

COMPROMISE SETTLEMENT AND RELEASE AGREEMENT

This Compromise Settlement and Release Agreement (this "**Agreement**") by and between Balcones Distilling LLC ("**Balcones**"), PE Investors II, LLC ("**PE Investors**"), Greg Allen ("**Allen**"), Noell Michaels ("**Michaels**"), Robert McLaughlin ("**McLaughlin**"), and Michael Rockafellow ("**Rockafellow**"), on the one hand, and Charles D. Tate ("**Tate**"), on the other hand, to be effective as of the date upon which Tate executes this Agreement (the "**Effective Date**"). Balcones, PE Investors, Allen, Michaels, McLaughlin, Rockafellow, and Tate are collectively referred to as the "**Parties**" and individually as a "**Party**"; the terms Balcones and PE Investors include their parent, subsidiary, affiliate, predecessor, and/or successor companies, if any, as well as their respective current or former representatives, agents, assigns, attorneys, officers, directors, shareholders, general or limited partners, employees, contractors, and/ or consultants, if any; and the terms Allen, Michaels, McLaughlin, Rockafellow and Tate includes their spouses, if any, heirs and attorneys.

I. PREAMBLE

WHEREAS, Balcones is a limited liability company organized under the laws of Texas with its principal place of business and corporate headquarters located in Waco, Texas;

WHEREAS, PE Investors is a limited liability company organized under the laws of Oklahoma with its principal place of business and corporate headquarters located in Oklahoma City, Oklahoma;

WHEREAS, Allen is an individual who resides in Charlottesville, Virginia;

WHEREAS, Michaels is an individual who resides in Charlottesville, Virginia;

WHEREAS, McLaughlin is an individual who resides in Oklahoma City, Oklahoma;

WHEREAS, Rockafellow is an individual who resides in Burnet, Texas;

WHEREAS, Tate is an individual who resides in Waco, Texas;

WHEREAS, Balcones filed a lawsuit against Tate in the 170th Judicial District Court of McLennan County, Texas, Cause No. 2014-3272 (the "Lawsuit"), and Tate filed an answer denying the claims set forth in the Lawsuit;

WHEREAS, Tate filed a counterclaim and third-party claims against Balcones, PE Investors, Allen, Michaels, Rockafellow and McLaughlin, and Balcones, PE Investors, Allen, Michaels, Rockafellow and McLaughlin filed answers denying the claims asserted against them in the Lawsuit;

WHEREAS, in order to avoid the uncertainty, time, and expense which would accompany further litigation, the Parties desire to compromise, resolve, and settle the claims and causes of action in and related to the Lawsuit, including asserted and unasserted claims, finally and forever.

NOW, THEREFORE, in consideration of the covenants and mutual promises and agreements herein contained, and other valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

II. TERMS AND CONDITIONS

1.0. Transfer of Membership Units.

1.1. On or before December 5, 2014, Balcones agrees to redeem from Tate all of the units/shares owned by Tate in Balcones at a price of [REDACTED]/unit pursuant to the terms of the Transfer of Membership Units Agreement attached hereto as Exhibit "A".

2.0. Non-competition and Non-Solicitation Restrictions.

2.1. In consideration of the transaction contemplated by Section 1.1, Tate agrees that, from the Effective Date until March 5, 2016 (the "Restrictive Period"), he will not own, manage, control, participate or consult with, or render services for any person or entity engaged in the

business of producing or selling, in the United States of America, (i) whisky (of any type) or (ii) any other spirit type that has been produced by Balcones between January 1, 2012 and August 5, 2014. Notwithstanding the foregoing, the restrictions contained in this Section 2.1 shall not prohibit Tate from speaking at industry conferences, seminars or other similar industry educational events provided that he does not disclose any Confidential Information at such events.

2.2. In consideration of the transaction contemplated by Section 1.1, Tate agrees that, during the Restrictive Period, he will not, directly or indirectly, (i) induce or attempt to induce any employee of Balcones to leave the employ of the company, or in any way interfere with the relationship between Balcones and any employee thereof, (ii) hire any employee of Balcones, and/or (iii) induce or attempt to induce any customer, supplier, licensee or other business relation of Balcones to cease doing business with Balcones or in any way interfere with the relationship between any such customer, supplier, licensee or business relation and Balcones. Notwithstanding the foregoing restrictions set forth in this Section 2.2, Tate may solicit and hire Nohemi Adame and/or Anulfo Aguilar.

2.3. Tate acknowledges and agrees that the Non-Competition and Non-Solicitation provisions set forth in this Section 2 are enforceable as written herein and, further, he waives any right to challenge the enforceability of the Non-Competition and Non-Solicitation provisions set forth herein.

3.0 Releases.

3.1. Release by Tate. For and in consideration of the covenants and/or promises contained herein, the receipt and sufficiency of which are hereby acknowledged, Tate, on behalf of himself and his spouse, family, assigns, heirs, and attorneys, if any, hereby fully, finally, and

forever RELEASES, ACQUITS, and DISCHARGES Balcones, PE Investors, Allen, Michaels, McLaughlin, and Rockafellow (collectively, the "*Balcones Released Parties*"), jointly and severally, from, and covenants not to sue the Balcones Released Parties, jointly and severally, for, any and all claims, demands, actions, causes of action, other liabilities, and/or damages, if any, known or unknown, whether arising at law, by statute, or in equity, which Tate, or any other person or entity claiming by, through or under him, may have or claim to have, jointly or severally, against the Balcones Released Parties that in any way arise out of or are connected with acts, omissions, conduct, relationships, occurrences, dealings, communications, events, and/or transactions that have occurred on or before the Effective Date, including, without limitation, the claims asserted in the Lawsuit and any other contractual, constitutional, statutory, or common law or tort claims, as well as any claims arising out of or based upon any allegations seeking to recover wages, salary, commissions, bonuses, front or back pay, benefits, stock options, profit sharing interests, or any other such employee-related compensation or benefits, or based upon allegations of breach of contract, defamation (including, without limitation, slander or libel), promissory estoppel, tortious interference, implied covenants, invasion of privacy, assault and battery (including ratification of same), false imprisonment, negligence (including negligent hiring, training, supervision, and retention and gross negligence), and/or intentional or other infliction of emotional distress.

3.2. Release by Balcones and PE Investors. For and in consideration of the covenants and/or promises contained herein, the receipt and sufficiency of which are hereby acknowledged, Balcones and PE Investors on behalf of themselves, their respective agents, employees, assigns, and attorneys hereby fully, finally, and forever RELEASE, ACQUIT, and DISCHARGE Tate from, and covenant not to sue Tate for, any and all claims, demands, actions,

causes of action, other liabilities, and/or damages, if any, known or unknown, whether arising at law, by statute, or in equity, which Balcones and/or PE Investors, or any other person or entity claiming by, through or under it or them, may have or claim to have, jointly or severally, against Tate that in any way arise out of or are connected with acts, omissions, conduct, relationships, occurrences, dealings, communications, events, and/or transactions that have occurred on or before the Effective Date, including, without limitation, the claims asserted in the Lawsuit and any other contractual, constitutional, statutory, or common law or tort claims, as well as any claims arising out of or based upon any allegations seeking to recover wages, salary, commissions, bonuses, front or back pay, benefits, stock options, profit sharing interests, or any other such employee-related compensation or benefits, or based upon allegations of breach of contract, defamation (including, without limitation, slander or libel), promissory estoppel, tortious interference, implied covenants, invasion of privacy, assault and battery (including ratification of same), false imprisonment, negligence (including negligent hiring, training, supervision, and retention and gross negligence), and/or intentional or other infliction of emotional distress.

3.3. Release by Allen, Michaels, McLaughlin and Rockafellow. For and in consideration of the covenants and/or promises contained herein, the receipt and sufficiency of which are hereby acknowledged, Allen, Michaels, McLaughlin and Rockafellow on behalf of themselves and their respective spouses, families, agents, assigns, heirs, and attorneys hereby fully, finally, and forever RELEASE, ACQUIT, and DISCHARGE Tate from, and covenant not to sue Tate for, any and all claims, demands, actions, causes of action, other liabilities, and/or damages, if any, known or unknown, whether arising at law, by statute, or in equity, which Allen, Michaels, McLaughlin and/or Rockafellow, or any other person or entity claiming by,

through or under him or them, may have or claim to have, jointly or severally, against Tate that in any way arise out of or are connected with acts, omissions, conduct, relationships, occurrences, dealings, communications, events, and/or transactions that have occurred on or before the Effective Date, including, without limitation, the claims asserted in the Lawsuit and any other contractual, constitutional, statutory, or common law or tort claims, as well as any claims arising out of or based upon any allegations seeking to recover wages, salary, commissions, bonuses, front or back pay, benefits, stock options, profit sharing interests, or any other such employee-related compensation or benefits, or based upon allegations of breach of contract, defamation (including, without limitation, slander or libel), promissory estoppel, tortious interference, implied covenants, invasion of privacy, assault and battery (including ratification of same), false imprisonment, negligence (including negligent hiring, training, supervision, and retention and gross negligence), and/or intentional or other infliction of emotional distress.

3.4. The Parties acknowledge and agree that the releases set forth in this Section 3 do not include any claims a Party may have against any other Party for a failure to comply with or breach of any provision of this Agreement.

4.0. Confidentiality.

4.1. Tate's Non-Disclosure Obligations. Tate, on behalf of himself and any person affiliated with him, including, without limitation, his spouse and any lawyers who have represented him in connection with his dispute with Balcones and PE Investors and/or the Lawsuit, acknowledges and agrees that (i) the negotiations pertaining to settling the disputes that have existed between Tate and the Balcones Released Parties and (ii) the price of the units redeemed in Section 1.1 shall remain strictly confidential, and shall not be divulged, disclosed, or

used for purposes (other than the settlement of the Lawsuit) by Tate, or anyone acting in concert or participation with him, except as set forth in Section 4.3.

4.2. Non-Disclosure Obligations of Balcones, PE Investors, Allen, Michaels, McLaughlin and Rockafellow. Balcones, PE Investors, Allen, Michaels, McLaughlin and Rockafellow, on behalf of themselves and any person affiliated with them, including, without limitation, their spouses and any lawyers who have represented them in connection with their dispute with Tate and/or the Lawsuit, acknowledges and agrees that (i) the negotiations pertaining to settling the disputes that have existed between Tate and the Balcones Released Parties and (ii) the price of the units redeemed in Section 1.1 shall remain strictly confidential, and shall not be divulged, disclosed, or used for purposes (other than the settlement of the Lawsuit) by any of them, or anyone acting in concert or participation with them, except as set forth in Section 4.3.

4.3. Limited Exceptions to Non-Disclosure Obligations. Notwithstanding the provisions of Section 4.1 and Section 4.2 above, nothing in this Section 4 shall prevent the following disclosures of this Agreement: (i) the Parties may use this Agreement as evidence in a subsequent proceeding in which either of the Parties alleges a breach of this Agreement; (ii) the Parties may disclose that the Lawsuit has been settled; and (iii) the Parties shall be permitted to disclose the terms of this Agreement where they are bound by a legal duty to disclose the terms of this Agreement, including, but not limited to, disclosures required pursuant to obligations under federal or state rules of discovery; *provided, however*, the disclosing Party shall immediately notify the other Party of his/its intention to disclose the terms of this Agreement, and comply with the notice requirements delineated hereinafter in this Section. In order to allow the Parties to protect their interests in confidentiality, any Party and his/its agents (including, but

not limited to, counsel) served with a subpoena, discovery request, or other similar legal instrument that could lead to a court order compelling disclosure of the terms of this Agreement shall notify the other Party of its intent to disclose the terms of this Agreement pursuant to such legal instrument at least seven (7) days prior to such disclosure.

4.4. Liquidated Damages. The confidentiality obligations set forth in Section 4 are contractual and material to this Agreement. In the event one Party proves in a court of competent jurisdiction that another Party has breached this Section 4, the non-breaching Party shall be entitled to recover liquidated damages from the breaching Party in the amount of \$100,000.00. Any such action must be filed within sixty (60) days from the date of the discovery of the alleged breach. The Parties acknowledge that it would be difficult to calculate damages incurred by the non-breaching Party as a result of a breach of these confidentiality obligations and that this liquidated damages clause is necessary and reasonable for the protection of the non-breaching Party. The Parties also acknowledge that the foregoing damage amount is fair and reasonable.

5.0. Dismissal of Lawsuit.

5.1. No later than three (3) business days after Tate's receipt of the settlement funds referenced in Section 1.1 above, legal counsel for the respective Parties shall execute and cause to be filed the Motion to Dismiss with Prejudice and an Order of Dismissal with Prejudice, in the form attached hereto as Exhibit "B," so as to dismiss, with prejudice, the Lawsuit. Except as provided herein by the terms of this Agreement, the Parties agree to bear their own costs, expenses and attorneys' fees.

6.0. Miscellaneous.

6.1. **Assignment of Claims.** The Parties each represent and warrant to each other that neither has assigned or otherwise transferred to any person, party or entity any of the claims, demands, actions, liabilities, obligations or causes of action being released hereby. The Parties further agree to indemnify and to hold each other harmless from any claims, demands, actions, liabilities, obligations and/or causes of action previously assigned or otherwise transferred.

6.2. **No Reliance.** In executing this Agreement, the Parties have not seen, heard or relied upon any promises, statements, representations, covenants, or warranties, whether express or implied, made by one another or by any representative or other person or entity, except to the extent that a matter is expressly stated in this Agreement. The Parties hereby waive and release any right or ability to seek to revoke, rescind, vacate, or otherwise avoid the operation and effect of this Agreement on the basis of any alleged fraudulent inducement, misrepresentation, or material omission by any of the Parties or their representatives, or on the basis of mutual or unilateral mistake of fact or law, or newly discovered information, and acknowledge that they are completely satisfied with this settlement, as reflected in this Agreement.

6.3. **Authority.** As a member of the board of managers of Balcones, Tate consents and agrees that Balcones has the right and authority to enter into this Agreement. Balcones and PE Investors expressly represent and warrant (a) that the execution and delivery of this Agreement (i) are within their powers, (ii) have been duly authorized by all necessary corporate action (or will hereafter be promptly ratified as such), and (iii) do not contravene any provision of any agreements to which they are a party or any law to which it is subject, (b) that the undersigned is duly authorized to execute and deliver this Agreement on their behalf, and (c) that, upon execution and delivery, this Agreement shall be the legal, valid, and binding obligation of each of them and enforceable in accordance with its terms.

6.4. **Entire Agreement.** This Agreement constitutes the entire understanding and agreement of the Parties, and supersedes and replaces all prior understandings and agreements among or between the Parties. There are no representations, agreements, arrangements or understandings, oral or written, concerning the subject matter hereof between and among the Parties that are not fully expressed or incorporated by reference herein. The Parties stipulate that the Senior Management Agreement is no longer effective or enforceable.

6.5. **Amendments.** Any modification of this Agreement or additional obligation assumed by any Party in connection with this Agreement shall be binding only if evidenced in writing signed by each Party or an authorized representative of each Party. Additionally, this Agreement cannot be changed or terminated orally, but may be changed only through written addendum executed by each of the Parties.

6.6. **Counterpart Originals.** This Agreement may be executed in multiple counterparts and all such counterparts so executed shall together be deemed to constitute one final agreement, as if one document had been signed by all of the Parties; and each such counterpart shall be deemed to be an original, binding the Party subscribed thereto, and multiple signature pages affixed to a single copy of this Agreement shall be deemed to be a fully executed original agreement.

6.7. **Severability.** The Parties acknowledge and understand that, if any term of this Agreement shall be determined by a court to be illegal, invalid, unconscionable or unenforceable, the remaining provisions will remain effective and legally binding, and the illegal, invalid, unconscionable or unenforceable term shall be deemed not to be a part of this Agreement.

6.8. **Binding Effect.** This Agreement and the terms, covenants, conditions, provisions, obligations, undertakings, rights and benefits hereof shall be binding upon, and shall

inure to the benefit of, the Parties and their respective heirs, executors, administrators, representatives, officers, directors, shareholders, predecessors, successors, parents, subsidiaries, affiliated entities, spouses, agents, attorneys, servants, employees, principals, partners, whether limited or general, and assigns, if any. Each of the Parties represents and warrants that he or it has the authority to act on his or its behalf and to bind him or it to this Agreement.

6.9. **Exercise of Rights.** Any failure or forbearance by either Party to exercise any right or remedy with respect to enforcement of this Agreement or any instrument executed in connection herewith shall not be construed as a waiver of any of such Party's rights or remedies, nor shall such failure or forbearance operate to modify this Agreement or such instruments in the absence of a writing as provided above.

6.10. **No Waiver.** No waiver of any of the terms of this Agreement shall be valid unless in writing and signed by all Parties to this Agreement. The waiver by any Party hereto of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by any Party, nor shall any waiver operate or be construed as a rescission of this Agreement.

6.11. **Choice of Law and Venue, Fees, and Injunctive Relief/Specific Performance.** The Parties agree that the Agreement shall be performed in Waco, Texas, and that the laws of the State of Texas, exclusive of the conflicts of law principles thereof, shall govern the enforceability, interpretation and legal effect of this Agreement. The Parties also agree that venue of any action to enforce the provisions of this Agreement or for breach hereof, or any document executed in connection herewith, shall be in Waco, Texas. The Parties also agree that the prevailing party in an action for breach of this agreement shall be entitled to recover attorneys' fees in that litigation. The Parties acknowledge and agree that the terms of this

Agreement are material and unique, that the non-breaching party would be irreparably harmed and that money damages would be an inadequate remedy for a breach of this Agreement. A non-breaching party may, in addition to other rights and remedies existing in their favor, apply to any court of competent jurisdiction for specific performance and/or injunctive relief in order to enforce, or prevent any violations of, the provisions of this Agreement.

6.12. 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, WHETHER NOW OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE. ANY PARTY MAY FILE A COPY OF THIS SECTION 6.12 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 WILL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

7.0. Voluntary Agreement.

7.1. The Parties hereby represent and warrant that, prior to signing below, each has had the opportunity to consult with legal counsel of his/its choice, has had a full opportunity to conduct discovery and investigate all claims and defenses, has read this document in its entirety and fully or satisfactorily understands its content and effect, and that he/it has not been subject to any form of duress in connection with this settlement, is completely satisfied with the settlement reflected in this Agreement, and accordingly agrees to be bound as described in this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as set forth in this Agreement.

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Balcones Distilling LLC

By: _____

Greg Allen, Chairman of the Board

PE Investors II, LLC

By: _____

Greg Allen, President

Greg Allen

Noell Michaels

Robert McLaughlin

Michael Rockafellow

Charles D. Tate

Balcones Distilling LLC

By: _____
Greg Allen, Chairman of the Board

PE Investors II, LLC

By: _____
Greg Allen, President

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Noell Michaels

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Noell Michaels



Robert McLaughlin

Michael Rockafellow

Charles D. Tate

Robert McLaughlin


Michael Rockafellow

Charles D. Tate

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