

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

**IN RE: MOTOR FUEL TEMPERATURE)
SALES PRACTICES LITIGATION)
(This Document Relates to All Cases)) MDL No: 1840
)
) No: 07-md-1840-KHV-JPO**

**RENEWED MOTION OF PLAINTIFFS FOR ORDER CONDITIONALLY
CERTIFYING SETTLEMENT CLASSES, PRELIMINARILY APPROVING CLASS
ACTION SETTLEMENTS, DIRECTING AND APPROVING DISTRIBUTION OF
CLASS NOTICE, SETTING HEARING FOR FINAL APPROVAL OF CLASS ACTION
SETTLEMENTS AND APPOINTING CLASS COUNSEL**

Exhibit 3

AMENDED CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

This Amended Class Action Settlement Agreement and Release (“Amended Settlement Agreement” or “Amended Agreement”) is entered into on _____, 2012, between Sam’s Club (as defined below) (“Sam’s”) and the Class Representatives, on behalf of themselves and the proposed Settlement Class Members in the proceedings entitled: *In re Motor Fuel Temperature Sales Practices Litigation*, Case No. 07-MD 1840-KHV-JPO, MDL No. 1840 (the “Action”). The Class Representatives and Sam’s are collectively referred to as the “Parties.”

RECITALS

WHEREAS, Class Representatives are plaintiffs in various federal court actions filed against Sam’s and other defendants alleging common law claims and violations of various state consumer protection statutes, and other statutes, based on the marketing and sale of motor fuel; and

WHEREAS, on or about June 18, 2007, the Judicial Panel on Multidistrict Litigation granted a motion for consolidation for coordinated pretrial proceedings under 28 U.S.C. § 1407 and subsequently transferred the cases identified in the motion, as well as all tag-along cases, to the United States District Court for the District of Kansas; and

WHEREAS, among those consolidated cases were cases filed in Alabama, California, Florida, Indiana, Kansas, Kentucky, Louisiana, Maryland, Mississippi, Missouri, Nevada, New Mexico, Oklahoma, Pennsylvania, Tennessee, Texas, Utah, and Virginia in which Sam’s was named as a defendant with respect to alleged conduct in these and other states; and

WHEREAS, also among those consolidated cases were cases filed in Arizona, Arkansas, Delaware, Georgia, New Jersey, North Carolina, and South Carolina in which Sam’s was not named as a defendant, and

WHEREAS, Sam’s owns and operates retail motor fuel stations in Arizona, Arkansas, Delaware, Georgia, New Jersey, North Carolina, and South Carolina, and therefore could have been named as a defendant, in the cases that were originally filed which covered those states and consolidated into the aforementioned MDL; and

WHEREAS, all of the actions filed against Sam's in Alabama, California, Florida, Indiana, Kansas, Kentucky, Louisiana, Maryland, Mississippi, Missouri, Nevada, New Mexico, Oklahoma, Pennsylvania, Tennessee, Texas, Utah, and Virginia, as well as the cases filed in Arizona, Arkansas, Delaware, Georgia, New Jersey, North Carolina, and South Carolina (collectively, the "Sam's Actions") have been consolidated in accordance with the MDL Panel's transfer orders, and are currently part of the MDL proceedings pending in the District of Kansas; and

WHEREAS, Sam's denies the allegations and all liability with respect to any and all facts and claims alleged in the Sam's Actions; and

WHEREAS, Class Representatives and Class Counsel represent that they have investigated the facts and law, have engaged in discovery and settlement negotiations relating to the Sam's Actions, and that this Amended Settlement Agreement is a product of sustained, arm's length negotiations; and

WHEREAS, the Parties and their counsel agreed to resolve the claims against Sam's, and only Sam's, as a class action settlement according to the terms of a settlement agreement entered into between the Parties; and

WHEREAS, on September 28, 2012, the Court indicated that it was prepared to preliminarily approve the proposed settlement between Plaintiffs and Sam's if Plaintiffs and Sam's would agree to a modification to require Sam's to file regular compliance reports with the Court;

WHEREAS, Plaintiffs and Sam's have agreed to enter into this Amended Settlement Agreement, which includes the modification contemplated by the Court's September 28, 2012 Order and

WHEREAS, Class Counsel and Class Representatives believe that this Amended Settlement Agreement is fair, reasonable, and adequate because: (1) it provides for certification of a conditional Settlement Class, even though the Court has not yet determined whether any or all of the Sam's Actions could properly be brought or maintained as a class action in any state other

than Kansas, and (2) it provides Injunctive and Other Relief of value to the Settlement Class in exchange for Settlement Class Members' release of their claims against only Sam's;

NOW THEREFORE, it is hereby stipulated and agreed as follows by the undersigned, on behalf of the Class Representatives, the Settlement Class, Class Counsel, and Sam's:

1. Definitions

As used in this Amended Settlement Agreement, the terms set forth in this section in boldface type will have the following meanings:

1.1 Attorneys' Fees Award. Any amount awarded by the Court to Class Counsel as attorneys' fees and costs as contemplated by section 7, but in no event to exceed the amount specified in said section 7. Costs related to Notice are not included in the costs that are part of the Attorneys' Fees Award.

1.2 Automatic Temperature Compensation Equipment, or ATC. Equipment capable of producing "Automatic Temperature or Density Compensation" as defined in Appendix D to Handbook 44, in the context of the retail sale of motor fuel.

1.3 Sam's or the Company. Sam's Club, Sam's East, Inc., Sam's West, Inc., Wal-Mart Stores, Inc., Wal-Mart Stores East, LLP, any and all of their present, former or future parents, subsidiaries, affiliates, divisions, agents, successors, predecessors, assignors, assignees and/or assigns, and each of their respective present, former or future officers, directors, shareholders, insurers, agents and employees.

1.4 Class Counsel. The Lead and Liaison Counsel appointed by the Court: Robert A. Horn, Thomas V. Girardi, George A. Zelcs, and Thomas V. Bender.

1.5 Class Representatives. Annie Smith (Alabama), Christopher Payne (Arizona), Michael Gauthraux (Arkansas), Barbara Cumbo (California), Anna Legates (Delaware), Mara Redstone (Florida), Steve Rutherford (Georgia), Victor Ruybalid (Indiana), Zach Wilson (Kansas), Lisa McBride (Kentucky), Dawn Lalor (Louisiana), Raphael Sagalyn (Maryland), J.C. Wash (Mississippi), Brent Donaldson (Missouri), Scot Campbell (Nevada), Richard Galauski (New Jersey), Charles W. Byram (New Mexico), Jean Neese (North Carolina), Hadley Bower

(Oklahoma), Gerald Panto (Pennsylvania), JoAnn Korleski (South Carolina), William Rutherford (Tennessee), Priscilla Craft (Texas), Sam Hotchkiss (Utah), and James Graham (Virginia).

1.6 Confidential Information. All documents and things provided to Class Counsel by Sam's during the course of the Sam's Actions, whether by formal discovery or otherwise, Sam's has in good faith designated as confidential commercial information or trade secret information, and shall not include material that is in or enters the public domain through no fault of Class Representatives or Class Counsel.

1.7 Conversion States. The Settlement States in which, as of the date of this Amended Settlement Agreement, Sam's buys motor fuel at wholesale on a temperature adjusted basis for purposes of selling that fuel at Retail Stations, namely: Alabama, Arizona, Arkansas, California, Florida, Georgia, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Nevada, New Mexico, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Virginia.

1.8 Court. The Honorable Kathryn H. Vratil, United States District Judge, District of Kansas, or such other judge to whom the Sam's Actions may hereafter be assigned.

1.9 Sam's Counsel or Company Counsel. Brian Duffy and Naomi G. Beer and the law firm of Greenberg Traurig, LLP.

1.10 Effective Date. The last date on which all of the following have occurred:

- a. The Court enters the Final Judgment finally approving this settlement in a manner consistent with the terms and intent of this Amended Settlement Agreement; and either: (i) Thirty-five (35) days have passed after completed service on the parties to the Sam's Actions and all objectors to the settlement of the Sam's Actions, if any, of notice of entry of the Court's Final Judgment finally approving this settlement, and every order awarding attorneys' fees, and within such time no appeal is taken or extension for such appeal is granted, or (ii) if an appeal is taken or an extension for such appeal is granted with respect to the Court's Final Judgment finally approving this settlement, the date when all appellate rights with respect to the Final Judgment have expired or have been exhausted in such a manner as to affirm the Final Judgment, and when no further

appeals are possible, including review by the United States Supreme Court, and the appellate court has by final order affirmed the Court's Final Judgment finally approving this settlement, or has denied review, or the appellant otherwise has exhausted all appellate remedies.

1.11 Final Judgment. The Final Judgment and Order of Dismissal with Prejudice to be entered by the Court consistent with this Amended Settlement Agreement.

1.12 Non-Conversion States. The Settlement States in which, as of the date of this Amended Settlement Agreement, Sam's buys motor fuel at wholesale on a non-temperature adjusted basis for purposes of selling that fuel at Retail Stations, namely Delaware, Indiana, Maryland, New Jersey, Pennsylvania, and Utah.

1.13 Notice. The notice to be given to the Settlement Class in accordance with and pursuant to any plan ordered by the Court.

1.14 Parties. The Class Representatives, on behalf of themselves and the Settlement Class Members, and Sam's.

1.15 Released Claims. The claims released as set forth in Section 6 of this Amended Settlement Agreement.

1.16 Released Parties. Sam's and its present, former, or future parents, subsidiaries, affiliates, divisions, agents, successors, predecessors, assignors, assignees and/or assigns, and each of their respective present, former or future, officers, directors, shareholders, insurers, agents and employees, as well as the personal representatives or executors of any such persons. Notwithstanding any other provision in this Amended Settlement Agreement, where such person or entity is or was a subsidiary of Sam's, "Released Parties" includes such person or entity only for the time period during which such person or entity is or was a subsidiary of Sam's.

1.17 Retail Stations. Motor fuel stations owned and operated by Sam's for the purpose of selling motor fuel at retail in the Settlement States.

1.18 Amended Settlement Agreement. This Amended Agreement, together with all of its exhibits.

1.19 Settlement Class Members or Settlement Class. All persons who fall within the settlement class contemplated by this Amended Settlement Agreement to be certified by the Court and who do not opt out in accordance with such procedures as are established by the Court in accordance with Rule 23 of the Federal Rules of Civil Procedure.

1.20 States at Issue or Settlement States. Alabama, Arizona, Arkansas, California, Delaware, Florida, Georgia, Indiana, Kansas, Kentucky, Louisiana, Maryland, Mississippi, Missouri, Nevada, New Jersey, New Mexico, North Carolina, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, Utah, and Virginia.

1.21 Term. The installation of Automatic Temperature Compensation Equipment in accordance with this Amended Settlement Agreement shall take place over a five-year period beginning on the Effective Date in accordance with the schedule for implementation set forth in section 4.4 of this Amended Settlement Agreement, and subject to section 4.4.5.

2. The Settlement Class

2.1 Settlement Class. For settlement purposes only, the Parties agree that the Court may certify a Settlement Class consisting of the following twenty-five (25) subclasses pursuant to all provisions of Federal Rule of Civil Procedure 23, defined as follows

- a. *Alabama Purchasers Subclass:* All persons who, between January 1, 2001 and the date of preliminary approval of this Amended Agreement, purchased motor fuel from Sam's in the State of Alabama, excluding: (a) officers and employees of Sam's or its affiliates; and (b) the Court, and members of the Court's immediate family. Class representative: Annie Smith.
- b. *Arizona Purchasers Subclass:* All persons who, between January 1, 2001 and the date of preliminary approval of this Amended Agreement, purchased motor fuel from Sam's in the State of Arizona, excluding: (a) officers and employees of Sam's or its affiliates; and (b) the Court, and members of the Court's immediate family. Class representative: Christopher Payne.

- c. *Arkansas Purchasers Subclass*: All persons who, between January 1, 2001 and the date of preliminary approval of this Amended Agreement, purchased motor fuel from Sam's in the State of Arkansas, excluding: (a) officers and employees of Sam's or its affiliates; and (b) the Court, and members of the Court's immediate family. Class representative: Michael Gauthraux.
- d. *California Purchasers Subclass*: All persons who, between January 1, 2001 and the date of preliminary approval of this Amended Agreement, purchased motor fuel from Sam's in the State of California, excluding: (a) officers and employees of Sam's or its affiliates; and (b) the Court, and members of the Court's immediate family. Class representative: Barbara Cumbo.
- e. *Delaware Purchasers Subclass*: All persons who, between January 1, 2001 and the date of preliminary approval of this Amended Agreement, purchased motor fuel from Sam's in the State of Delaware, excluding: (a) officers and employees of Sam's or its affiliates; and (b) the Court, and members of the Court's immediate family. Class representative: Anna Legates.
- f. *Florida Purchasers Subclass*: All persons who, between January 1, 2001 and the date of preliminary approval of this Amended Agreement, purchased motor fuel from Sam's in the State of Florida, excluding: (a) officers and employees of Sam's or its affiliates; and (b) the Court, and members of the Court's immediate family. Class representative: Mara Redstone.
- g. *Georgia Purchasers Subclass*: All persons who, between January 1, 2001 and the date of preliminary approval of this Amended Agreement, purchased motor fuel from Sam's in the State of Georgia, excluding: (a) officers and employees of Sam's or its affiliates; and (b) the Court, and members of the Court's immediate family. Class representative: Steve Rutherford.
- h. *Indiana Purchasers Subclass*: All persons who, between January 1, 2001 and the date of preliminary approval of this Amended Agreement, purchased motor fuel from Sam's in the State of Indiana, excluding: (a) officers and employees of Sam's or its affiliates; and (b) the Court, and members of the Court's immediate family. Class representative: Victor Ruybalid.
- i. *Kansas Purchasers Subclass*: All persons who, between January 1, 2001 and the date of preliminary approval of this Amended Agreement, purchased motor fuel from Sam's in the State of Kansas, excluding: (a) officers and employees of Sam's or its affiliates; and (b) the Court, and members of the Court's immediate family. Class representative: Zachary Wilson.
- j. *Kentucky Purchasers Subclass*: All persons who, between January 1, 2001 and the date of preliminary approval of this Amended Agreement, purchased motor fuel from Sam's in the State of Kentucky, excluding: (a) officers and employees of Sam's or its affiliates; and (b) the Court, and members of the Court's immediate family. Class representative: Lisa McBride.

- k. *Louisiana Purchasers Subclass*: All persons who, between January 1, 2001 and the date of preliminary approval of this Amended Agreement, purchased motor fuel from Sam's in the State of Louisiana, excluding: (a) officers and employees of Sam's or its affiliates; and (b) the Court, and members of the Court's immediate family. Class representative: Dawn Lalor.
- l. *Maryland Purchasers Subclass*: All persons who, between January 1, 2001 and the date of preliminary approval of this Amended Agreement, purchased motor fuel from Sam's in the State of Maryland, excluding: (a) officers and employees of Sam's or its affiliates; and (b) the Court, and members of the Court's immediate family. Class representative: Raphael Sagalyn.
- m. *Mississippi Purchasers Subclass*: All persons who, between January 1, 2001 and the date of preliminary approval of this Amended Agreement, purchased motor fuel from Sam's in the State of Mississippi, excluding: (a) officers and employees of Sam's or its affiliates; and (b) the Court, and members of the Court's immediate family. Class representative: J.C. Wash.
- n. *Missouri Purchasers Subclass*: All persons who, between January 1, 2001 and the date of preliminary approval of this Amended Agreement, purchased motor fuel from Sam's in the State of Missouri, excluding: (a) officers and employees of Sam's or its affiliates; and (b) the Court, and members of the Court's immediate family. Class representative: Brent Donaldson.
- o. *Nevada Purchasers Subclass*: All persons who, between January 1, 2001 and the date of preliminary approval of this Amended Agreement, purchased motor fuel from Sam's in the State of Nevada, excluding: (a) officers and employees of Sam's or its affiliates; and (b) the Court, and members of the Court's immediate family. Class representative: Scott Campbell.
- p. *New Jersey Purchasers Subclass*: All persons who, between January 1, 2001 and the date of preliminary approval of this Amended Agreement, purchased motor fuel from Sam's in the State of New Jersey, excluding: (a) officers and employees of Sam's or its affiliates; and (b) the Court, and members of the Court's immediate family. Class representative: Richard Galauski.
- q. *New Mexico Purchasers Subclass*: All persons who, between January 1, 2001 and the date of preliminary approval of this Amended Agreement, purchased motor fuel from Sam's in the State of New Mexico, excluding: (a) officers and employees of Sam's or its affiliates; and (b) the Court, and members of the Court's immediate family. Class representative: Charles W. Byram.
- r. *North Carolina Purchasers Subclass*: All persons who, between January 1, 2001 and the date of preliminary approval of this Amended Agreement, purchased motor fuel from Sam's in the State of North Carolina, excluding: (a) officers and employees of Sam's or its affiliates; and (b) the Court, and members of the Court's immediate family. Class representative: Jean Neese.

- s. *Oklahoma Purchasers Subclass*: All persons who, between January 1, 2001 and the date of preliminary approval of this Amended Agreement, purchased motor fuel from Sam's in the State of Oklahoma, excluding: (a) officers and employees of Sam's or its affiliates; and (b) the Court, and members of the Court's immediate family. Class representative: Hadley Bower.
- t. *Pennsylvania Purchasers Subclass*: All persons who, between January 1, 2001 and the date of preliminary approval of this Amended Agreement, purchased motor fuel from Sam's in the State of Pennsylvania, excluding: (a) officers and employees of Sam's or its affiliates; and (b) the Court, and members of the Court's immediate family. Class representative: Gerald Panto.
- u. *South Carolina Purchasers Subclass*: All persons who, between January 1, 2001 and the date of preliminary approval of this Amended Agreement, purchased motor fuel from Sam's in the State of South Carolina, excluding: (a) officers and employees of Sam's or its affiliates; and (b) the Court, and members of the Court's immediate family. Class representative: JoAnn Korleski.
- v. *Tennessee Purchasers Subclass*: All persons who, between January 1, 2001 and the date of preliminary approval of this Amended Agreement, purchased motor fuel from Sam's in the State of Tennessee, excluding: (a) officers and employees of Sam's or its affiliates; and (b) the Court, and members of the Court's immediate family. Class representative: William Rutherford.
- w. *Texas Purchasers Subclass*: All persons who, between January 1, 2001 and the date of preliminary approval of this Amended Agreement, purchased motor fuel from Sam's in the State of Texas, excluding: (a) officers and employees of Sam's or its affiliates; and (b) the Court, and members of the Court's immediate family. Class representative: Priscilla Craft.
- x. *Utah Purchasers Subclass*: All persons who, between January 1, 2001 and the date of preliminary approval of this Amended Agreement, purchased motor fuel from Sam's in the State of Utah, excluding: (a) officers and employees of Sam's or its affiliates; and (b) the Court, and members of the Court's immediate family. Class representative: Sam Hotchkiss.
- y. *Virginia Purchasers Subclass*: All persons who, between January 1, 2001 and the date of preliminary approval of this Amended Agreement, purchased motor fuel from Sam's in the State of Virginia, excluding: (a) officers and employees of Sam's or its affiliates; and (b) the Court, and members of the Court's immediate family. Class representative: James Graham.

Class Representatives shall move for conditional certification of the Settlement Class contemporaneously with their motion for preliminary approval of this settlement, and Sam's shall not object to such motion, solely for the purposes of this settlement. The Class

Representatives will provide a copy of said motions to Sam's within a reasonable time prior to filing.

2.2 Decertification of the Settlement Class if Settlement Not Approved. If the Court does not grant final approval of the settlement reflected in the Amended Settlement Agreement, any certification of any Settlement Class will be vacated and the Parties will be returned to their positions with respect to the Sam's Actions as if the Amended Settlement Agreement had not been entered into. In the event that Final Approval is not achieved: (a) any Court orders preliminarily or finally approving the certification of any class contemplated by this Amended Settlement Agreement shall be null, void, and vacated, and shall not be used or cited thereafter by any person or entity in any manner whatsoever, including without limitation any contested proceeding relating to the certification of any class; and (b) the fact of the settlement reflected in this Amended Settlement Agreement, that Sam's did not oppose the certification of any class under this Amended Settlement Agreement, or that the Court preliminarily approved the certification of any Settlement Class, shall not be used or cited thereafter by any person or entity in any manner whatsoever, including without limitation any contested proceeding relating to the certification of any class.

2.3 Amendment of Complaints. Class Representatives shall seek Court approval, and Sam's will consent, to amend, or, where complaints were previously voluntarily dismissed without prejudice, to refile complaints with respect to claims covering Arizona, Arkansas, California, Delaware, Georgia, Indiana, Missouri, New Jersey, Pennsylvania, North Carolina, and South Carolina, so as to add Sam's as a defendant to those cases for the sole purpose of obtaining certification of a settlement class and approval of this Amended Settlement Agreement. All paperwork necessary to accomplish such amendments will be completed by Class Counsel.

3. Notice

3.1 Manner of Giving Notice. Notice of this Amended Settlement Agreement shall be given in accordance with such notice ordered by the Court. Such Notice shall be designed and issued by Class Counsel and shall be reasonably calculated, subject to Court approval, to provide the reach and content necessary to give appropriate notice to a

reasonable portion of the Settlement Class in accordance with constitutional requirements of due process and Rule 23 of the Federal Rules of Civil Procedure. The Parties shall confer regarding the Notice plan prior to its submission to the Court and Sam's shall have the right to approve the proposed Notice plan, which approval shall not be unreasonably withheld. The Parties acknowledge that it is the present intention of Class Counsel that such Notice shall be in the form of a combined notice of settlement with Sam's and such other defendants as may have settled by the time such Notice is given. If the Court orders mailed notice for some or all of the Settlement Class Members covered by this Amended Settlement Agreement, the costs of such additional notice will be borne entirely by Sam's, however, Sam's reserves the right to terminate this settlement in its sole discretion if the Court orders such mailed individual notice. If Sam's exercises its option to terminate due to the requirement of mailed individual notice, it shall provide Class Counsel with written notice of its election, at which point the Parties shall return to their respective positions in the manner and effect as set forth in section 2.2.

3.2 Cost of Class Notice. Within ten (10) business days after the date of preliminary approval of this Amended Settlement Agreement, Sam's shall pay to Class Counsel the sum of Two Hundred Thousand Dollars (\$200,000.00), which sum shall be utilized by Class Counsel towards the cost of Notice and administration of the Settlement. Except as provided in section 3.1 with respect to individual mailed notice, all costs of such Notice shall be borne solely by Class Counsel and not by Sam's. The payment of the sum identified in this section shall be in addition to the payment of the sum identified in section 7 below, and it is understood that, except as provided in section 3.1 with respect to individual mailed notice, the sum mentioned in this section shall be the sole and exclusive cost incurred by Sam's with respect to the issuance and publication of Notice and administration of the Settlement.

3.3 Opt Outs

3.3.1 Procedures for Opt Outs. Any request to opt out of the Settlement must be submitted electronically via the website established by Class Counsel in connection with the Notice, or in writing. Such opt-out election must include the name, address, and telephone number of the opting-out Settlement Class Member. The opt-out request must be personally signed, or

submitted electronically, by the Settlement Class Member who seeks to opt out; no Settlement Class Member may opt out by having a request to opt out submitted by an actual or purported agent or attorney acting on behalf of the Settlement Class Member. No opt out request may be made on behalf of a group of Settlement Class Members. Each Settlement Class Member who does not submit an opt out request substantially in compliance with this section within thirty (30) days of the conclusion of the notice period pursuant to section 3.1 shall be deemed to participate in the settlement and all releases provided in this Amended Agreement. For purposes of determining timeliness, an opt-out request shall be deemed to have been submitted upon electronic transmission or when postmarked by the postal service or other expedited mail service. The Notice Administrator shall provide copies of all requests to opt out to Class Counsel and Sam's Counsel.

3.3.2 Effect of Opt Outs by Settlement Class Members. If the number of Settlement Class Members who opt out of the Settlement exceeds Two Thousand Five Hundred (2,500) members, Sam's may terminate this Amended Settlement Agreement by providing written notice to Class Counsel and the Court within ten (10) business days after the Notice Administrator provides to Sam's Counsel the list of opt-out requests made in accordance with the procedure in section 3.3.1, at which point this Amended Settlement Agreement, and all of Sam's obligations under this Amended Settlement Agreement, shall be rescinded, cancelled, and annulled, and the Parties shall return to their respective positions in the manner and effect as set forth in Section 2.2.

4. Consideration

4.1 Sam's agrees to the following:

4.2 Conversion to ATC at Existing Stations. Subject to the other provisions in this Amended Settlement Agreement, and in accordance with the schedule and Implementation Period(s) set forth in Section 4.4 and its sub-sections below, Sam's will convert all of the motor fuel dispensers at all Retail Stations in the Conversion States to Automatic Temperature Compensation Equipment. If Sam's standard practice in any of the Conversion States changes such that Sam's begins consistently purchasing a majority of its motor fuel on a non-temperature adjusted basis for sale at Retail Stations in that Settlement State during the Term of

this Amended Settlement Agreement, the requirement that Sam's convert all of the motor fuel dispensers at all Retail Stations in that Settlement State to Automatic Temperature Compensation Equipment shall cease until such time, if any, during the Term of this Amended Settlement Agreement that Sam's begins purchasing a majority of its motor fuel in that Settlement State on a temperature adjusted basis. Should, subsequent to the Effective Date but prior to the expiration of the Term of this Amended Settlement Agreement, Sam's begin consistently purchasing motor fuel on a temperature adjusted basis for sale at Retail Stations in any Non-Conversion State, Sam's agrees to convert all of the motor fuel dispensers at the Retail Stations in that Non-Conversion State in accordance with the schedule and Implementation Period set forth in Section 4.4 and its subsections, below.

4.3 Installation of ATC at New Stations. Subject to the other provisions in this Amended Settlement Agreement, Sam's will install Automatic Temperature Compensation Equipment on all motor fuel dispensers at any new Retail Station in the Conversion States opened during the Term of the Amended Agreement. If Sam's standard practice in any of the Conversion States changes such that Sam's begins purchasing a majority of its motor fuel on a non-temperature adjusted basis for sale at Retail Stations in that Settlement State during the Term of this Amended Settlement Agreement, the requirement that Sam's install Automatic Temperature Compensation Equipment at new Retail Stations in that Settlement State shall cease until such time that Sam's begins purchasing a majority of its motor fuel in that Settlement State on a temperature adjusted basis. Should, subsequent to the Effective Date but prior to the expiration of the Term of this Amended Settlement Agreement, Sam's begin consistently purchasing motor fuel on a temperature adjusted basis for sale at Retail Stations in any Non-Conversion State, Sam's agrees to install ATC at any new Retail Stations in that Non-Conversion State, in accordance with the schedule and Implementation Period set forth in Section 4.4 and its subsections, below.

4.4 Implementation Period. Subject to all the other provisions in this Amended Settlement Agreement, Sam's will, where if permitted by the Settlement State's authorities, laws, and regulations, complete the conversion and installation of ATC in each of the Settlement States as set forth in sections 4.2 and 4.3 above in accordance with the following schedule, starting on the Effective Date. Subject to Section 4.4.5, if ATC is not permitted by

the authorities, laws, and regulations in a particular Settlement State prior to the expiration of the Term of this Amended Settlement Agreement, the obligation to convert to or install ATC in that Settlement State ceases at the expiration of the five (5) year Term of this Amended Settlement Agreement.

4.4.1 Within two (2) years of the Effective Date, subject to section 4.6, Sam's will convert to Automatic Temperature Compensation Equipment at least Ten percent (10%) of the motor fuel dispensers in the Retail Stations in such Settlement State.

4.4.2 Within three (3) years of the Effective Date, subject to section 4.6, Sam's will convert to Automatic Temperature Compensation Equipment at least Forty percent (40%) of the motor fuel dispensers in the Retail Stations in such Settlement State.

4.4.3 Within four (4) years of the Effective Date, subject to section 4.6, Sam's will convert to Automatic Temperature Compensation Equipment at least Seventy percent (70%) of the motor fuel dispensers in the Retail Stations in such Settlement State.

4.4.4 Within five (5) years of the Effective Date, subject to section 4.6, Sam's will convert to Automatic Temperature Compensation Equipment One Hundred percent (100%) of the motor fuel dispensers in the Retail Stations in such Settlement State.

4.4.5 Notwithstanding the schedule set forth in sections 4.4.1 to 4.4.4 above, the maximum number of motor fuel dispensers Sam's must convert to ATC in any one year cannot exceed Thirty percent (30%) of the motor fuel dispensers in the Retail Stations in the Conversion States. If delays in obtaining required regulatory approval have prevented Sam's from converting more than Fifty percent (50%) of the motor fuel dispensers in the Retail Stations in the Conversion States by the end of the fifth year after the Effective Date, the Parties agree to extend the Term of this Amended Settlement Agreement for an additional year.

4.5 Force Majeure. Sam's shall not be liable for failure to perform any obligation set forth in this Amended Settlement Agreement, and any such failure shall not be considered a breach of or noncompliance with the terms of this Amended Settlement Agreement, for the period during which such failure results from the actions or omissions of a third party or other cause beyond Sam's control. This provision shall apply, by way of example without limitation, if

Sam's is unable to procure Automatic Temperature Compensation Equipment to comply with its obligations pursuant to sections 4.2 and 4.3 above, or services of personnel to properly install such equipment. It shall also apply, by way of example without limitation, if Sam's is unable to meet the implementation schedule set forth in section 4.4 above due to delays in any regulatory approval that is required by law.

4.6 Regulatory Approval. Within thirty (30) days after the Effective Date, Class Counsel and Company Counsel shall provide each other with any and all non-privileged evidence in their possession concerning whether or not each of the Settlement States allows or prohibits ATC. If on the Effective Date, in the good faith judgment of Sam's there is any regulatory approval required as a matter of law, the Company shall so notify Class Counsel. Class Counsel agree to take all reasonable steps to seek such regulatory approval required by law from each of the Settlement States. Sam's shall have no obligation to take any steps or action of any kind to seek to obtain any such regulatory approval, nor shall Sam's have any obligation to begin the conversion or installation process referenced in Sections 4.2 and 4.3 above in any of the Settlement States unless and until such regulatory approval has been issued and obtained in such Settlement State.

Following denial of any legally required regulatory approval in any Settlement State, or, if the legality of a regulatory denial is challenged then following an adverse final adjudication of such legal challenge, the Retail Stations in that state will be excluded from Section 4, and all of the equipment in Retail Stations in that state will be excluded from the total amount of equipment used to compute the conversion percentage identified in section 4.4.

4.7 Other Agreements. If at any time prior to the completion of conversion and installation of ATC, Class Counsel and Class Representatives agree to enter into any agreement with any person or company to resolve any action or any other pending or threatened claim concerning ATC, where such agreement is based on such person or company converting or installing ATC, and where such agreement is materially more favorable to that person or company than this Agreement is to Sam's (including, without limitation, calling for a lower conversion percentage, slower rate of conversion to ATC, or for completion of conversion to ATC at a later date than required by Section 4.4), Class Counsel and Class Representatives agree

to notify Sam's promptly of the terms of such agreement. At Sam's sole discretion, it may adopt the materially more favorable terms in any such agreement in place of its obligations under Section 4.4. Sam's agrees to notify Class Counsel and Class Representatives in writing of any such election. The Parties agree that any change in Sam's obligations under Section 4.4 as a result of any such election that is not a change that is materially adverse to the Settlement Class does not require additional notice to the Settlement Class.

4.8 Supply Disruption. If Sam's, as a direct or indirect result of the Amended Settlement Agreement (determined solely in the good faith subjective judgment of Sam's), loses a commercially material amount of its current motor fuel supply and/or experiences commercially material increases in the price of motor fuel in a Settlement State, the Amended Settlement Agreement shall, at Sam's election, be rescinded, cancelled, and annulled as applied to that state if ATC equipment shall not have been installed and operating with requisite public notice in the majority of Retail Locations in that Settlement State for at least one year. If Sam's exercises this option, it shall provide Class Counsel with written notice of its election.

4.9 Sticker Disclosures at Sam's Pumps. Sam's agrees that within sixty (60) days after the Effective Date, and continuing through the expiration of the Term of this Amended Settlement Agreement, Sam's will place stickers on the fuel dispensers at Retail Stations in the Settlement States. Such stickers shall generally disclose information about the effects of temperature on the volume and energy content of motor fuel that is meaningful to the consumer in making purchasing decisions. The language of the stickers shall be agreed to by the Parties. The obligation to place such stickers shall end as to all Settlement States at the expiration of the Term of this Amended Settlement Agreement. The obligation to place such stickers shall also end with respect to a particular Retail Station if during the Term of this Amended Settlement Agreement Sam's converts or installs ATC Equipment at that Retail Station.

5. Settlement Procedures

5.1 Preliminary Approval. Following the execution of this Amended Agreement by all Parties, and on the schedule set by the Court, Class Representatives shall move the Court for an order for preliminary approval of this settlement. It is contemplated and understood that such motion may be filed in conjunction with motions seeking preliminary approval of other

settlements with other defendants in the litigation. At that time, Class Representatives shall request from the Court a Preliminary Approval Order substantively identical to Exhibit A, specifically including provisions granting preliminary approval, approving the Notice plan, and providing for objections to this settlement by way of an objection procedure.

5.2 Objections. Any objection to this settlement must be received in the form and manner required by the Notice within thirty (30) days of the conclusion of the notice period pursuant to section 3.1. Any objection to the proposed settlement shall be heard, and any papers submitted in support of said objections shall be received and considered by the Court at the final approval hearing (or at such other time as may be directed by the Court), only if persons making objections file with the Court and serve on the Parties notice of their intentions and copies of such papers they propose to submit at the hearing at least thirty (30) days before the final approval hearing.

5.3 Final Approval and Dismissal. The final approval hearing shall be set within a sufficient number of days after the Court enters the Preliminary Approval Order so as to allow for the ninety day period contemplated by the notice provisions of the Class Action Fairness Act, 28 U.S.C. § 1715 (“CAFA”) and so as to allow for the notice and objection procedures contemplated by this Amended Settlement Agreement. Within a reasonable time prior to the date set for the Final Approval Hearing (or at such other time as may be directed by the Court), Class Representatives shall move the Court for an order seeking final approval of this settlement. It is contemplated and understood that such motion may be filed in conjunction with motions seeking final approval of other settlements with other defendants in the litigation. At that time, Class Representatives shall request from the Court a Final Judgment and Order of Dismissal that includes at least the following provisions:

5.3.1 finding that the Parties have submitted to the jurisdiction of the Court for purposes of settlement, that the Court has personal jurisdiction over the Parties and all Settlement Class Members, and that the Court has subject matter jurisdiction to approve the settlement;

5.3.2 finding that the Notice was the best notice practicable under the circumstances and was due and sufficient notice to the Settlement Class, and that such notice fully satisfies the requirements of due process and applicable law;

5.3.3 approving this settlement and finding it is fair, reasonable and adequate, and in the best interests of the Settlement Class;

5.3.4 confirming that the Class Representatives and the Settlement Class shall be deemed to have released all claims against Sam's, as described in Section 6 below, and permanently barring and enjoining Class Representatives and any member of the Settlement Class who has not opted out from asserting, commencing, prosecuting, or continuing any of the Released Claims against Sam's;

5.3.5 dismissing Sam's from the Sam's Actions with prejudice, with each party to bear its own costs except as otherwise provided in this Amended Settlement Agreement, and subject to the Court's retaining jurisdiction over the enforcement of the terms of this Amended Settlement Agreement; and

5.3.6 determining that the Final Judgment and Order of Dismissal shall be final and appealable.

5.4 If the Court certifies any Settlement Class for purposes of effectuating this settlement, or enters any orders relating to Class Representatives and Class Counsel in connection with this settlement, such actions shall not be an adjudication of any fact or issue for any purpose other than the effectuation of this Amended Settlement Agreement and shall neither be considered as law of the case or *res judicata* nor shall have collateral estoppel, or any other, effect in this or any other proceeding. In the event that Final Approval is not granted, the Court's orders contemplated by this section shall be null, void, and vacated, and shall not be used or cited thereafter by any person or entity for any purpose in the Sam's Actions, any other action, case, proceeding or suit, or otherwise.

6. Release of Claims

6.1 Release of Class Claims. Upon the Effective Date, Class Representatives and each Settlement Class Member, and each of their respective executors, representatives, heirs, successors, bankruptcy trustees, guardians, and all those who claim or could claim through them or assert claims on their behalf, will be deemed and adjudged to have completely released and forever discharged the Released Parties, and each of them, from any claim, right, demand, charge,

complaint, action, cause of action, obligation or liability, including but not limited to any claims for declaratory or injunctive relief, or for any type of restitution or damages or any other relief whether known or unknown, suspected or unsuspected, under the law of any jurisdiction, which the Class Representatives or any Settlement Class Member now has or ever had, from the beginning of the world to the Effective Date, resulting from, arising out of or in any way directly or indirectly connected to claims that are, were, or could have been asserted in the actions against Sam's, and further specifically including, though not limited to, any and all claims that were or could have been asserted in the Sam's Actions for misrepresentation, misstatement, acts, omissions, disclosures, non-disclosures, unconscionability, fraud, breach of contract, quasi-contract, quantum meruit, unjust enrichment, violation of state consumer protection statutes, alleged participation in an alleged conspiracy, or any other alleged claim or theory, related in any way to the retail sale of motor fuel, the temperature, energy content, or other characteristics or qualities of motor fuel, or the collection of taxes in connection with the retail sale of motor fuel. Each of the Class Representatives and each of the Settlement Class Members further expressly and irrevocably waive and fully, finally, and forever settle and release, upon the Court's final approval of this Amended Settlement Agreement, any and all defenses, rights, and benefits that he or she may have or that may be derived from the provisions of applicable law which, absent such waiver, may limit the extent or effect of the release contained in this Section. Without limiting the generality of the foregoing, each of the Class Representatives and each of the Settlement Class Members expressly and irrevocably waive and release any and all defenses, rights, and benefits that he or she might otherwise have in relation to the release by virtue of the provisions of California Civil Code § 1542 or similar laws of any other state or jurisdiction. Section 1542 provides: **"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."**

6.2 Bar to Future Suits. Except for the enforcement of the final judgment entered pursuant to this Settlement, Class Representatives and Settlement Class Members who do not opt out of the Sam's Actions shall be enjoined from prosecuting any proceeding against any Released Party with respect to the conduct, services, fees, charges, actions or omissions of any Released Party relating to any matters within the scope of the release in this section or actions taken by a Released Party that are authorized or required by this Amended Settlement Agreement

or by the Final Judgment. The Court shall retain jurisdiction to enforce the judgment, releases and bar to suits contemplated by this Amended Settlement Agreement. It is further agreed that the Amended Settlement Agreement and the Final Judgment may be pleaded as a complete defense to any proceeding subject to this section as to Sam's. This bar, and all provisions of this Section 6, and all of its subparts, and all other paragraphs and sections of this document, are agreed to because of the valuable benefits conferred on members of the class by this Settlement, the extended period of time that would be required to come to some other resolution, and the uncertain nature of any resolution absent this Settlement.

7. Attorneys' Fees Award

7.1 Application. Class Counsel may apply to the Court for an award of fees and costs (as defined, an "Attorneys' Fees Award") with respect to the claims against Sam's in the Sam's Actions (the "Fee Application"). Class Counsel agree to request, and Sam's has, subject to Court approval, agreed to pay, the amount of Three Million Dollars (\$3,000,000.00) to Class Counsel as an Attorneys' Fees Award, upon approval of such award by the Court. Sam's does not agree to pay, Class Counsel will not seek from the Court as against Sam's, and Class Counsel in no event will ever seek to collect from Sam's, an amount in excess of Three Million Dollars (\$3,000,000.00) as an Attorneys' Fees Award with respect to the Sam's Actions or the settlement contemplated and agreed to herein. The fee amount referenced in this sub-section was negotiated separately from the matters negotiated and agreed to in sections 4 and 6 above, and was agreed to only after the Parties and their counsel had already agreed to the terms and provisions of sections 4 and 6.

7.2 Service of Fee Application on Objectors. Class Counsel shall serve any Fee Application on all Settlement Class Members who file objections to the Amended Settlement Agreement.

7.3 Timing. The Parties agree that any Attorneys' Fees Award shall be payable by Sam's within fourteen (14) business days after the Effective Date.

7.4 Incentive Awards to Class Representatives. Class Counsel will ask that the District Court provide for an incentive fee for the Class Representatives in the amount of Two Thousand Dollars (\$2,000.00) each. If the Court awards this amount or any other amount, it will

be deducted from the Attorneys' Fees Award, and in no circumstances shall Sam's be obligated to pay any additional monies to any person or entity as an Incentive Award.

8. Continuing Jurisdiction; Compliance Reporting

8.1 Continuing Jurisdiction. The Court shall have continuing jurisdiction to enforce the terms of this Amended Settlement Agreement and to enforce the Final Judgment. The Parties submit to the jurisdiction of the Court for purposes of implementing and enforcing the terms of the Amended Settlement Agreement.

8.2 Compliance Reporting. Beginning on the date that is six (6) months after the Effective Date, and within each six (6) month period thereafter during the Term of this Amended Settlement Agreement, Sam's will file with the Court and serve on Class Counsel a status report describing Sam's compliance with the requirements of section 4.

9. Exception for Compliance with Legislative/Regulatory Requirements

To the extent that any local, state, or federal legislative or regulatory body or agency has adopted or adopts legislation, regulations, or rules or policies that conflict with or impose requirements substantially similar to the terms of the Amended Settlement Agreement, then compliance by Sam's with any such legislation, regulations, or rules or policies shall be deemed to constitute satisfaction of the terms of the Amended Settlement Agreement. Nothing in this Amended Settlement Agreement shall be construed or applied so as to require Sam's to engage in any conduct, action or inaction that Sam's believes in reasonable good faith Sam's to violate any applicable federal, state or local law or regulation. In the event Sam's concludes that it is legally required to depart from or act in a manner inconsistent with the requirements of this Amended Settlement Agreement, Sam's shall, to the extent practicable, provide notice of such to Class Counsel.

10. Return of Confidential Information

Class Counsel, on behalf of themselves and any expert witnesses and consultants retained by them, acknowledge that during the course of the Actions, they have received Confidential Information. No later than sixty (60) days after the Effective Date, Class Counsel will return to Sam's all Sam's Confidential Information and will certify under oath that they and their

expert witnesses and consultants do not retain any copies or summaries or compilations or indices of such information.

This provision is not intended to cover work product of Class Counsel or information that is in the public domain through no fault of Plaintiffs or Class Counsel, but is intended to cover Confidential Information that might simply be attached to any work product.

Class Counsel also will not use any of the Confidential Information learned or obtained in the actions against Sam's for any purpose after the Effective Date.

11. Notices

Any communication sent by any Party in connection with this Amended Settlement Agreement other than the Notice to Class Members set forth in section 3 above shall be sent by email and certified mail, return receipt requested, as follows:

To Class Representatives:
Robert A. Horn
Horn Aylward Bandy
2600 Grand Boulevard, Suite 1100
Kansas City, Missouri 64108
Phone: (816) 421-0700
Fax: (816) 421-0899
bhorn@hab-law.com

To Sam's:
Brian L. Duffy
Naomi G. Beer
Greenberg Traurig, LLP
1200 17th Street, Suite 2400
Denver, Colorado 80202
Phone: (303) 572-6549
Fax: (303) 572-6540
beern@gtlaw.com

12. Publicity

The Parties shall agree to the terms and language of a statement to be made to the press by Class Counsel and a statement to be made by Sam's with respect to this settlement. No person shall make any other statements to the media concerning the settlement without the written pre-approval of all Parties, except that the Parties may refer the media to the agreed statements and any Court filings not under seal.

13. Representations and Warranties

13.1 No Additional Persons with Financial Interest. Class Representatives and Class Counsel represent and warrant that all persons (natural or legal) having any interest in any award of attorneys' fees or costs in connection with this Settlement must seek any award of attorney's fees or costs with this Court pursuant to the Court's preliminary approval order, and that they are not currently aware of any such person aside from Class Counsel.

13.2 Parties Authorized to Enter into Amended Settlement Agreement. Class Representatives, Class Counsel, and Sam's represent and warrant that he, she, or it is fully authorized to enter into this Amended Settlement Agreement and to carry out the obligations provided for herein. Each person executing this Amended Settlement Agreement on behalf of a Party covenants, warrants and represents that he is and has been fully authorized to do so by such Party. Each Party hereto further represents and warrants that he, she, or it intends to be bound fully by the terms of this Amended Settlement Agreement.

13.3 No Attempt by Parties to Object. Class Representatives and Class Counsel and Sam's each represent and warrant that they have not made nor will they make any effort or attempt (a) to void or impair the enforceability of any element of this Amended Settlement Agreement in any way, or (b) solicit, encourage, or assist in any fashion any effort by any person (natural or legal) to object to the Amended Settlement Agreement.

14. Miscellaneous

14.1 No Liability. This Amended Settlement Agreement is not, is not intended to be, and will not under any circumstances be deemed to be, an admission or acknowledgement by any party as to the merits, validity, or accuracy, or lack thereof, of any of the allegations or claims in the Sam's Actions, nor the waiver of any defense. Sam's expressly denies liability or wrongdoing of any kind associated with the claims alleged in the Sam's Actions and further contends that none of the Sam's Actions are appropriate for class action treatment pursuant to Rule 23 of the Federal Rules of Civil Procedure or any other federal or state rule, statute, law, or provision. Sam's continues to assert that the Sam's Actions fail to meet the prerequisites necessary for class action treatment under applicable law, especially, but not solely, with respect to predominance and manageability

because the need to determine individualized issues make each of the Sam's Actions unmanageable consistent with due process. Sam's further asserts that it has complied with all applicable provisions of federal and state statutory and common law. Sam's further states that despite its good faith belief that it is not liable for any of the claims asserted, and despite its good faith belief that class certification is not appropriate, it will not oppose the Court's certification of the Settlement Class contemplated by this Amended Settlement Agreement solely for purposes of effectuating this settlement. Other than for purposes of this settlement, Sam's does not waive its objections to certification of the Settlement Class, or any other class, in the Sam's Actions, or any other action, or for any other purpose.

14.2 No Construction Against Drafter. This Amended Settlement Agreement shall be deemed to have been drafted by the Parties, and any rule that a document shall be interpreted against the drafter shall not apply to this Amended Settlement Agreement.

14.3 Signatures. Signature by facsimile or in PDF format will constitute sufficient execution of this Amended Settlement Agreement. Original signatures must be available upon request.

14.4 Execution in Counterparts. This Amended Settlement Agreement shall become effective upon its execution by all Parties. The Parties may execute this Amended Settlement Agreement in counterparts. Each counterpart shall be deemed to be an original, and execution of counterparts shall have the same force and effect as if all Parties had signed the same instrument.

14.5 Invalidity on Modification or Disapproval. Other than with respect to the Attorneys' Fees Award provided for in Section 7, in the event any court disapproves or sets aside this Amended Settlement Agreement or any material part of this Amended Settlement Agreement for any reason, or holds that it will not enter or give effect to the Final Judgment without material modification, or holds that the entry of the Final Judgment or any material part thereof should be overturned or modified in any material way, then:

- (A) If all Parties do not agree jointly either to such modification or to appeal such ruling, this Amended Settlement Agreement will become null and void, and the Sam's Actions will continue, and the Parties stipulate to joint motions (i) that any and all orders entered pursuant to this Amended Settlement Agreement be vacated, and (ii) that any and all

dismissals pursuant to this Amended Agreement will be vacated; or

(B) If the Parties do agree to jointly appeal such ruling and if the Final Judgment or its equivalent in all material respects is not in effect after the termination of all proceedings arising out of such appeal, this Amended Agreement will become null and void, and the Sam's Actions will continue, and the Parties stipulate to joint motions (i) that any and all orders entered pursuant to this Amended Agreement be vacated, including, without limitation, any order modifying the class certification order or permitting amendment of the complaint to conform the complaint to the class definition set out in section 2.1, and (ii) that any and all dismissals pursuant to this Amended Agreement will be vacated.

In the event that any court orders an Attorneys' Fees Award in an amount less than that sought by Class Counsel in accordance with Section 7, that finding shall not be a basis for rendering the entire Amended Settlement Agreement null, void and unenforceable. Class Counsel retains their right to appeal any decision by the Court regarding the Attorneys' Fee Award.

14.6 Termination Option. If, at any time prior to the Court's entry of the Final Judgment, Class Counsel and Class Representatives enter into any agreement with any person to resolve any of the cases in the Litigation or any other pending or threatened claim concerning ATC, Class Counsel and Class Representatives agree to notify Sam's promptly of the terms of such agreement. Where such other agreement is based on such person or company converting or installing ATC, at Sam's sole discretion, if Sam's believes that any such other agreement is materially more advantageous to Sam's than this Amended Settlement Agreement and for any reason Sam's is not able to exercise its rights under Section 4.7, Sam's shall have the right to rescind this Amended Settlement Agreement, in which case all of Sam's obligations under this Amended Settlement Agreement shall cease to be of any force and effect, and this Amended Settlement Agreement shall be rescinded, cancelled, and annulled. If Sam's exercises this option, it shall provide Class Counsel with written notice of its election, at which point the Parties shall return to their respective positions in the manner and effect as set forth in Section 2.2.

14.7. Amendment. This Amended Settlement Agreement may be amended or modified only by a written instrument signed by all Parties or their successors in interest or their

duly authorized representatives or by court order modifying the Amended Settlement Agreement based on changed circumstances.

14.8 Modification. Prior to entry of the Final Judgment, this Amended Settlement Agreement may, with approval of the Court, be modified by written agreement of Class Counsel and Sam's Counsel in their discretion without giving any additional notice to the Class, provided that such modifications are not materially adverse to the Class.

Subsequent to the Final Approval Order and Judgment becoming a Final Judgment, this Amended Settlement Agreement may, with approval of the Court, be modified by written agreement of Class Counsel and Sam's Counsel in their discretion without giving any additional notice to the Settlement Class Members, provided that such modifications do not limit the rights of the Settlement Class Members under the Amended Settlement Agreement.

14.9 Best Efforts. Class Counsel and Class Representatives and Sam's will use their best efforts to seek approval of the Amended Settlement Agreement by the Court, including amendment of the complaints to include Sam's and to incorporate the definition of the Settlement Class, if necessary, and in responding to any objectors, intervenors or other persons or entities seeking to preclude the final approval of this Amended Settlement Agreement.

14.10 Time Periods. The time periods and dates described in this Amended Settlement Agreement with respect to the giving of notices and hearings are subject to Court approval and modification by the Court or by written stipulation of the Parties' counsel.

14.11 Governing Law. Except where otherwise provided for herein, this Amended Settlement Agreement is intended to and shall be governed by the laws of the State of Kansas, provided, however, that whether or not ATC is permitted by the applicable authorities, laws, and regulations of a Settlement State shall be determined in accordance with the law of the Settlement State where the Retail Stations are located.

14.12 Agreement Binding on Successors in Interest. This Amended Settlement Agreement shall be binding on and inure to the benefit of the respective heirs, successors, and assigns of the Parties.

IN WITNESS WHEREOF, the Parties hereto have caused this Amended Settlement Agreement to be executed as of the day and year indicated below.

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CLASS COUNSEL

Dated: Oct. 16, 2012



ROBERT A. HORN

Dated: _____, 2012

THOMAS V. GIRARDI

Dated: _____, 2012

GEORGE A. ZELCS

Dated: _____, 2012

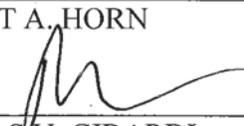
THOMAS V. BENDER

CLASS COUNSEL

Dated: _____, 2012

ROBERT A. HORN

Dated: 10/16, 2012



THOMAS V. GIRARDI

Dated: _____, 2012

GEORGE A. ZELCS

Dated: _____, 2012

THOMAS V. BENDER

CLASS COUNSEL

Dated: _____, 2012

ROBERT A. HORN

Dated: _____, 2012

THOMAS V. GIRARDI

Dated: 10/17, 2012



GEORGE A. ZELCS

Dated: _____, 2012

THOMAS V. BENDER

CLASS COUNSEL

Dated: _____, 2012

ROBERT A. HORN

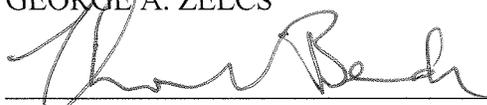
Dated: _____, 2012

THOMAS V. GIRARDI

Dated: _____, 2012

GEORGE A. ZELCS

Dated: _____, 2012



THOMAS V. BENDER

COUNSEL FOR SAM'S

Dated: 10/15, 2012


BRIAN L. DUFFY