace, eliminate and otherwise supplant those duties (including fiduciary duties) that a Member, member of the Board or officer of the Company might otherwise have under applicable law.

Section 10.4 Waiver. No delay or omission to exercise any right, power or remedy accruing to any party under this Agreement, upon any breach or default of any other party under this Agreement, shall impair any such right, power or remedy of such non-breaching or non-defaulting party nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of or in any similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of any party of any breach or default under this Agreement, or any waiver on the part of any party of any provisions or conditions of this Agreement, must be in writing and shall be effective only to the extent specifically set forth in such writing.

Section 10.5 Amendment or Modification; Termination.

(a) Subject to Sections 10.5(b) and 10.5(c), this Agreement and the Articles may be amended, waived or modified from time to time only upon the written approval of the Company and the approval of Members holding at 86% of the total outstanding Units, voting together as a single class.

(b) Notwithstanding anything contained in Section 10.5(a) to the contrary, this Agreement may not be amended, modified or terminated without the approval of a particular Member if any such amendment, modification or termination would affect such holder in a manner that is materially adversely different than the effect of such amendment, modification or termination on all other Members.

(c) Notwithstanding anything contained in Section 10.5 or any other provision of this Agreement to the contrary, (1) no Member approval is required for any amendment made by the President, or such other officer designated by the President, to Exhibit A in accordance with Section 3.1, and (2) the Board may, without any Member action, approve any amendment to the Articles or this Agreement:

(i) to reflect any change in the registered office or registered agent of the Company;

(ii) that is of an inconsequential nature and does not adversely affect the Members;

(iii) that is required by this Agreement; and

(iv) that clarifies any ambiguity or corrects any provision herein that may be inconsistent with the manifest intent of this Agreement.

Section 10.6 Binding Effect. Subject to the restrictions on Transfers set forth in this Agreement, this Agreement will apply to, and be binding in all respects upon, and inure to the benefit of the permitted successors and assigns of the Company (including any Corporate Successor) and the Members.

Section 10.7 Governing Law. This Agreement, and any dispute, controversy or claim arising out of or relating to this Agreement or a breach thereof (a "Claim"), shall be governed by, and construed in accordance with, the laws of the State of Texas, excluding any conflict-of-laws rules or principles that might refer the governance or the construction of this Agreement to the law of another jurisdiction.

Section 10.8 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including .pdf) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

Section 10.9 Severability. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. The parties further agree that if any provision contained herein is, to any extent, held invalid or unenforceable in any respect under the laws governing this Agreement, they will take any actions necessary to render the remaining provisions of this Agreement valid and enforceable to the fullest extent permitted by law and, to the extent necessary, will amend or otherwise modify this Agreement to replace any provision contained herein that is held invalid or unenforceable with a valid and enforceable provision giving effect to the intent of the parties.

Section 10.10 Construction. The headings of Articles and Sections in this Agreement are provided for convenience only and will not affect its construction or interpretation. All words used in this Agreement will be construed to be of such gender or number as the context requires. The language used in the Agreement will be construed, in all cases, according to its fair meaning, and not for or against any party hereto. The parties acknowledge that each party has reviewed this Agreement and that rules of construction to the effect that any ambiguities are to be resolved against the drafting party will not be available in the interpretation of this Agreement.

Section 10.11 Waiver of Jury Trial.

THE PARTIES HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING ARISING OUT OF OR IN ANY WAY PERTAINING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY, WHETHER NOW OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE. ANY PARTY MAY FILE A COPY OF THIS SECTION 10.11 WITH ANY

COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY AND BARGAINED AGREEMENT BETWEEN THE PARTIES TO IRREVOCABLY WAIVE TRIAL BY JURY, AND THAT ANY PROCEEDING OR ACTION WHATSOEVER BETWEEN THE PARTIES RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY WILL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A TRIAL.

Section 10.12 Remedies. All parties, in addition to being entitled to exercise all rights granted by law, including recovery of damages, will be entitled to specific performance of their rights under this Agreement. Each party hereto agrees that monetary damages would not be adequate compensation for any loss incurred by reason of a breach by it of the provisions of this Agreement and hereby agrees to waive the defense in any action for specific performance that a remedy at law would be adequate. In addition, the rights of each party set forth in this Agreement shall be in addition to, and not in lieu of, any other rights that such party may have in any capacity. All remedies, either under this Agreement or by law or otherwise afforded to any party, shall be cumulative and not alternative.

Section 10.13 Reservation of Other Business Opportunities. The Company renounces any interest or expectancy of the Company in, or in being offered an opportunity to participate in, any Excluded Opportunity. An "Excluded Opportunity" is any matter, transaction or interest that is presented to, or acquired, created or developed by, or which otherwise comes into the possession of, (i) any PE Investors Manager, other than someone who is an employee of the Company or any of its subsidiaries; (ii) PE Investors or any partner, member, manager, shareholder, Affiliate, employee or agent of PE Investors, other than someone who is an employee of the Company or any of its subsidiaries, (iii) the Rockefellow Manager, other than someone who is an employee of the Company or any of its subsidiaries; or (iv) Rockafellow or his successors in interest who are entitled to elect or appoint the Rockafellow Manager (the "Rockafellow Parties") or any partner, member, manager, shareholder, Affiliate, employee or agent of the Rockafellow Parties, other than someone who is an employee of the Company or any of its subsidiaries (collectively, "Covered Persons"), unless such matter, transaction or interest is first presented to, or acquired, created or developed by, or otherwise first comes into the possession of, a Covered Person expressly in such Covered Person's capacity as a manager of the Company. Notwithstanding anything contained herein to the contrary, for so long as the Founder is employed by the Company, no Member shall make an investment in any business involving aged whisky or aged rum; provided that PE Investors may make an investment in the Virginia Distillery Company.

Section 10.14 Takeover Proposals. Each Member (on behalf of itself and, to the extent that such Member would be responsible for the acts of the following Persons under principles of agency law, its managers, officers, Affiliates, shareholders, partners, employees, agents and members) covenants and agrees that it shall not, directly or indirectly, without the prior written consent of PE Investors and Founder (which may be withheld or delayed in the sole discretion of PE Investors or Founder): (a) enter into negotiations, provide advice, provide any form of assistance or otherwise encourage, facilitate or make any proposal or offer for any takeover bid, amalgamation, plan of arrangement, reorganization, recapitalization, asset sale, merger, business combination or any similar extraordinary transaction involving the Company or any of its Affiliates or Members (each, a "Takeover Proposal"); (b) engage in any discussion or negotiations, or enter into any agreement, commitment or understanding with any third party with respect to any Takeover Proposal; (c) provide or arrange any equity or debt financing to any third party considering or proposing any Takeover Proposal or (d) assist, advise or encourage a third party in

doing any of the foregoing. In exercising its sole discretion under this Section 10.14, PE Investors shall be entitled to consider only such interests and factors as PE Investors desires (including its own, and its Affiliates' interests) and shall, to the fullest extent permitted by applicable law, have no duty or obligation to give any consideration to any interest of or factors affecting the Company, any other Member or any other Person.

Section 10.15 Designees. Each of the rights granted to PE Investors hereunder may, upon the request of PE Investors, be exercised in whole or in part from time to time by its Affiliates and other designees.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the undersigned Members and the Company have executed this Agreement effective as of the Effective Date.

COMPANY:

Balcones Distilling, LLC

By: _____
Charles D. Tate, President

MEMBERS:

PE Investors II, LLC

By:_____
Name:_____
Its:_____

_____
Charles D. Tate

_____
Michael Rockafellow

IN WITNESS WHEREOF, the undersigned Members and the Company have executed this Agreement effective as of the Effective Date.

COMPANY:

Balcones Distilling, LLC

By: _____
Charles D. Tate, President

MEMBERS:

PE Investors II, LLC

By: _____
Name: MARK ALLEN
Its: MEMBER MANAGER

_____
Charles D. Tate

_____
Michael Rockafellow

IN WITNESS WHEREOF, the undersigned Members and the Company have executed this Agreement effective as of the Effective Date.

COMPANY:

Balcones Distilling, LLC

By: _____
Charles D. Tate, President

MEMBERS:

PE Investors II, LLC

By: _____
Name: _____
Its: _____

_____
Charles D. Tate

_____
Michael Rockafellow

Exhibit A
Members and Units

As of June 3, 2013

Member Address	Units
PE Investors II, LLC _____ _____ Fax: _____	58,000
Charles D. Tate _____ _____ Fax: _____	27,000
Michael Rockafellow _____ _____ Fax: _____	15,000
Total	**100,000**

Exhibit B
Milestones

Time Period Covered	Milestone
Effective Date through December 31, 2017	Milestone will be assumed to be met
January 1, 2018 through December 31, 2019	2017 Revenues exceed $4,000,000 and EBITDA exceeds $1,000,000
January 1, 2020 through December 31, 2022	2019 Revenues exceed $8,000,000 and EBITDA exceeds $2,000,000
January 1, 2023 and thereafter	Prior Year's Revenues exceed $15,000,000 and EBITDA exceeds $4,000,000

For purposes of this Exhibit B, revenue and EBITDA for the applicable year shall be determined in accordance with generally accepted accounting principles and in good faith by the Board of Managers.

EXHIBIT 3

December 9, 2014

Chip Tate
15313 Old China Spring Road
China Spring, Texas 76633

Dear Mr. Tate:

I am writing to demand payment according to the terms of our May 23, 2013 loan agreement, a copy of which is attached to this letter.

According to the terms of that agreement, I made a personal loan to you of $10,000. In exchange for that loan, you were required to pay me a portion of any profits you received from Balcones. In addition, according to the terms of that agreement, the amount you were to pay me was to be equivalent to a 1% ownership interest in Balcones.

It is my understanding that you have recently entered into a settlement agreement with Balcones wherein you sold your shares to Balcones. While I do not know the terms of that settlement or how much money you may have received, it seems to me that this would be the last opportunity you would have to receive profits from Balcones. Therefore, I am asking that you satisfy the terms of our agreement out of any settlement proceeds you received from Balcones. Specifically, it is my understanding that I would be entitled to the same value you received on your shares multiplied by 1,000, which would represent 1% of the outstanding shares in Balcones.

Accordingly, I am asking you to pay that amount to me within the next thirty (30) days. If I do not receive such payment by 5:00 p.m. on January 8, 2015, then I will be forced to file a lawsuit to seek the money I'm entitled to, plus attorneys' fees. In addition, I will have to seek disclosure of the amount paid to you in the settlement in order to calculate the full amount owed to me.

Please forward payment or any other correspondence to me at my address: 605 North 16th Street, Waco, Texas 76707. I look forward to receiving payment as promptly as possible.

Sincerely yours,

By: Laura Himstedt
Laura Himstedt