

AGREEMENT

This Agreement is entered into effective October 11, 2006 (the "Effective Date"), by and between the undersigned States through their respective Attorneys General and R.J. Reynolds Tobacco Company ("Reynolds") (the "Parties").

WHEREAS, a multi-state group of Attorneys General (the "Attorneys General") conducted an extensive investigation of Reynolds' marketing, promotion and advertising of the following cigarette brand styles (collectively the "Investigated Cigarette Brand Styles"): *Camel*: Basma, Samsun, Rare, Mandarin Mint, Dark Mint, Crema, Izmir Stinger, Twist, Cinnzabar, Mandalay Lime, Aegean Spice, Bayou Blast, Beach Breezer, Margarita Mixer, Midnight Madness, Back Alley Blend, Kauai Kolada, Twista Lime, Winter MochaMint, Warm Winter Toffee, Blackjack Gin, Screwdriver Slots, and SnakeEyes Scotch; *Salem*: Dark Currents, Fire & Ice, Deep Freeze, and Cool Myst; and *Kool*: Mintrigue, Mocha Taboo, Midnight Berry, and Caribbean Chill; and

WHEREAS, Reynolds has cooperated with the Attorneys General in this investigation by providing certain documents and making others available for inspection; and

WHEREAS, the Attorneys General have alleged that Reynolds has violated the prohibition against targeting Youth as set forth in Section III(a) of the Master Settlement Agreement ("MSA") and Section V(A) of the Consent Decree¹ in connection with the marketing, promotion and advertising of the Investigated Cigarette Brand Styles except Basma, Samsun and Rare; and

¹References in this Agreement to specific paragraphs of the Consent Decree are to the Model Consent Decree. Some state Consent Decrees are numbered differently.

WHEREAS, Reynolds asserts that it in good faith believes that its marketing, advertising and sale of the Investigated Cigarette Brand Styles fully complies with the MSA and Consent Decrees; and

WHEREAS, the Attorneys General have determined that it is in the public interest of their respective States and their residents to enter into this Agreement rather than to proceed with litigation and that this Agreement is in the best interest of the States and satisfies the States' concerns about the Investigated Cigarette Brand Styles, and Reynolds also has determined that it is in its interest to enter into this Agreement rather than to proceed with litigation; and

WHEREAS, on July 30, 2004, Reynolds merged with the domestic cigarette manufacturing operations of Brown & Williamson Tobacco Corporation, which had previously manufactured, advertised, promoted and marketed Kool Smooth Fusions cigarettes (which were among the Investigated Cigarette Brand Styles); and

WHEREAS, the Parties wish to completely settle, release and discharge all claims under Section III(a-k) of the MSA and Section V(A-G) of the Consent Decrees, and comparable claims under state law, including state consumer protection law, concerning the Investigated Cigarette Brand Styles, and this Agreement constitutes a good faith settlement of the disputes and disagreements between the Parties relating to the application of the enumerated sections of the MSA and the Consent Decrees to the Investigated Cigarette Brand Styles; and

NOW, THEREFORE, in consideration of their mutual agreement to the terms of this Agreement, and such other consideration as described herein, the sufficiency of which is hereby acknowledged, the Parties, acting by and through their authorized agents, stipulate and agree as follows:

I. Definitions

The following terms shall have the following definitions:

1. "Adult" shall have the same meaning as in the MSA.
2. "Underage" shall have the same meaning as in the MSA.
3. "Adult-Only Facility" shall have the same meaning as in the MSA.

4. "Candy" shall mean the generic name of a confection made from sugar or sugar substitute (*e.g.*, toffee) and the brand name of such a confection. For purposes of this Agreement, "Candy" shall also include chocolate, cocoa, cacao, mocha, vanilla, honey, maple, cinnamon, licorice, and mint (*e.g.*, spearmint and peppermint, but excluding menthol).²

5. "Cigarettes" shall have the same meaning as in the MSA.

6. "Consent Decrees" shall mean the Consent Decrees and Final Judgments entered in each of the Signatory States pursuant to XIII (b) of the MSA.

7. "Flavored Cigarettes" shall mean any cigarette, or any component part thereof (including but not limited to the tobacco, paper, roll or filter), which contains a natural or artificial constituent or additive that causes such cigarette or its smoke to have a characterizing flavor other than tobacco or menthol.³

8. "Fruit" shall mean the generic name of a specific fruit (*e.g.*, lime) or a type of fruit

²The fact that this Agreement proscribes certain future use of the words "candy," "cacao," "cocoa," "honey," "maple," or "licorice" should not be interpreted to suggest that Reynolds previously marketed the Investigated Cigarette Brand Styles as having such flavors.

³As of the date of signing this Agreement, the Investigated Cigarette Brand Styles, with the exception of Basma, Samsun and Rare, are the only cigarette brand styles among the Camel, Kool and Salem brands, of which the Signatory States are aware, that fall within the definition of Flavored Cigarettes.

(*e.g.*, berry). For purposes of this Agreement, “Fruit” does not include fruit seeds (*e.g.*, coffee), nuts or peppers.

9. “Master Settlement Agreement” shall mean the tobacco Master Settlement Agreement agreed to among certain states and governmental jurisdictions and certain cigarette manufacturers, including Reynolds, on November 23, 1998, as amended.

10. “Signatory States” shall mean those states which sign this Agreement by a representative of the state’s Attorney General.

11. “NAAG” shall have the same meaning as in the MSA.

II. Marketing Restrictions

1. As of the Effective Date of this Agreement, Reynolds agrees that:

A. With the exception of the Basma, Samsun and Rare cigarette brand styles, it will not manufacture, market, distribute or sell the Investigated Cigarette Brand Styles specifically intended by Reynolds for distribution or sale in the United States.⁴

B. In the event that Reynolds manufactures, markets, distributes, or sells Flavored Cigarettes specifically intended by Reynolds for distribution or sale in the United States, Reynolds agrees that with respect to its marketing of such Flavored Cigarettes:

(1) It will not use in the name of a brand style, (i) a Fruit or Candy, or (ii) the words “fruit,” “candy,” “sweet,” “sugar,” “citrus,” “tart,” “tangy,” or “cream,” or any extensions or variations of such words (*e.g.*, “fruity,” “sweetened,” “creamy”).

⁴Reynolds is not required to recall any of the Investigated Cigarette Brand Styles that it already had sold or distributed before the Effective Date of this Agreement or any point of sale marketing materials concerning the Investigated Cigarette Brand Styles.

(2) It will not use on the packaging visible to consumers before purchase,⁵ in print advertising,⁶ in point of sale advertising not located in an Adult-Only Facility, in direct mail or email promotions to individuals Reynolds has not reasonably determined to be an Adult, or in web-based advertising (excluding web-based advertising which is accessible to individuals Reynolds has reasonably determined to be an Adult),⁷ (i) a Fruit or a Candy, (ii) the words “fruit,” “candy,” “sweet,” “sugar,” “citrus,” “tart,” “tangy,” or “cream,” or any extensions or variations of these words, or (iii) images of a Fruit, a Candy, or other sweet desserts.

(3) It will not use in the name of a brand style, (i) the generic name of a type of alcoholic beverage (*e.g.*, scotch, gin, vodka), (ii) the brand name of a type of alcoholic beverage,⁸ (iii) the words “Kolada,” “cocktail,” “chaser,” “shot,” “shooter,” or “spiked,” or (iv) any of the alcoholic

⁵As used in this Agreement, “packaging visible to consumers before purchase” includes packaging that is visible after exterior packaging, such as a carton, box, wrapper or opaque cellophane, has been removed.

⁶As used in this Agreement, “print advertising” does not include advertising in an Adult-Only Facility or other advertising or marketing used in an interaction with an individual Reynolds has reasonably determined to be an Adult.

⁷The fact that this Agreement proscribes certain future direct mail or email promotions and web-based advertising to individuals that Reynolds has not reasonably determined to be an Adult should not be interpreted to suggest that Reynolds previously marketed the Investigated Cigarette Brand Styles using direct mail or email promotions or web-based advertising to individuals that Reynolds has not reasonably determined to be an Adult.

⁸Sections 3(ii) and 4(ii) of this Agreement are not intended to displace MSA Section III(j), entitled “Ban on Non-Tobacco Brand Names.” In addition, nothing in sections 3(ii) and 4(ii) applies to any cigarette brand style name in existence as of September 1, 2006. However, the Parties understand that nothing in this Agreement shall be construed to permit Reynolds to use any of the Investigated Cigarette Brand Styles, with the exception of Basma, Samsun and Rare, specifically intended for sale or distribution in the United States.

beverages delineated in Appendix A.⁹

(4) With respect to the description of flavor characteristics, it will not use on the packaging visible to consumers before purchase, in print advertising, in point of sale advertising not located in an Adult-Only Facility, in direct mail or email promotions to individuals Reynolds has not reasonably determined to be an Adult, or in web-based advertising (excluding web-based advertising which is accessible to individuals Reynolds has reasonably determined to be an Adult), (i) the generic name of a type of alcoholic beverage (*e.g.*, scotch, gin, vodka), (ii) the brand name of a type of alcoholic beverage, (iii) the words “Kolada,” “cocktail,” “chaser,” “shot,” “shooter,” or “spiked,”(iv) any of the alcoholic beverages delineated in Appendix A,¹⁰ or (v) images of an alcoholic beverage (*i.e.*, imagery explicitly depicting the items identified in this subparagraph (4) and in the prior subparagraph (3)).

(5) In the event Reynolds uses words in the names of its Flavored Cigarette brand styles or in its advertising and promotions for its cigarettes that are the names of alcoholic beverages as delineated in Appendix A or in subparagraphs (3) and (4) above, but which have additional meanings not associated with alcoholic beverages, the context of such words will govern. (For example, a cigarette named “Cosmopolitan” with an image of the New York skyline depicted on the packaging would not be prohibited by this Agreement. By contrast, a cigarette named

⁹The fact that this Agreement proscribes certain future use of brand names of alcoholic beverages, of the words “chaser,” “shot,” “spiked,” and “shooter,” and of the alcoholic beverage names listed on Appendix A, should not be interpreted to suggest that Reynolds previously marketed the Investigated Cigarette Brand Styles using such names and words. The Agreement regarding alcoholic beverages listed on Appendix A is intended to extend only to the specific, full names listed on that Appendix. It does not extend to individual words or numerals that may be used in names appearing on that list.

¹⁰ See *supra* fn. 9.

“Cosmopolitan” with an image of a glass depicted on the packaging would be prohibited.)

(6) It will not use (except in an Adult-Only facility) or distribute to consumers, irrespective of the venue, scented promotional materials.

2. This Agreement shall not be deemed to restrict in any way whatsoever:

A. the composition, design or flavor of the actual cigarettes manufactured, distributed or sold by Reynolds, except as provided in II.1.A. above; or

B. the advertising, marketing, promotion, distribution and/or sale of cigarette brand styles specifically intended by Reynolds for distribution and/or sale only outside the United States, including but not limited to advertising published outside the United States for such cigarettes; or

C. communications in any form by Reynolds about Reynolds’ cigarette ingredients in response to inquiries from an Adult, as part of a list of ingredients on a website, or in corporate communications with shareholders, regulators or legislators, in any legal proceeding, or pursuant to law; or

D. use or distribution of print advertising, marketing or promotions in an age-restricted interaction with an individual reasonably determined by Reynolds to be an Adult, except as provided in II.1.B.(6) above.

III. Costs

1. The Parties will bear their own costs of this investigation.

IV. Miscellaneous Provisions

1. The Parties agree to discuss in good faith any disputes or other issues that may arise with respect to this Agreement. In the event that any of the Signatory States believes that

Reynolds has acted or is acting contrary to any provision of this Agreement and the Parties are unable to resolve said dispute through discussion, this Agreement shall be enforceable in the same manner as the MSA and Consent Decrees.

2. Without limitation on whatever other rights to access they may be permitted by law, for a period of six (6) years from the Effective Date of this Agreement, representatives of the Attorney General of each Signatory State may, for the purpose of enforcing this Agreement, upon reasonable cause to believe that a violation of this Agreement has occurred, and upon reasonable prior written notice (but in no event less than 10 business days), (1) have access during regular office hours to inspect and copy all relevant non-privileged, non-work-product books, records, meeting agenda and minutes and other documents (whether in hard copy form or stored electronically) of Reynolds insofar as they pertain to such believed violation; (2) interview Reynolds' marketing employees (who shall be entitled to have counsel present) with respect to relevant, non-privileged, non-work-product matters pertaining to such believed violation. Documents and information provided to representatives of the Attorney General of such Signatory State pursuant to this section IV, paragraph 2 shall be kept confidential by the Signatory States, and shall be utilized only by the Signatory States and only for purposes of enforcing this Agreement. The inspection and discovery rights provided to such Signatory State pursuant to this paragraph shall be coordinated through NAAG so as to avoid repetitive and excessive inspection and discovery.

3. The Parties expressly acknowledge and agree that this Agreement is voluntarily entered into as a result of arm's-length negotiations, and all Parties hereto were represented by counsel in deciding to enter into this Agreement. The parties believe that this Agreement

constitutes a good faith settlement of the disputes and disagreements between the Parties relating to the application of the MSA and Consent Decrees to Reynolds' manufacturing, marketing, advertising, sale and distribution of the Investigated Cigarette Brand Styles and any related public harm alleged to be suffered by the residents of the Signatory States attributable to these cigarettes.

4. No Party shall be considered the drafter of this Agreement for the purpose of any rule of interpretation or construction that would or might cause any provision to be construed against the drafter.

5. The Parties understand and acknowledge that this Agreement constitutes a compromise and settlement of disputed claims. This Agreement is not intended to be, and shall not in any event be construed as, or deemed to be, an admission or concession or evidence of any liability or wrongdoing whatsoever on the part of Reynolds. This Agreement also is not intended to be, and shall not in any event be construed as, or deemed to be, approval, pursuant to Section III(a) of the MSA or Section V(A) of the Consent Decrees or otherwise, by the Signatory States or the Attorneys General of any of Reynolds' present or future business practices, including but not limited to the use of specific names for Reynolds' cigarette brand styles, statements on the packaging of its cigarettes, and advertising and promotions for its cigarettes.

6. The provisions of this Agreement shall apply to Reynolds and its past and present subsidiaries, successors and assigns.

7. The Signatory States hereby waive any and all legal and/or equitable claims whatsoever under Section III (a-k) of the MSA and Section V(A-G) of the Consent Decrees, and comparable claims under state law, including claims under state consumer protection law, pertaining to the marketing, advertising, promotion, distribution or sale of the Investigated

Cigarette Brand Styles.

8. This Agreement does not waive or limit any rights or remedies that the Signatory States have at law or equity, including under the MSA and the Consent Decrees, relating to any future advertising, promotion or marketing of cigarettes by Reynolds.

9. Within six (6) months of the Effective Date of this Agreement, the Signatory States will present a similar agreement to the other major tobacco companies. In no event, however, shall Reynolds' obligations under this Agreement be contingent in any manner upon the execution of any such agreement.

10. This Agreement shall be governed by and construed in each of the Signatory States in accordance with the laws of such states, respectively.

11. This Agreement constitutes the entire agreement between the Parties pertaining to its subject matter and supersedes any and all prior and/or contemporaneous oral or written negotiations, agreements, representations, and undertakings, other than the MSA and the Consent Decrees. The settlement negotiations resulting in this Agreement have been undertaken by the Parties in good faith and for settlement purposes only, and no evidence of negotiations or discussions underlying this Agreement shall be offered or received in evidence in any action or proceeding for any purpose. The Parties, and each of them, understand that this Agreement is made without reliance upon any inducement, statement, promise, or representation other than those contained within this Agreement. This Agreement may not be altered, amended, modified or otherwise changed in any respect or particular whatsoever, except by writing duly executed by the Parties to this Agreement or their authorized representatives.

12. This Agreement may be executed in faxed counterparts, each of which will constitute an original but all of which taken together shall constitute one and the same document.

13. This Agreement shall not apply to the Marshall McGearty brand family until five (5) months after the Effective Date.

DATED: _____, 2006

R.J. REYNOLDS TOBACCO COMPANY

By: _____

Name: _____

Title: _____