

FORBEARANCE AGREEMENT

Borrowers:

Date: _____

THIS FORBEARANCE AGREEMENT (this "Agreement"), effective as of the above-referenced date, is made by and among _____, each a "Borrower", _____ (each individually, a "Guarantor", and _____ ("Lender").

RECITALS:

A. Reference is hereby made to:

- (a) (i) that certain Loan Agreement dated _____, _____ by and between Borrower and Lender (as amended, modified, supplemented, renewed, extended and/or restated from time to time, the "Loan Agreement"); (ii) that certain Commercial Security Agreement dated _____, _____ by and between Borrower and Lender (as amended, modified, supplemented, renewed, extended and/or restated from time to time, the "Security Agreement"); (iii) that certain Promissory Note dated _____, _____ in the original principal amount of \$ _____ made by Borrower in favor of Lender (as amended, modified, supplemented, renewed, extended and/or restated from time to time, the "Note"); (iv) that certain Commercial Guaranty of Guarantor dated _____, _____ in favor of Lender (as amended, modified, supplemented, renewed, extended and/or restated from time to time, the "Guaranty"); and (v) all other related documents (collectively with the Loan Agreement, the Security Agreement, the Note and the Guaranty, the "Loan Documents");

B. Pursuant to the Loan Documents, Lender made certain loans and other extensions of credit available to Borrowers, and to secure such loans, extensions of credit and the other obligations under the Loan Documents (collectively referred to herein as the "Obligations"), Borrowers granted to Lender liens on and security interests in the Collateral (as defined in the respective Loan Documents);

C. Pursuant to the Loan Documents, Lender has made certain loans and other extensions of credit available to Borrowers. The outstanding principal balance of the Obligations to Lender as of _____, _____ is as follows:

- (a) pursuant to the Loan Documents, \$ _____;

plus all accrued and accruing interest and fees, and all accrued and accruing costs and expenses incurred by Lender in connection with the Loan Documents and all other Obligations;

D. Various Events of Default have occurred and are continuing under the Loan Documents as of the date hereof as described on Exhibit A attached hereto (collectively referred to herein as the “Current Defaults”), and each Borrower and Guarantor acknowledges that it has been duly and properly notified of such Current Defaults;

E. As a result of the Current Defaults, Lender has the immediate right to exercise any and all rights, powers and remedies available against Borrowers and Guarantors under the Loan Documents, and all additional rights, powers and remedies, at law, in equity or by statute;

F. Borrowers and Guarantors have requested that Lender forbear in the exercise and enforcement of its rights, powers and remedies under the Loan Documents with respect to the Current Defaults, and Lender is willing to forbear from the exercise and enforcement of such rights and remedies for a limited time only upon the full and complete compliance with and fulfillment of the terms and conditions set forth herein and under the Loan Documents in the manner hereinafter stated, provided that the rights and remedies of Lender are not otherwise waived or impaired.

NOW, THEREFORE, in consideration of the foregoing and the agreements, promises and covenants set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **RECITALS**. The recitals to this Agreement are incorporated herein as a part of this Agreement.

2. **DEFINITIONS**. Unless otherwise defined herein, capitalized terms used herein shall have the meanings ascribed to such terms in the Loan Documents. In addition, the following terms shall have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

(a) “Bankruptcy Code” means Title 11 of the United States Code (11 U.S.C. §§ 101 *et seq.*).

(b) “Claims” shall have the meaning set forth in Section 10(a).

(c) “Current Defaults” shall have the meaning set forth in Recital F above.

(d) “Forbearance Event of Default” shall have the meaning set forth in Section 7.

(e) “Forbearance Period” means the period commencing on the date hereof and ending on the earliest to occur of (A) the date of the termination of this Agreement by Lender pursuant to Section 8 hereof, (B) the date on which all of the Obligations have been paid in full and the Loan Documents have been terminated, or (C) the Forbearance Termination Date.

(f) “Forbearance Termination Date” means _____, _____.

(g) “Proceeding” means any voluntary or involuntary proceeding commenced by or against any Borrower or Guarantor under any provision of the Bankruptcy Code, or under any other bankruptcy or insolvency law, including assignments for the benefit of creditors, formal or informal moratoria, compositions, extensions generally with its creditors, or proceedings seeking dissolution, receivership, reorganization, arrangement, or other similar relief.

(h) “Releasees” shall have the meaning set forth in Section 10(a).

(i) “Releasers” shall have the meaning set forth in Section 10(a).

(j) “Section” means a numbered section of this Agreement, unless another document is specifically referenced.

3. ACKNOWLEDGMENT AND AGREEMENT. Each Borrower and each Guarantor hereby acknowledges, reaffirms, represents, warrants and covenants that:

(a) The Current Defaults have occurred and are continuing, and Lender has not, as of the date of this Agreement, expressly or impliedly waived any of the Current Defaults;

(b) The Recitals are true and correct;

(c) Lender maintains valid, properly perfected, fully enforceable security interests in and liens on all of the Collateral described in the Loan Documents, which such liens are paramount in priority and interest to all other liens and security interests, if any, of any other parties relating to the Collateral except as expressly stated in the Loan Documents;

(d) The Loan Documents constitute legal, valid and binding obligations enforceable by Lender against Borrowers and Guarantors party thereto in accordance with their respective terms subject to the effect of any applicable bankruptcy, insolvency, reorganization or similar law affecting creditors’ rights generally. Each Borrower and each Guarantor hereby reaffirms its respective obligations under the Loan Documents (as amended by this Agreement) including, without limitation, the Obligations. Each Borrower and each Guarantor also agrees that it shall not dispute the validity or enforceability of this Agreement, the Loan Documents or any of its obligations under such agreements, or the validity, priority, enforceability or extent of Lender’s security interest in

and lien on any Collateral in any judicial, administrative or other proceeding, either during or following the termination or expiration of the Forbearance Period;

(e) Subject to the provisions of Section 4 hereof and the terms of the Loan Documents, by virtue of the Current Defaults, Lender has the right to immediately enforce its right to payment of all Obligations and, in connection therewith, to immediately enforce its security interests in, and liens on, the Collateral and to exercise all other rights, powers and remedies provided to Lender under the Loan Documents or at law, in equity or by statute;

(f) Nothing contained in this Agreement shall, at any time, require Lender to make loans or other extensions of credit to Borrowers or to permit overdrafts in any account maintained by or on behalf of Borrowers; and any such obligations of Lender shall be governed only by, and shall remain subject only to, the terms of the Loan Documents except to the extent expressly limited herein and except to the extent that the Current Defaults shall not by reason of the execution of this Agreement limit, during the Forbearance Period, the ability of Borrowers to obtain advances otherwise available under the Loan Documents as specifically provided herein; and

(g) Each Borrower and each Guarantor does not intend to file a petition for relief under any Chapter of the Bankruptcy Code or to initiate any other Proceeding, and Lender has relied to its detriment on such representation.

4. LIMITED FORBEARANCE AND FURTHER CONSIDERATION.

(a) During the Forbearance Period, so long as no Forbearance Event of Default (as defined in Section 7 hereof) shall have occurred and be continuing and subject to compliance by each Borrower and each Guarantor with the terms and conditions of this Agreement and the Loan Documents, Lender hereby agrees to forbear from exercising and enforcing its rights, powers and remedies afforded under the Loan Documents or at law, in equity or by statute, with respect to the Current Defaults during the Forbearance Period.

(b) The limited forbearance set forth in this Agreement shall not be construed to waive or otherwise impair the ability of Lender to charge such fees or interest, or to otherwise enforce any other rights, powers or remedies, without further notice, in each case in accordance with the Loan Documents, (i) after the Forbearance Period regardless of whether or not such enforcement relates to actions taken or payments received during the Forbearance Period, or (ii) upon a Forbearance Event of Default.

(c) The forbearance of Lender provided herein shall immediately cease without notice at the end of the Forbearance Period, and each Borrower and each Guarantor at that time shall be obligated to make immediate payment of all outstanding Obligations under this Agreement and the Loan Documents.

(d) Borrowers and Guarantors agree that any breach of this Agreement by any Borrower or Guarantor or any Forbearance Event of Default will also constitute an Event of Default under the Loan Documents and that any Event of Default (other than the Current Defaults) under the Loan Documents shall constitute a Forbearance Event of Default hereunder. Borrowers and Guarantors further agree that the occurrence of any Event of Default (other than Current Defaults) or Forbearance Event of Default shall constitute cause for the termination by Lender of this Agreement pursuant to Section 8 hereof.

(e) The forbearance of Lender hereunder is further expressly subject to and conditioned upon the strict compliance of Borrowers and Guarantors with each and every term and provision of this Agreement, and except with respect to Current Defaults, the strict compliance of Borrowers and Guarantors with each and every term and provision of the Loan Documents.

(f) Upon the breach by any Borrower or Guarantor of any provision of this Agreement, or an Event of Default hereunder or under the Loan Documents (other than the Current Defaults), Lender, at its option, may terminate this Agreement in the manner provided in Section 8 hereof, upon which time all Obligations shall be immediately due and payable, and Lender shall have the undisputed and absolute right to exercise and enforce all other rights, powers and remedies that may exist pursuant to the Loan Documents or at law, in equity or by statute, all without further demand or notice of any kind, all of which are hereby waived by Borrowers and Guarantors.

(g) Borrowers and Guarantors acknowledge and agree that Lender shall be under no obligation to extend the Forbearance Termination Date and that the failure of Lender to enforce any or all of its remedies under this Agreement, the Loan Documents, or under law or at equity after the expiration of the current Forbearance Period will not give rise to a further extension of the Forbearance Period absent a written agreement executed by Lender to extend the Forbearance Termination Date.

(h) Borrowers and Guarantors further acknowledge and agree that the decision of Lenders to allow Borrowers to use the Collateral during the Forbearance Period is of great value to Borrowers and Guarantors, and that such forbearance is, independent of the other consideration received by Borrowers and Guarantors hereunder, sufficient consideration for each and every one of Borrowers' and Guarantors' obligations under this Agreement.

5. CONDITIONS. In addition to the other provisions set forth in this Agreement and in the Loan Documents, Lender's forbearance is expressly subject to and conditioned upon the continual compliance by Borrowers of the following terms, conditions and provisions, which shall be deemed to be amendments to and part of the Loan Documents:

(a) During the Forbearance Period, each Borrower shall continue to perform and comply with each term, condition and provision of this Agreement and the Loan Documents, and no Forbearance Event of Default, Event of Default or other breach or default shall have occurred and be continuing under this Agreement or any of the Loan Documents, except the Current Defaults;

(b) The term "Revolving Loan Availability" as defined in the Loan Agreement shall be amended and restated to have the following meaning: "the lesser of \$ _____ or the Borrowing Base Amount."

(c) The term "Borrowing Base Amount" as defined in each of the following Loan Documents shall be amended and restated to have the following meanings:

(i) in the Loan Agreement: "the sum of (a) an amount equal to 80% of the net amount (after deduction of such reserves and allowances as Lender deems proper and necessary) of the Eligible Accounts; plus (b) an amount equal to 70% of the lower of cost or market value (after deduction of such reserves and allowances as Lender deems proper and necessary) of the Eligible Inventory; plus (c) an amount equal to 85% of the face value of unused tobacco tax stamps issued by various of the States and purchased by and in the possession of Borrower, not to exceed \$1,000,000;"

(d) The paragraph entitled "Variable Interest Rate" in each of the following Loan Documents shall be amended and restated as follows:

(i) in the Note: "The interest rate on this Note is subject to change from time to time based on changes in an index which is Lender's Prime Rate (the "Index"). The Prime Rate is the rate of interest publicly announced from time to time by Lender as the Prime Rate. This rate may or may not be the lowest rate available from Lender at any given time. Lender will tell Borrower the current Index rate upon Borrower's request. The interest rate change will not occur more often than once each day. Borrower understands that Lender may make loans based on other rates as well. The Index is currently ___% per annum. The interest rate to be applied to the unpaid principal balance shall be as follows: (i) prior to _____, _____, at a rate of the Index less 0.25%, (ii) from _____, _____ through _____, _____, at a rate of the Index plus 1%, and (iii) from and after _____, _____, at a rate of the Index plus 2%. NOTICE: Under no circumstances will the interest rate on this Note be more than the maximum rate allowed by applicable law."

(e) Borrowers shall provide Lender with an appraisal on the warehouse located at _____ at Borrowers' expense;

(f) Borrowers shall during the Forbearance Period provide full and complete access, and all requested information on a prompt basis, and otherwise fully cooperate with Lender and its agents;

(g) In order to induce Lender to enter into this Agreement, _____ and _____ hereby agree to pay to Lender a non-refundable Forbearance Fee in the amount of \$_____, which fee is fully earned upon the date hereof, and shall be charged to the Construction Loan Agreement, payable on the Forbearance Termination Date, provided, however, that if all Obligations of Borrowers are satisfied as of the Forbearance Termination Date, the Forbearance Fee shall be \$0.00.

(h) Borrowers and Guarantors shall pay on demand all reasonable legal fees and expenses incurred by Lender in connection with the preparation, drafting, negotiation and enforcement of this Agreement; and

(i) All of the warranties and representations of Borrowers contained herein shall be true and correct in all material respects.

6. REPRESENTATIONS AND WARRANTIES. All of Borrowers' and Guarantors' representations and warranties contained in this Agreement shall survive the execution, delivery and acceptance of this Agreement by Lender. Borrowers and Guarantors represent and warrant to Lender that:

(a) The execution and delivery of this Agreement and the performance by Borrowers and Guarantors of their respective obligations hereunder are within Borrowers' and Guarantors' organizational powers and authority, have been duly authorized by all necessary organizational action and do not and will not contravene or conflict with the organizational documents or material contracts of Borrowers and Guarantors. This Agreement has been duly executed and delivered by Borrowers and Guarantors and constitutes the legal, valid and binding obligations of Borrowers and Guarantors, enforceable against Borrowers and Guarantors in accordance with its terms subject to the effect of any applicable bankruptcy, insolvency, reorganization or similar law affecting creditors' rights generally;

(b) No Event of Default, or defaults which, except for the passage of time or notice would constitute an Event of Default, exists under the Loan Documents other than the Current Defaults as of the date of this Agreement;

(c) Each Borrower and each Guarantor has read and understands the contents of this Agreement and has had an opportunity to review and consider the terms of this Agreement with counsel of its choice.

7. FORBEARANCE EVENTS OF DEFAULT. A "Forbearance Event of Default" shall mean the occurrence of any one or more of the following events:

(a) Any Borrower shall fail to observe or perform any term, covenant, condition, or agreement contained in this Agreement, or any agreement, instrument or document executed in connection herewith to which such Borrower is a party, including, without limitation, any condition contained in Section 5 of this Agreement;

(b) An Event of Default or a Default, shall have occurred and be continuing under the Loan Documents, other than the Current Defaults;

(c) Any creditor or other party: (i) commences to exercise any remedies against any Collateral, including, without limitation, for possession, disposition, foreclosure, public or private sale, replevin, garnishment, attachment, or seizure, or sends any notice to or otherwise seeks to obtain payment directly from any account debtor of Borrowers, or (ii) takes any action that would constitute a material adverse change in the business or operations of Borrowers;

(d) Any instrument, document, report, schedule, agreement, representation or warranty, oral or written, made or delivered to Lender by any Borrower under or in connection with this Agreement is untrue or incorrect in any material respect when made or delivered.

8. TERMINATION. Upon the occurrence of any Forbearance Event of Default, Lender may immediately terminate this Agreement and/or accelerate and declare all of the Obligations immediately due and payable. Upon the occurrence of any Forbearance Event of Default, Lender shall be entitled to exercise all of its rights and remedies under this Agreement, the Loan Documents and applicable law. Each Borrower hereby consents (i) to the *ex parte* appointment of a receiver by Lender in any action initiated by Lender pursuant to this Agreement, and such Borrower waives any requirements for notice or posting of a bond in connection therewith; and (ii) to the *ex parte* filing by Lender on behalf on such Borrower of an assignment for the benefit of creditors in accordance with applicable law, and such Borrower waives any requirements for notice or posting of a bond in connection therewith. Each Borrower acknowledges that it shall have no claim for damages or otherwise against Lender with respect to any such termination of the Forbearance Period or acceleration of the Obligations in accordance with the terms of this Agreement.

9. RESERVATION OF RIGHTS. The forbearance set forth herein shall be limited precisely as written and, except as expressly set forth herein, neither the fact of Lender's forbearance nor any other term or provisions herein shall, or shall be deemed or construed to, (i) be a consent to any forbearance, waiver, amendment or modification of any term, provision or condition of the Loan Documents, (ii) affect, impair, operate as a waiver of, or prejudice any right, power or remedy which Lender may now or hereafter have pursuant to the Loan Documents or any other document, agreement, security agreement or instrument executed in connection with or related to the Loan Documents, or at law or in equity or by statute including, without limitation, with regard to any existing or hereafter arising Event of Default or Forbearance Event of Default, (iii) impose upon Lender any obligation, express or implied, to consent to any

amendment or further modification of the Loan Documents or (iv) be a consent to any waiver of any existing Event of Default (including, without limitation, the Current Defaults), all such Events of Defaults remaining outstanding. Lender hereby expressly reserves all rights, powers and remedies specifically given to them under the Loan Documents or now or hereafter existing at law, in equity or by statute.

10. RELEASES; INDEMNITIES.

(a) In further consideration of Lender's execution of this Agreement, each Borrower and each Guarantor, individually and on behalf of its respective successors (including, without limitation, any trustees acting on behalf of such Borrower or Guarantor and any debtor-in-possession with respect to such Borrower or Guarantor), assigns, subsidiaries and affiliates (collectively, the "Releasors"), hereby forever releases Lender and its successors, assigns, parents, subsidiaries, affiliates, officers, employees, directors, agents and attorneys (collectively, the "Releasees") from any and all debts, claims, demands, liabilities, responsibilities, disputes, causes, damages, actions, causes of actions (whether at law or in equity) and obligations of every nature whatsoever, whether liquidated or unliquidated, whether known or unknown, matured or unmatured, fixed or contingent (collectively, "Claims") that Releasors may have against the Releasees which arise from or relate to any actions which the Releasees may have taken or omitted to take prior to the date this Agreement was executed including, without limitation, with respect to the Obligations, any Collateral, the Loan Documents, or any third parties liable in whole or in part for the Obligations. This provision shall survive and continue in full force and effect whether or not (i) any Borrower or Guarantor shall satisfy all other provisions of this Agreement or the Loan Documents, including payment in full of all Obligations, (ii) this Agreement otherwise is terminated, or (iii) the forbearance of Lender ceases pursuant to this Agreement.

(b) The Releasors hereby agree to indemnify and hold the Releasees harmless with respect to any and all liabilities, claims, obligations, losses, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever incurred by the Releasees, or any of them, whether direct, indirect or consequential, as a result of or arising from or relating to any proceeding, whether threatened or initiated, asserting any claim for legal or equitable remedy under any statutes, regulations or common law principles arising from or in connection with the negotiation, preparation, execution, delivery, performance, administration and enforcement of the Loan Documents, this Agreement or any other document executed in connection herewith. The foregoing indemnity shall survive the payment in full of the Obligations and the termination of this Agreement and the Loan Documents.

11. ACKNOWLEDGMENT OF VALIDITY AND ENFORCEABILITY OF LOAN DOCUMENTS.

Each Borrower and each Guarantor expressly acknowledges and agrees that the Loan Documents to which such Borrower or Guarantor is a party constitutes legal, valid and binding obligations enforceable in accordance with

their terms by Lender against such Borrower or such Guarantor, and each Borrower and each Guarantor expressly reaffirms its obligations under the Loan Documents (as amended by this Agreement), including, without limitation, the Obligations. Each Borrower further expressly acknowledges and agrees that Lender has a valid, duly perfected, fully enforceable security interest in and lien on the Collateral. Each Borrower and each Guarantor agrees that it shall not dispute the validity or enforceability of this Agreement, the Loan Documents or any of its obligations hereunder or thereunder, or the validity, priority, enforceability or extent of Lender's security interest in or lien on any Collateral in any judicial, administrative or other proceeding, either during or following the termination or expiration of the Forbearance Period.

12. AMENDMENTS. No amendment or modification of any provision of this Agreement shall be effective without the written agreement of Lender, and no termination or waiver of any provision of this Agreement, or consent to any departure by any Borrower or Guarantor from such provisions, shall in any event be effective without the written concurrence of Lender. Any waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given.

13. NO WAIVER. Lender's failure at any time to require strict performance by any Borrower or Guarantor of any provision or term of the Loan Documents or this Agreement shall not waive, affect or diminish any right of Lender thereafter to demand strict compliance and performance therewith. Any suspension or waiver by Lender of a Forbearance Event of Default or any Event of Default shall not, except as may be expressly set forth herein, suspend, waive or affect any other Forbearance Event of Default or any Event of Default, whether the same is prior or subsequent thereto and whether of the same or of a different kind or character. None of the undertakings, agreements, warranties, covenants and representations of any Borrower or Guarantor contained in this Agreement or the Loan Documents, and no Forbearance Event of Default or Event of Default, shall be deemed to have been suspended or waived by Lender unless such suspension or waiver is (a) in writing and signed by Lender, and (b) delivered to Borrowers.

14. SUCCESSORS AND ASSIGNS. This Agreement shall be binding upon Lender and its successors and assigns, and shall be binding on each Borrower and each Guarantor and its respective successors and permitted assigns.

15. LIMITATION ON RELATIONSHIP BETWEEN PARTIES. The relationship of Lender, on the one hand, and Borrowers, on the other hand, has been and shall continue to be, at all times, that of creditors and debtors and not as joint venturers or partners. Nothing contained in this Agreement, any instrument, document or agreement delivered in connection herewith or in the Loan Documents shall be deemed or construed to create a fiduciary relationship between or among the parties.

16. NO ASSIGNMENT. This Agreement shall not be assignable by any Borrower without the written consent of Lender. Lender may freely assign to one or more Persons all or any part of, or any participation interest in, its rights and benefits hereunder.

17. **SECTION TITLES.** The Section titles contained in this Agreement are included for the sake of convenience only, shall be without substantive meaning or content of any kind whatsoever, and are not a part of the agreement among the parties.

18. **INCORPORATION OF LOAN AGREEMENT PROVISIONS.** The provisions regarding governing law and jury waiver as set forth in the Loan Documents are incorporated herein by reference to the same extent as if reproduced herein in their entirety.

19. **NOTICES.** Except as otherwise provided herein, all notices, requests and demands to or upon a party hereto to be effective shall be in writing and shall be sent to the addresses and by the means specified in the Loan Documents. Copies of any such notices, requests and demands given by Borrowers or Guarantors shall also be given to counsel for Lender, _____.

20. **EXECUTION IN COUNTERPARTS/FACSIMILE.** This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Facsimile and .pdf signatures shall be binding on the parties.

21. **INTEGRATION.** This Agreement embodies the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersedes all prior oral or written negotiations, agreements and understandings of the parties with respect to the subject matter hereof; provided, however, that except as expressly modified herein the Loan Documents shall remain in full force and effect in accordance with their respective terms and conditions.

22. **TIME OF ESSENCE.** Time is of the essence in this Agreement and the Loan Documents.

23. **REAFFIRMATION OF GUARANTY.** By execution hereof, each Guarantor hereby reaffirms all of such Guarantor's obligations under the respective Guarantees and agrees that all obligations under such Guarantees shall continue in full force and effect so long as the Obligations of Borrowers remain outstanding, as provided in the Guarantees.

* * * * *

[SIGNATURE PAGES FOLLOW]

(Signature Page to Forbearance Agreement)

LENDER: _____, as Lender

By: _____
Name: _____
Title: _____

BORROWERS: _____, a _____
corporation

By: _____
Name: _____
Title: _____

GUARANTORS:

EXHIBIT A
CURRENT DEFAULT