

CLASS ACTION SETTLEMENT AGREEMENT

This Class Action Settlement Agreement (the “Agreement” or “Settlement”) is entered into by and among Mario Aliano (“Aliano”), Due Fratelli, Inc. (“Due Fratelli”), and Derek Hetland (“Hetland”), for themselves individually and on behalf of the Settlement Class (defined below), and Proximo Spirits, Inc., and all of its subsidiaries and affiliates, including entities under common control of the controlling shareholders of Proximo Spirits, Inc. and the immediate family members thereof (“Proximo” or “Defendant”). This Settlement is intended by the Parties (defined below) to fully, finally, and forever resolve, discharge and settle the Released Claims (defined below) upon and subject to the terms and conditions hereof, and subject to court approval.

I. RECITALS

WHEREAS, there are two putative class action lawsuits that were filed in state courts in Illinois and Iowa against Defendant related to the marketing of its Tincup whiskey product;

WHEREAS, in the case captioned *Aliano, et al. v. Proximo Spirits, Inc.*, 2014-CH-17429 (Cir. Ct. Cook County, Ill.) (the “*Aliano* Action”), Plaintiffs Aliano and Due Fratelli alleged claims for damages, as well as injunctive and declaratory relief arising out of the design, marketing, and sale of Defendant’s Tincup whiskey product to consumers and commercial entities.

WHEREAS, in the case captioned *Hetland v. Proximo Distillers, LLC*, CV049328 (Iowa Dist. Ct., Polk County) (the “*Hetland* Action”), Hetland similarly alleged claims for damages, as well as injunctive and declaratory relief against Defendant arising out of the marketing and sale of Defendant’s Tincup whiskey product.

WHEREAS, the Plaintiffs in the above-referenced matters have their respective cases pending in different jurisdictions and are represented by separate counsel;

WHEREAS, the Parties have exchanged several rounds of informal discovery, including documents and other information relevant to their respective claims and defenses, and ultimately agreed to attempt to resolve the claims against Defendant related to the marketing and sale of its Tincup whiskey product;

WHEREAS, Plaintiffs and Class Counsel have conducted a comprehensive examination of the law and facts relating to the actions at issue, including through informal discovery, and exchanges of information throughout the pendency of this case;

WHEREAS, based on an analysis of the facts and the law applicable to Plaintiffs' claims in the Actions, and taking into account the burdens and expense of such litigation, including the risks and uncertainties associated with protracted trials and appeals, as well as the fair, cost-effective and assured method of resolving the claims of the Settlement Class, Plaintiffs and Class Counsel have concluded that this Settlement provides substantial benefits to the Settlement Class and the public as a whole, and is fair, reasonable, adequate, and in the best interest of Plaintiffs and the Settlement Class;

WHEREAS, Defendant does not admit any liability or wrongdoing, but has similarly concluded that this Agreement is desirable in order to avoid the time, risk and expense of defending protracted litigation, and to resolve finally and completely the pending and potential claims of Plaintiffs and the Settlement Class;

WHEREAS, the Parties agree that all Persons shall have an individual right to exclude themselves from the Settlement Class, such that participation in the Settlement Benefits provided by this Agreement shall be voluntary; and

NOW THEREFORE, the Parties stipulate and agree that any and all Released Claims against Defendant, and all other Released Parties, shall be finally settled and resolved on the terms and conditions set forth in this Agreement, subject to Court approval, as a fair, reasonable, and adequate settlement.

II. DEFINITIONS

As used herein, in addition to any definitions set forth elsewhere in this Agreement, the following terms shall have the meanings set forth below:

“Actions” means the cases captioned *Aliano, et al. v. Proximo Spirits, Inc.*, 2014-CH-17429 (Cir. Ct. Cook County, Ill.) (the “*Aliano* Action”); and *Hetland v. Proximo Distillers, LLC*, CV049328 (Iowa Dist. Ct., Polk County) (the “*Hetland* Action”).

“Agreement” means this Class Action Settlement Agreement (including all exhibits hereto).

“Approved Claim” means a Claim Form submitted by a Settlement Class Member that (a) is timely and submitted in accordance with the directions on the Claim Form and the terms of this Agreement, (b) is physically signed or electronically verified by the Settlement Class Member, and (c) is not the subject of an objection by any Party that has not been overruled in accordance with this Agreement.

“Claim Form” means the form attached hereto as Exhibit A, as approved by the Court. The Claim Form must be completed, and physically signed or verified electronically by Settlement Class Members, and shall be available for online filing or download from the Settlement Website and from the Settlement Administrator in hardcopy form. The Claim Form will require the Settlement Class Member to provide the following information: (i) their full name and address, (ii) their phone number, and (iii) the State(s) in which they made their Tincup

whiskey purchase(s).

“Claims Deadline” means the date by which all Claim Forms must be postmarked or received to be considered timely and shall be set as the date sixty (60) days after the Notice Date. The Claims Deadline shall be clearly set forth in the Notice to be provided to the Settlement Class, the Claim Form, and the Court’s order granting Preliminary Approval.

“Class Counsel” means attorneys Thomas A. Zimmerman, Jr., Eleonora P. Khazanova, Matthew C. De Re, and Nickolas J. Hagman of Zimmerman Law Offices, P.C.

“Class Representatives” means or refers to Mario Aliano and Due Fratelli, Inc., each of whom personally submits to the jurisdiction of the Circuit Court of Cook County, Illinois, for the purpose of approving, administering, interpreting, and enforcing this Agreement.

“Court” means the Circuit Court of Cook County, Illinois, County Department, Chancery Division.

“Defendant” means or refers to Defendant Proximo Spirits, Inc., and all of its subsidiaries and affiliates, including Proximo Distillers, LLC, and entities under common control of the controlling shareholders of Proximo Spirits, Inc. and the immediate family members thereof.

“Defendant’s Counsel” means William P. Schuman of McDermott Will & Emery LLP.

“Effective Date” means one business day following the later of: (i) the date upon which the time expires for filing or noticing any appeal of the Final Judgment if no such appeal is filed; (ii) if there is an appeal or appeals, other than an appeal or appeals solely with respect to attorneys’ fees and reimbursement of expenses, the date of completion, in a manner that finally affirms and leaves in place the Final Judgment without any material modification, of all proceedings arising out of the appeal or appeals (including, but not limited to, the expiration of

all deadlines for motions for reconsideration or petitions for review and/or *certiorari*, all proceedings ordered on remand, and all proceedings arising out of any subsequent appeal or appeals following decisions on remand); or (iii) the date of final dismissal of any appeal or the final dismissal of any proceeding on *certiorari* with respect to the Final Judgment.

“Exclusion/Objection Deadline” means the date by which a written objection to this Agreement must be filed with the Court or a request for exclusion by a Person within the Settlement Class must be postmarked or delivered to the Settlement Administrator, Class Counsel, and/or Defendant’s Counsel (as set forth in this Agreement), which shall be designated as a date no later than forty-five (45) days after the Notice Date, or such other date as ordered by the Court.

“Fairness Hearing” means the hearing before the Court where the Parties will request the Final Judgment be entered by the Court finally approving the Settlement as fair, reasonable, and adequate, and approving the Fee Award and the incentive awards to the Class Representatives and Named Plaintiff.

“Fee Award” means the amount of attorneys’ fees and reimbursement of costs awarded by the Court to Class Counsel.

“Final Judgment” means the Final Judgment to be entered by the Court approving the Agreement, and determining the Fee Award and the incentive award to the Class Representatives and Named Plaintiff.

“Named Plaintiff” means Derek Hetland.

“Notice” means notice of this proposed settlement and the Fairness Hearing, which is to be sent to the Settlement Class substantially in the manner set forth in this Agreement, fulfills the requirements of Due Process, and is substantially in the form of Exhibits B, C, D, E, F, and G

attached hereto.

“Notice Date” means the date upon which the Notice set forth in Section V is complete, which shall be a date no later than thirty (30) days after entry of Preliminary Approval.

“Parties” means, collectively, Plaintiffs Mario Aliano, Due Fratelli, Inc., and Derek Hetland, and Defendant Proximo Spirits, Inc., and all of its subsidiaries and affiliates, including Proximo Distillers, LLC, and entities under common control of the controlling shareholders of Proximo Spirits, Inc. and the immediate family members thereof.

“Person” means any individual, corporation, trust, partnership, limited liability company or other legal entity and their respective predecessors, successors or assigns. The definition of “Person” is not intended to include any governmental agencies or governmental actors, including, without limitation, any state Attorney General office.

“Plaintiffs” means or refers to the Class Representatives and Named Plaintiff.

“Preliminary Approval” means the order preliminarily approving the Agreement, certifying the Settlement Class for settlement purposes, and approving the form and manner of the Notice, a proposed version of which will be agreed upon by the Parties and submitted to the Court in conjunction with Plaintiffs’ motion for preliminary approval of the Agreement.

“Proof of Purchase” means written documentation evidencing the purchase of Tincup whiskey, such as an itemized sales receipt, credit card statement, or UPC from a Tincup bottle.

“Released Claims” means any and all actual, potential, filed, known or unknown, fixed or contingent, claimed or unclaimed, suspected or unsuspected, claims, demands, liabilities, rights, causes of action, contracts or agreements, extra-contractual claims, damages, punitive, exemplary or multiplied damages, expenses, costs, attorneys’ fees and/or obligations (including “Unknown Claims” as defined below), whether in law or in equity, accrued or unaccrued, direct,

individual or representative, of every nature and description whatsoever, whether based on federal, state, local, statutory or common law or any other law, rule or regulation, including the law of any jurisdiction outside the United States, against the Released Parties, or any of them, arising out of the facts, transactions, events, matters, occurrences, acts, disclosures, statements, misrepresentations, omissions or failures to act regarding the Released Parties' marketing, advertising, promotion, packaging, distribution, offering, charging, billing, or sale of Tincup whiskey, including all claims that were brought or could have been brought in the Actions relating to such marketing, advertising, promotion, packaging, distribution, offering, charging, billing, or sale, belonging to any and all Releasing Parties. Nothing herein is intended to release any claims that any governmental agency or governmental actor has against Defendant.

“Released Parties” means Defendants Proximo Spirits, Inc. and Proximo Distillers, LLC, and their respective predecessors, successors, parents, subsidiaries, affiliates, divisions, departments, any and all of their past, present, and future officers, directors, members, managers, contractors, employees, equity holders, partners, servants, successors, attorneys, representatives, insurers, and subrogees, all entities under common control of the controlling shareholders of Proximo Spirits, Inc., and any and all suppliers, distributors, and retailers involved in the manufacturing, marketing, advertising, and sale of Tincup whiskey.

“Releasing Parties” means the Class Representatives, Named Plaintiff, and the Settlement Class Members who do not validly and timely request to be excluded from the proposed settlement (whether or not such Settlement Class Members submit claims) and all of their present, former, and future heirs, executors, administrators, representatives, agents, attorneys, partners, predecessors-in-interest, successors, assigns, and legatees. To the extent a Settlement Class Member is not an individual, Releasing Parties also includes all of its present,

former, and future direct and indirect parent companies, affiliates, subsidiaries, divisions, agents, franchisees, successors, assigns and predecessors-in-interest.

“Remaining Funds” means the amount of the Settlement Fund remaining after the payment of all Approved Claims, Settlement Administration Expenses, the incentive awards to the Class Representatives and Named Plaintiff, and the Fee Award to Class Counsel.

“Settlement Administration Expenses” means the expenses incurred by the Settlement Administrator in providing Notice, processing Claim Forms and requests for exclusion, paying Approved Claims, establishing and maintaining the Settlement Website, and establishing and maintaining the Settlement Telephone Line.

“Settlement Administrator” means, subject to approval of the Court, Dahl Administration, LLC, which will oversee the Notice plan and conduct the processing and payment of Approved Claims to Settlement Class Members as set forth in this Agreement.

“Settlement Class” means all persons and entities in the United States who purchased Tincup whiskey from July 1, 2013 to the date of Preliminary Approval. Excluded from the Settlement Class are: (1) the Judges presiding over the *Aliano* Action and the *Hetland* Action, and members of their families; and (2) the Released Parties.

“Settlement Class Member” or “Class Member” means a Person who falls within the definition of the Settlement Class as set forth in this Agreement and who has not submitted a valid request for exclusion.

“Settlement Fund” means the cash settlement fund in the amount of Four Hundred and Twenty Five Thousand U.S. Dollars (\$425,000.00). The Settlement Fund shall be used for the payment of all Approved Claims, Settlement Administration Expenses, any incentive awards to the Class Representatives and Named Plaintiff, and any Fee Awards to Class Counsel and the

Steering Committee. Within ten (10) days after the Effective Date, Defendant shall transmit to the Settlement Administrator the Settlement Fund required to pay all of the foregoing items. The Settlement Fund represents the limit and extent of Defendant's monetary obligations under this Agreement. All Remaining Funds are the property of Defendant.

"Steering Committee" means Randy J. Wilharber of Peddicord, Wharton, Spencer, Hook, Barron & Wegman, LLP. The Steering Committee will submit to the jurisdiction of the Circuit Court of Cook County, Illinois for purposes of complying with and giving effect to this Settlement Agreement and any related orders of the Court.

"Tincup" means the whiskey manufactured and sold as Tincup or Tin Cup whiskey by any of the Released Parties.

"Unknown Claims" means claims that could have been raised in the Actions and that Plaintiffs, any member of the Settlement Class or any Releasing Party, do not know or suspect to exist, which, if known by him, her or it, might affect his, her or its agreement to release the Released Parties or the Released Claims or might affect his, her or its decision to agree, object or not to object to the Settlement. Upon the Effective Date, Plaintiffs, any member of the Settlement Class, and any Releasing Party shall be deemed to have, and shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Upon the Effective Date, each of the Releasing Parties shall be deemed to have, and shall have, waived any and all provisions, rights and benefits conferred by any law of any state, the District of Columbia or territory of the United States, by federal law, or principle of common law, or the

law of any jurisdiction outside of the United States, which is similar, comparable or equivalent to Section 1542 of the California Civil Code. Plaintiffs, the Settlement Class, and the Releasing Parties acknowledge that they may discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of the release, but that it is their intention to finally and forever settle and release the Released Claims, notwithstanding any Unknown Claims they may have, as that term is defined in this paragraph.

III. SETTLEMENT RELIEF

A. Prospective Relief. Defendant agrees to make the following modification to its labeling and marketing practices, for a period of no less than four (4) years from the Effective Date:

1. Label and Bottle Changes. Defendant shall (a) not state on its Tincup labels that Tincup is manufactured entirely in Colorado, and (b) identify on its Tincup labels the State or States in which the spirit is distilled.

2. Website and Marketing. Defendant shall not state on its website or in marketing materials that Tincup is manufactured entirely in Colorado, beginning no later than thirty (30) days after the Effective Date.

3. Class Counsel Review. Class Counsel has reviewed Defendant's revised language that will be used on Defendant's labels, bottles and similar marketing materials and agrees the language addresses and resolves the issues alleged in the *Aliano* Action and the *Hetland* Action.

B. Monetary Payments. Settlement Class Members who did not purchase Tincup for resale shall have until the Claims Deadline to submit Claim Forms and may elect to seek payments ("Settlement Benefits") as set forth below: (1) for bottles purchased without Proof of

Purchase, (2) for bottles purchased with Proof of Purchase, and (3) for alcoholic beverages containing Tincup purchased from a retail establishment. Each Settlement Class Member who timely submits an Approved Claim shall, upon the Effective Date, be entitled to a cash payment in an amount based upon the following:

1. Without Proof of Purchase. Settlement Class Members who timely submit an Approved Claim without Proof(s) of Purchase shall be entitled to receive a cash payment of Two Dollars and Twenty Five Cents (\$2.25) for each bottle of Tincup that they purchased, subject to a maximum of six (6) bottles per Settlement Class Member.

2. With Proof of Purchase. Settlement Class Members who timely submit an Approved Claim along with Proof(s) of Purchase shall be entitled to a cash payment of Four Dollars and Fifty Cents (\$4.50) for each bottle of Tincup that they purchased, subject to a maximum of six (6) bottles per Settlement Class Member.

3. On Premise Purchase. Settlement Class Members who timely submit a valid Claim Form shall, upon the Effective Date, be entitled to receive a cash payment of Seventy Five Cents (\$0.75) for each alcoholic beverage containing Tincup that they purchased on premise at a retail establishment, subject to a maximum of five (5) drinks.

4. Limits Per Claim. Settlement Class Members may select any or all of the above options, subject to an aggregate limit of Twenty Seven Dollars (\$27.00) total per Claim Form and one Claim Form submitted per household. Persons who are Settlement Class Members cannot file a Claim Form seeking payment for any bottles of Tincup purchased that were later sold, in whole or in part, at retail.

C. If the total amount of Approved Claims exceeds the amount in the Settlement Fund after payment of Settlement Administration Expenses, Fee Awards, and incentive awards,

then each Settlement Class Member with an Approved Claim shall receive a *pro rata* share of the amount of the Settlement Fund that is available after payment of such amounts.

D. All cash payments issued to Settlement Class Members via check will state on the face of the check that the check will expire and become null and void unless cashed within ninety (90) days after the date of issuance. To the extent that a check issued to a Settlement Class Member is not cashed within ninety (90) days after the date of issuance, the check will be void, and such funds shall revert to the Illinois Bar Foundation. Within fourteen (14) days after the ninetieth (90th) day after the date of issuance of the settlement checks, the Settlement Administrator shall (1) notify the bank that issued these checks to stop payment on the checks, and (2) issue a check payable to the Illinois Bar Foundation in the aggregate amount of the voided checks.

IV. RELEASE

Upon the Effective Date, the Releasing Parties, and each of them, shall be deemed to have, and by operation of the Final Judgment shall have, fully, finally, and forever released, relinquished and discharged all Released Claims against each and every one of the Released Parties.

V. SETTLEMENT CLASS NOTICE

A. Upon entry of Preliminary Approval, the Settlement Administrator shall cause the Notice describing the Fairness Hearing, the terms of the compromise embodied in this Agreement, and the Claim Form to be disseminated to the Settlement Class as provided herein. Such Notice shall comport with due process and the costs shall be Settlement Administration Expenses.

B. The Notice shall include:

1. Direct Notice by E-mail. Within fourteen (14) days after Preliminary Approval of this Agreement, Defendant shall—based on a reasonable review of the reasonably available business records and data in its possession, custody, or control—provide the Settlement Administrator with e-mail addresses for all reasonably identifiable Persons, if any, who are potential members of the Settlement Class. The information provided to the Settlement Administrator shall be held in confidence and not provided to any Person other than Class Counsel. Class Counsel shall keep such information strictly confidential and will use it only in connection with the Settlement. Within fourteen (14) days after receipt of such e-mail addresses, the Settlement Administrator will send notice to potential Settlement Class Members by e-mail. A copy of the proposed e-mail notice is attached as Exhibit B hereto.

2. Direct Notice By Mail. Within fourteen (14) days after Preliminary Approval of this Agreement, Defendant shall—based on a reasonable review of the reasonably available business records and data in its possession, custody, or control—provide the Settlement Administrator with mailing addresses for any reasonably identifiable Persons, if any, who are potential members of the Settlement Class. The information provided to the Settlement Administrator shall be held in confidence and not provided to any Person other than Class Counsel. Class Counsel shall keep such information strictly confidential and will use it only in connection with administration of the Settlement. Within fourteen (14) days after receipt of such mailing addresses, the Settlement Administrator will mail notice to potential Settlement Class Members by United States postal service. The mailed notice shall consist of a postcard containing a summary notice. A copy of the proposed postcard summary notice is attached as Exhibit C hereto.

3. Online Media. The Settlement Administrator will design and implement online media notice to supplement the direct notice and Settlement Website. The online media shall be substantially in the form of Exhibit D attached hereto, and notice shall commence within twenty eight (28) days after Preliminary Approval.

4. Settlement Website. Within ten (10) days after Preliminary Approval, the Settlement Administrator will develop, host, administer and maintain a dedicated settlement website located at URL www.TincupWhiskeySettlement.com, which shall include the ability to electronically file Claim Forms and any accompanying documentation online (“Settlement Website”). The settlement website and long form notice which can be downloaded from the website shall be substantially in the form of Exhibits E and F attached hereto. The Settlement Website and Toll-Free Helpline shall be active and maintained until fifteen (15) days after the last date to negotiate settlement checks.

5. Tincup’s Website. Within ten (10) days after Preliminary Approval, Defendant shall place a short notice with a hyperlink to the Settlement Website on its Tincup website. The hyperlink notice shall be substantially in the form of Exhibit G attached hereto. The short notice and hyperlink shall be active and maintained until the Claims Deadline.

C. The Notice shall advise the Settlement Class of their rights under the Settlement, including the right to be excluded from, comment upon, and/or object to the Agreement or its terms. The Notice shall specify that any objection to this Agreement, and any papers submitted in support of said objection, shall be received by the Court at the Fairness Hearing, only if, on or before the Exclusion/Objection Deadline approved by the Court and specified in the Notice, the Person making an objection shall file notice of his or her intention to do so and at the same time (a) file copies of such papers he or she proposes to submit at the Fairness Hearing with the Court,

and (b) send copies of such papers via mail, hand, or overnight delivery service to either Class Counsel or Defendant's Counsel.

D. Any Settlement Class Member who does not file a written request for exclusion and who intends to object to this Agreement must present the objection in writing, which must be personally signed by the objector, and must include: (1) the objector's full name, address, and telephone number; (2) a signed statement promising that the following information is true and correct to the best of the Settlement Class Member's knowledge and belief: the Settlement Class Member purchased either a bottle of Tincup, or a drink containing Tincup on premise at a retail establishment, between July 1, 2013 and the date of Preliminary Approval; (3) all grounds for the objection, including all citations to legal authority and documents or evidence supporting the objection; (4) the name and contact information of any and all attorneys representing, advising, or in any way assisting the objector in connection with the preparation or submission of the objection or who may profit from the pursuit of the objection (the "Objecting Attorneys"); and (5) a statement indicating whether the objector intends to appear at the Fairness Hearing (either personally or through counsel who files an appearance with the Court in accordance with the rules of the Court). Any Person who objects to the settlement shall not be permitted to opt-out pursuant to Paragraph V(F) below.

E. Any Settlement Class Member who fails to timely file a written objection with the Court and notice of his or her intent to appear at the Fairness Hearing in accordance with the terms of this Section and as detailed in the Notice, and at the same time provide copies to designated counsel for the Parties, shall not be permitted to object to this Agreement at the Fairness Hearing, and shall be foreclosed from seeking any review of this Agreement by appeal or other means and shall be deemed to have waived his or her objections and be forever barred

from making any such objections in the Actions, or any other action or proceeding relative to this settlement.

F. Any member of the Settlement Class who has not objected to the Settlement may request to be excluded from the Settlement Class by sending a written request for exclusion to the Settlement Administrator postmarked on or before the Exclusion/Objection Deadline. To be valid, any request for exclusion must be in writing; identify the case *Aliano, et al. v. Proximo Spirits, Inc.*, 2014-CH-17429 (Cir. Ct. Cook County, Ill.); state the name and address of the member(s) of the Settlement Class seeking exclusion; include a clear and unambiguous statement that he or she wishes to be excluded from the settlement; be physically signed by the Person(s) seeking exclusion; and must be postmarked or received by the Settlement Administrator on or before the Exclusion/Objection Deadline. A request to be excluded that does not include all of this information, or that is sent to an address other than that designated in the Notice, or that is not postmarked or received by the Settlement Administrator within the time specified, shall be invalid, and the Person(s) serving such a request shall be a member(s) of the Settlement Class and shall be bound as Settlement Class Members by the Agreement, if approved. Any Person who elects to opt-out of the Settlement Class shall not (i) be bound by any orders or Final Judgment, (ii) be entitled to relief under this Agreement, (iii) gain any rights by virtue of this Agreement, or (iv) be entitled to object to any aspect of this Agreement. No Person may opt-out of the Settlement Class through “mass” or “class” opt-outs. Any Person who opts out shall not be permitted to object pursuant to Paragraph V(D) above.

VI. SETTLEMENT ADMINISTRATION

A. The Settlement Administrator shall, under the supervision of the Court, administer the relief provided by this Agreement by processing Claim Forms in a rational, responsive, cost

effective and timely manner. The Settlement Administrator shall maintain reasonably detailed records of its activities under this Agreement. The Settlement Administrator shall maintain all such records as are required by applicable law in accordance with its normal business practices and such records will be made available to Class Counsel and Defendant's Counsel upon request. The Settlement Administrator shall also provide reports and other information to the Court as the Court may require. The Settlement Administrator shall provide Class Counsel and Defendant's Counsel with information concerning Notice, administration and implementation of the Agreement. The Parties, upon the request of the Court and in conjunction with the Settlement Administrator, shall submit a timely report to the Court summarizing the work performed by the Settlement Administrator, including a report of all amounts paid to Settlement Class Members on account of Approved Claims. Without limiting the foregoing, the Settlement Administrator shall:

1. Forward to Defendant's Counsel, with copies to Class Counsel, all documents and other materials received in connection with the administration of the Agreement within thirty (30) days after the date on which all Claim Forms have been finally approved or disallowed per the terms of the Agreement;
2. Receive exclusions and other requests from the Settlement Class and promptly provide a copy of such requests to Class Counsel and Defendant's Counsel upon receipt. If the Settlement Administrator receives any exclusion forms or other requests from the Settlement Class after the Exclusion/Objection Deadline, the Settlement Administrator shall promptly provide copies thereof to Class Counsel and Defendant's Counsel;
3. Provide weekly reports to Class Counsel and Defendant's Counsel, including without limitation, reports regarding the number of Claim Forms received; and make available for inspection by Class Counsel or Defendant's Counsel the Claim Forms, any

documentation submitted in support thereof, and any correspondence received by the Settlement Administrator at any time upon reasonable notice.

B. The Settlement Administrator may reject a Claim Form, or any part of a claim for a payment reflected therein, where the Person submitting the Claim Form does not appear to be a Settlement Class Member. In addition, the Settlement Administrator shall be obliged to employ reasonable procedures to screen claims for abuse or fraud and deny Claim Forms where there is evidence of abuse or fraud. The Settlement Administrator shall determine whether a Claim Form, or any portion thereof, submitted by a Settlement Class Member is an Approved Claim and shall reject Claim Forms or a portion thereof that fail to comply with the instructions thereon or the terms of this Agreement, after giving the claimant a reasonable opportunity to provide any requested missing information, but in no event shall any Settlement Class Member have more than twenty-one (21) days after being noticed by the Settlement Administrator of any question or deficiency in the submitted Claim Form.

C. Both Defendant's Counsel and Class Counsel shall have the right to challenge the acceptance or rejection of a Claim Form submitted by Settlement Class Members for any reason. The Settlement Administrator shall follow any agreed-to decisions of Defendant's Counsel and Class Counsel. To the extent Defendant's Counsel and Class Counsel are not able to agree on the disposition of a challenge, a mutually agreed-upon neutral shall timely decide such challenge and any associated fees and costs shall be deemed to be Settlement Administration Expenses.

D. The Settlement Administrator shall make all payments resulting from Approved Claims by check and mail them to Settlement Class Members within sixty (60) days after the Effective Date or fourteen (14) days after the final resolution of any mediated claims, whichever is later ("the Payment Completion Date").

E. The Settlement Administrator shall make payment of all Remaining Funds to Defendant by check, mailed to Defendant's Counsel, within fourteen (14) days after the Payment Completion Date.

VII. TERMINATION OF AGREEMENT

The Class Representatives in this Action, on behalf of the Settlement Class Members, and the Defendant, shall have the right to terminate this Agreement by providing written notice of their election to do so ("Termination Notice") to all other Parties hereto within fourteen (14) days after: (i) the Court's refusal to grant Preliminary Approval of the Agreement in any material respect, (ii) receiving notification that more than seven thousand five hundred (7,500) disputed claims have been referred to the neutral, (iii) the Court's refusal to enter the Final Judgment in any material respect, (iv) the date upon which the Final Judgment is modified or reversed in any material respect by any appellate or other court; or (v) the date upon which an Alternative Judgment, as defined in Paragraph X.A. of this Agreement, is modified or reversed in any material respect by the Court of Appeals or the Illinois Supreme Court.

VIII. PRELIMINARY APPROVAL ORDER AND FINAL JUDGMENT

A. Promptly after the execution of this Agreement, Class Counsel shall submit this Agreement together with its exhibits to the Court and shall move the Court for Preliminary Approval of the settlement set forth in this Agreement, certification of the Settlement Class for settlement purposes only, appointment of Class Counsel and the Class Representatives, which shall set a Fairness Hearing date and approve the Notice and Claim Form for dissemination substantially in the form of Exhibits A, B, C, D, E, F, and G attached hereto.

B. At the time of the submission of this Agreement to the Court as described above, Class Counsel and Defendant's Counsel shall request that, after Notice is given, the Court hold a

Fairness Hearing and approve the settlement of the Action as set forth herein.

C. After Notice is given, the Parties shall request and obtain from the Court a Final Judgment. The Final Judgment will (among other things), if the Court approves:

1. Find that the Court has personal jurisdiction over all Settlement Class Members and that the Court has subject matter jurisdiction to approve this Agreement, including all attached exhibits;

2. Approve the Agreement and the proposed settlement as fair, reasonable and adequate as to, and in the best interests of, the Settlement Class Members; direct the Parties and their counsel to implement and consummate the Agreement according to its terms and conditions; and declare the Agreement to be binding on, and have *res judicata* and preclusive effect in, all pending and future lawsuits or other proceedings maintained by or on behalf of Plaintiffs and all other Settlement Class Members and Releasing Parties;

3. Find that the Notice implemented pursuant to the Agreement (a) constitutes the best practicable notice under the circumstances, (b) constitutes notice that is reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Actions, their right to object to or exclude themselves from this Agreement and to appear at the Fairness Hearing, (c) is reasonable and constitutes due, adequate and sufficient notice to all persons entitled to receive notice, and (d) meets all applicable requirements of the Illinois Rules of Civil Procedure, the Due Process Clause of the United States Constitution and the rules of the Court;

4. Find that the Class Representatives and Class Counsel adequately represented the Settlement Class for purposes of entering into and implementing the Agreement;

5. Dismiss the *Aliano* Action on the merits and with prejudice, without fees or costs to any party except as provided in this Agreement; and order the Named Plaintiff and the Steering Committee to take all steps necessary to obtain dismissal of the *Hetland* Action with prejudice, without fees or costs to any party, within five (5) business days of entry of the Final Judgment;

6. Incorporate the release set forth above, make the release effective as of the date of the Final Judgment, and forever discharge the Released Parties as set forth herein;

7. Permanently bar and enjoin all Settlement Class Members who have not been properly excluded from the Settlement Class from filing, commencing, prosecuting, intervening in, or participating (as class members or otherwise) in, any lawsuit or other action in any jurisdiction based on the Released Claims;

8. Authorize the Parties, without further approval from the Court, to agree to and adopt such amendments, modifications and expansions of the Agreement and its implementing documents (including all exhibits to this Agreement) that (a) shall be consistent in all material respects with the Final Judgment, and (b) do not limit the rights of Settlement Class Members;

9. Without affecting the finality of the Final Judgment for purposes of appeal, retain jurisdiction as to all matters relating to administration, consummation, enforcement and interpretation of the Agreement and the Final Judgment, and for any other necessary purpose; and

10. Incorporate any other provisions, consistent with the material terms of this Agreement, as the Court deems necessary and just.

IX. PLAINTIFFS' INCENTIVE AWARDS, THE FEE AWARD, AND COSTS

A. Defendant agrees to pay from the Settlement Fund the Class Representatives, in recognition of their efforts on behalf of the Settlement Class, subject to Court approval, an incentive award in the amount of Five Thousand Dollars (\$5,000.00) to each of the Class Representatives. Defendant shall not object to or otherwise challenge, directly or indirectly, Class Counsel's application for the incentive awards to the Class Representatives. Class Counsel has, in turn, agreed to seek no more than this amount from the Court as the incentive awards for the Class Representatives. Defendant shall pay the incentive awards, as determined by the Court, from the Settlement Fund within ten (10) days after the Effective Date. Payment of the incentive awards to the Class Representatives shall be made via check to the Class Representatives to be sent care of Class Counsel within ten (10) days after the Effective Date. An incentive award in the amount of Two Thousand Five Hundred Dollars (\$2,500.00) to the Named Plaintiff shall be made via check to the Steering Committee within ten (10) days after the Effective Date.

B. Class Counsel will request, subject to Court approval, a Fee Award in an amount not to exceed One Hundred Forty-One Thousand Six Hundred and Sixty-Six Dollars (\$141,666.00) in attorneys' fees and for reimbursement of expenses incurred in the Actions. Defendant agrees it will not object to or otherwise challenge, directly or indirectly, Class Counsel's request for a Fee Award limited to this amount. Class Counsel has, in turn, agreed to seek no more than this amount from the Court in attorneys' fees and for reimbursement of expenses. Defendant shall pay to Class Counsel from the Settlement Fund the Fee Award approved by the Court within ten (10) days after the Effective Date. Payment of the Fee Award shall be made via wire transfer to an account designated by Class Counsel after providing necessary information for electronic transfer.

C. Any dispute between or among Class Counsel and the Steering Committee regarding the division of the Fee Award shall be submitted to a mutually agreed-upon neutral in Cook County, Illinois, for binding resolution. The Parties agree that no dispute between or among Class Counsel and the Steering committee regarding the division of the Fee Award will delay the scheduling of the Fairness Hearing or entry of the Final Judgment.

X. CONDITIONS OF SETTLEMENT, AND EFFECT OF DISAPPROVAL, CANCELLATION OR TERMINATION

A. The Effective Date of this Agreement shall not occur unless and until each and every one of the following events occurs, and shall be the date upon which the last (in time) of the following events occurs:

1. This Agreement has been signed by the Parties, Class Counsel and Defendant's Counsel;
2. The Court has entered an order granting Preliminary Approval of the Agreement;
3. The Court has entered an order finally approving the Agreement, following notice to the Settlement Class and a Fairness Hearing, and has entered the Final Judgment, or a judgment substantially consistent with this Agreement, and which includes a provision requiring the Named Plaintiff to file within five (5) days after the Effective Date all papers necessary to obtain dismissal of the *Hetland* Action; and
4. The Final Judgment has become final by virtue of the Effective Date, as defined above, or, in the event that the Court enters an order and final judgment in a form other than that provided above ("Alternative Judgment") to which the Parties have consented, that Alternative Judgment has become final by virtue of the Effective Date.

B. If some or all of the conditions specified in Paragraph X.A. are not met, or in the event that this Agreement is not approved by the Court, or the settlement set forth in this Agreement is terminated or fails to become effective in accordance with its terms, then this Agreement shall be canceled and terminated subject to Paragraph X.C., unless Class Counsel and Defendant's Counsel mutually agree in writing to proceed with this Agreement. If any Party is in material breach of the terms hereof, any other Party, provided that it is in substantial compliance with the terms of this Agreement, may terminate this Agreement on notice to all other Parties.

C. Preliminary approval of the Settlement Class shall not be deemed a concession that certification of a litigation class is appropriate, nor would Defendant be precluded from challenging class certification in further proceedings in the Actions or in any other action, if the settlement is not finalized or finally approved. If this Agreement is terminated or fails to become effective for any reason, the Parties shall be restored to their respective positions in the Actions as of the date of the signing of this Agreement. In such event, any Final Judgment, certification of the Settlement Class, or other order entered by the Court in accordance with the terms of this Agreement shall be treated as vacated and void, *nunc pro tunc*, and the Parties shall be returned to the *status quo ante* with respect to the Actions as if this Agreement had never been entered into and, pursuant to Paragraph XI.D. below, this Agreement shall not be used for any purpose whatsoever against any of the Parties. No agreements made by or entered into by Defendant in connection with the Settlement may be used by the Plaintiffs, any person in the Settlement Class, or any other person to establish any of the elements of class certification in any litigated certification proceedings, whether in the Actions or any other proceeding.

D. Notwithstanding anything herein, the Parties agree that the Court's failure to approve, in whole or in part, the Fee Award to Class Counsel shall not prevent the Agreement

from becoming effective, nor shall it be grounds for termination.

XI. MISCELLANEOUS PROVISIONS

A. The Parties: (1) acknowledge that it is their intent to consummate this Agreement; and (2) agree, subject to their fiduciary and other legal obligations, to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Agreement and to exercise their reasonable best efforts to accomplish the foregoing terms and conditions of this Agreement. Class Counsel and Defendant's Counsel agree to cooperate with one another in seeking entry of an order granting Preliminary Approval of this Agreement and the Final Judgment, and promptly to agree upon and execute all such other documentation as may be reasonably required to obtain final approval of the Agreement.

B. Notwithstanding the foregoing, nothing in this Agreement shall require any of the Released Parties to modify, remove or recall any existing bottles of Tincup whiskey that have already been delivered to a distributor or have otherwise entered the stream of commerce for sale. Further, the Released Parties may continue to use, sell, and display for promotional purposes any and all Tincup merchandise containing the information about which Plaintiffs complain in the complaint filed in the *Aliano* Action for a period of twelve (12) months following the Effective Date of this Agreement. The relief provided under Section III.A. of this Agreement relates prospectively to new Tincup products and merchandise manufactured, marketed, and sold by Proximo more than twelve (12) months after the Effective Date of this Agreement.

C. The Parties intend this Agreement to be a final and complete resolution of all disputes between them with respect to the Released Claims by Plaintiffs and the Settlement Class, and each or any of them, on the one hand, against the Released Parties, and each or any of

the Released Parties, on the other hand. Accordingly, the Parties agree not to assert in any forum that the Actions were brought by Plaintiffs or defended by Defendant, or each or any of them, in bad faith or without a reasonable basis.

D. The Parties have relied upon the advice and representation of counsel, selected by them, concerning their respective legal liability for the claims hereby released. The Parties have read and understand fully this Agreement and have been fully advised as to the legal effect hereof by counsel of their own selection and intend to be legally bound by the same.

E. Whether the Effective Date occurs or this Agreement is terminated, neither this Agreement nor the settlement contained herein, nor any act performed or document executed pursuant to or in furtherance of this Agreement or the settlement:

1. Is, may be deemed, or shall be used, offered or received against the Released Parties, or each or any of them as an admission, concession or evidence of, the validity of any Released Claims, the truth of any fact alleged by Plaintiffs, the deficiency of any defense that has been or could have been asserted in the Actions, the violation of any law or statute, the reasonableness of the settlement amount or the Fee Award, or of any alleged wrongdoing, liability, negligence, or fault of the Released Parties, or any of them;

2. Is, may be deemed, or shall be used, offered or received against Defendant as an admission, concession or evidence of any fault, misrepresentation or omission with respect to any statement or written document approved or made by the Released Parties, or any of them;

3. Is, may be deemed, or shall be used, offered or received against Plaintiffs or the Settlement Class, or each or any of them as an admission, concession or evidence of, the infirmity or strength of any claims asserted in the Actions, the truth or falsity of any fact alleged by Defendant, or the availability or lack of availability of meritorious defenses to the claims

raised in the Actions;

4. Is, may be deemed, or shall be used, offered or received against the Released Parties, or each or any of them as an admission or concession with respect to any liability, negligence, fault or wrongdoing as against any Released Parties, in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. However, the settlement, this Agreement, and any acts performed and/or documents executed in furtherance of or pursuant to this Agreement and/or settlement may be used in any proceedings as may be necessary to effectuate the provisions of this Agreement. Moreover, if this Agreement is approved by the Court, any party or any of the Released Parties may file this Agreement and/or the Final Judgment in any action that may be brought against such party or Parties in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion, or similar defense or counterclaim;

5. Is, may be deemed, or shall be construed against Plaintiffs and the Settlement Class, or each or any of them, or against the Released Parties, or each or any of them, as an admission or concession that the consideration to be given hereunder represents an amount equal to, less than or greater than that amount that could have or would have been recovered after trial; and

6. Is, may be deemed, or shall be construed as or received in evidence as an admission or concession against Plaintiffs and the Settlement Class, or each and any of them, or against the Released Parties, or each or any of them, that any of Plaintiffs' claims are with or without merit or that damages recoverable in the Actions would have exceeded or would have been less than any particular amount.

F. The headings used herein are used for the purpose of convenience only and are not meant to have legal effect.

G. The waiver by one Party of any breach of this Agreement by any other Party shall not be deemed as a waiver of any other prior or subsequent breaches of this Agreement.

H. All of the exhibits to this Agreement are material and integral parts hereof and are fully incorporated herein by this reference.

I. This Agreement and its exhibits set forth the entire agreement and understanding of the Parties with respect to the matters set forth herein, and supersede all prior negotiations, agreements, arrangements and undertakings with respect to the matters set forth herein. No representations, warranties or inducements have been made to any party concerning this Agreement or its exhibits other than the representations, warranties and covenants contained and memorialized in such documents. This Agreement may be amended or modified only by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest.

J. Except as otherwise provided herein, each Party shall bear its own attorneys' fees and costs incurred in any way related to the Actions.

K. Plaintiffs represent and warrant that they have not assigned any claim or right or interest therein as against the Released Parties to any other Person or Party and that they are fully entitled to release the same.

L. Each counsel or other Person executing this Agreement, any of its exhibits, or any related settlement documents on behalf of any Party hereto, hereby warrants and represents that such Person has the full authority to do so and has the authority to take appropriate action required or permitted to be taken pursuant to the Agreement to effectuate its terms.

M. This Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. Signature by digital, facsimile, or in PDF format will constitute sufficient execution of this Agreement. A complete set of original executed counterparts shall be filed with the Court if the Court so requests.

N. The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of this Agreement, and all Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in this Agreement.

O. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois without reference to the conflicts of law's provisions thereof.

P. This Agreement is deemed to have been prepared by counsel for all Parties, as a result of arms'-length negotiations among the Parties. Whereas all Parties have contributed substantially and materially to the preparation of this Agreement, it shall not be construed more strictly against one Party than another.

Q. Any notice, instruction, application for Court approval or application for Court orders sought in connection with this Agreement or other document to be given by any Party to any other Party shall be in writing and delivered personally or sent by registered or certified mail, postage prepaid, if to Defendant to the attention of Defendant's Counsel of record, or if to Plaintiffs or the Settlement Class to Class Counsel, or to other recipients as the Court may specify.

All notices to the Parties or counsel required by this Agreement shall be made in writing and communicated by mail and e-mail to the following addresses:

If to Plaintiffs' or Class Counsel:

Thomas A. Zimmerman, Jr.
ZIMMERMAN LAW OFFICES, PC
77 West Washington Street, Suite 1220
Chicago, Illinois 60602
tom@attorneyzim.com

If to Defendant's Counsel:

William P. Schuman
MCDERMOTT WILL & EMERY LLP
227 West Monroe Street
Chicago, IL 60606
wschuman@mwe.com

IN WITNESS WHEREOF, each of the Parties hereto has caused this Agreement to be executed on its behalf by its duly authorized counsel of record, all as of the day set forth below.

[SIGNATURES APPEAR ON FOLLOWING PAGE]