

2002 VENUE SPONSORSHIP AGREEMENT

THIS VENUE SPONSORSHIP AGREEMENT (the "Agreement") is entered into as of the following Date of Agreement, by and between _____ (the "SPONSOR") and the owner (the "Venue Owner") of the business establishment (the "Venue") defined below. Below are various defined terms for the purposes of this Agreement:

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Date of Agreement: _____
 Term of Agreement: **January 1, 2002 – December 31, 2002 ("Term")**
 Sponsorship Program: **Winston Bar Program ("WBP")**

I. VENUE INFORMATION

Venue Name: _____ Venue Code: _____
 Venue Address/Zip Code: _____
 Venue Owner Name: _____ FEIN or SSN: _____
 Venue Owner Category: ☐ Sole Proprietorship ☐ Corporation ☐ Partnership
 (select one) ☐ Limited Liability Company ☐ Other: _____

II. SPONSORSHIP FUNDS AND EXTRA VALUE ITEMS

The summary information set forth in this Section II is subject in all respects to the remaining terms and conditions contained in this Agreement.

Special Event Funds: \$ _____ to offset costs for a minimum of _____ () Special Events from Jan. 1 – June 30, 2002
 \$ _____ to offset costs for a minimum of _____ () Special Events from July 1 – Dec. 31, 2002

Print Materials Fund: \$ _____ (this amount not to exceed 15% of the Special Events Fund) to offset costs for the printing and shipping of flyers, as well as the purchases of local media, including advertisements in alternative weeklies, and additional printed material, as available, at the discretion of SPONSOR, from Jan. 1 – Dec. 31, 2002.

TOTAL SPONSORSHIP

FUNDS: \$ _____ [This amount includes all sub-totals set forth above]

SPONSOR will also provide the following Extra Value items at no cost to Venue:

Tobacco License Fees: All state and local retail tobacco licensing fees for Venue (if Venue is currently without a license);

Flyer Distribution: Public distribution of flyers to adult smokers age 21 years or older for Special Events and activities at Venue, at discretion of SPONSOR;

Cigarette Delivery: Free delivery of RJRT cigarette brand styles (the "Product") purchased by Venue Owner for resale in Venue; Free (Gratis) Product that SPONSOR may distribute in Venue to adult smokers age 21 years of age or older (as permitted by law);

III. **DUTIES OF SPONSOR.** In exchange for Venue Owner's full performance of the duties described below, SPONSOR will provide the payments and services described herein.

A. **PRODUCTION OF SPECIAL EVENTS.** SPONSOR will make payments and assist in the planning and production of sponsored special events at the Venue (the "Special Events") during the Term, as follows:

1. **Event Planning.** SPONSOR and Venue management staff will jointly plan the concepts and themes of Special Events to be held at the Venue during the Term. Access to all Special Events at Venue shall be limited to patrons 21 years of age or older. The Venue Owner will produce no less than the minimum number of Special Events set forth on the first page of this Agreement. Neither Venue nor Venue Owner may photograph, videotape, or otherwise record (audio or video) all or any portion of the Special Event or any performance therein.
2. **Payments.** SPONSOR shall pay up to the amount of the Special Events Fund to vendors that participate in the production of the Special Events (for example, disc jockeys) or to Venue Owner for reimbursement of reasonable and actual costs incurred and paid. The terms of all payments shall be at the sole discretion of SPONSOR.
3. **Deadlines.** All Special Event arrangements must be completed and memorialized in a written document signed by SPONSOR at least forty (40) days before the date of event. As set forth on the first page of this Agreement, the designated portions of the Special Events Fund must be spent by July 1, 2002 and December 31, 2002, respectively or Venue Owner may forfeit such amounts, at SPONSOR's sole discretion.
4. **Exclusive Sponsorship.** The Special Events shall be sponsored solely by SPONSOR's client, R.J. Reynolds Tobacco Company ("RJRT" or "Client"). Venue Owner shall not seek or allow any other party to sponsor any of the Special Events or place signage, conduct sampling, or engage in any other promotional activities in the Venue during a Special Event, without SPONSOR's prior written consent.

B. **PRINT MATERIALS AND MEDIA PURCHASES.**

1. **Flyers and Advertisements.** SPONSOR will design, produce, ship, and distribute flyers for Special Events and other activities at the Venue. SPONSOR may also design advertisements to run in local media to promote Special Events. All such decisions shall be at the sole discretion of SPONSOR, in consultation with Venue Owner.
2. **Payments.** SPONSOR shall contribute up to the amount of the Print Materials Fund, in the form of direct payments to print vendors and local media. The Print Materials Fund cannot be used for event production without SPONSOR's prior written consent.
3. **Media.** In addition to the above, SPONSOR may feature the Venue and a description of the Special Events as part of media advertisements. SPONSOR will write, design, lay out, and pay for the placement costs of the media advertisements. The decision whether to include information about the Venue in the media and the placement dates, frequency, design elements, and text of the advertisements shall be at the sole discretion of SPONSOR.

C. **PRODUCT SALE AND DELIVERY.** During the Term, SPONSOR will sell Product to Venue Owner and deliver Product to the Venue for the purpose of resale by Venue staff to adult smokers. SPONSOR will provide, maintain, repair, and replace display kiosks for the Product, which will remain SPONSOR's property at all times and may be removed at SPONSOR's sole discretion. New Venues (venues that have not been in the WBP in the last 14 months) will receive a one-time display payment of \$150 after Venue's initial purchase of 4 cartons of Winston cigarettes.

D. **PAYMENT OF TOBACCO LICENSE FEES.** If Venue Owner does not otherwise possess all required state and/or local licenses regulating the sale and/or sampling of tobacco products at the Venue, SPONSOR will pay the application fees for Venue Owner to obtain the licenses. SPONSOR will make payment after Venue Owner submits the completed license application(s) to SPONSOR for review and provides SPONSOR with such other information as may be reasonably requested by SPONSOR.

IV. **DUTIES OF VENUE OWNER.** Venue Owner will provide the following to SPONSOR:

A. **VENUE AGE RESTRICTION.** The Product and all materials provided by SPONSOR must be distributed by Venue's staff only to smokers who are 21 years of age or older, without exception of any kind. Any activity in violation of this age restriction may subject Venue, Venue Owner and this Agreement to immediate termination by SPONSOR.

I, _____, assure and uphold the following age restriction policy in my venue at all times and agree to uphold all (Venue Owner's Name) age restriction guidelines set forth by SPONSOR and their client, R. J. Reynolds Tobacco Company, as follows:

- Not less than age 18+ at door at all times
- Age 21+ at door during Winston events

Venue Owner

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B. PRODUCT MERCHANDISING. Venue Owner will display the Product and sell it in plain view of Venue's patrons by placing it on or behind counters/bars or on waitrays. Venue Owner shall ensure that Non-Client tobacco brands ("Competitive Product") personally preferred and/or consumed by employees shall not at any time be displayed upon the bars, on waitrays, or smoked or consumed by employees anywhere in plain view of patrons while at work. Except as set forth in Section IV(B)(2)(b) below, Competitive Product shall not at any time be offered to patrons.

1. **Cigarette Kiosks.** Venue Owner will permit SPONSOR to place _____ () lockable cigarette kiosks on the Venue's bars or other mutually acceptable locations to promote over-the-counter sales of the Product. Venue Owner will order enough Product from SPONSOR to keep the kiosks fully stocked at all times.
2. **Cigarette Vending Machines.**
 - a. Any cigarette vending machines located in the Venue owned by Venue Owner will be stocked exclusively with the Client cigarette brands and brand styles requested by SPONSOR.
 - b. At least 50% of the cigarettes in any vending machines located in the Venue owned by a third-party vendor will be stocked with cigarette brand styles requested by SPONSOR.
 - c. Venue Owner agrees to provide sufficient space atop or alongside cigarette vending machines for the installation of illuminated signage and/or catalog merchandisers, at SPONSOR's sole discretion.

C. GUARANTEE OF EXCLUSIVITY. Without exception, Venue Owner will not, and will not permit Venue employees, to:

1. Sell, give away, or otherwise distribute any Competitive Product in the Venue;
2. Display Competitive Product or any competitive promotional material or signage on bars, server trays, kiosks, or anywhere in the Venue;
3. Allow Venue staff to offer Venue patrons any Competitive Product, regardless of whether Venue staff personally prefer or consume Competitive Product;
4. Allow any manufacturer, distributor, or other seller of Competitive Product, or its/their agencies (in any event, a "Competitor") to supply Competitive Product to Venue, sponsor Venue, or be associated in any way with any activities in the Venue;
5. Allow any Competitor's promotional vehicles, bar essentials, kiosks, or field personnel (costumed or otherwise) to occupy private thoroughways adjacent to the Venue (including outside murals, paintings, and signs);
6. Allow Venue staff to wear or display any items that feature the name or logo of any Competitor or Competitive Product while at the Venue;
7. This exclusivity provision shall apply to all over-the-counter sales at the Venue during the Term of this Agreement.
8. Venue Owner shall take the necessary and appropriate steps to advise its/their employees of the above undertakings.

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D. PLACEMENT OF SIGNAGE. Venue Owner grants SPONSOR the right to place signage and promotional material in the Venue during the Term and temporarily place extra signage in the Venue during Special Events. Signage and displays will be approved by Venue management prior to placement, which approval shall not be unreasonably withheld or delayed. Venue management objections to signage or displays shall be communicated to SPONSOR in writing. All signage placed in Venue by SPONSOR will remain the property of SPONSOR at all times and may be removed at SPONSOR's discretion.

1. Signage will include at least two (2) pieces of highly-visible permanent signage within the Venue.
2. Promotional materials (POS) will include (1) highly-visible display within the Venue.

E. ACCESS TO VENUE. Venue Owner will grant SPONSOR's employees and representatives and Client's employees and representatives complimentary access to Venue, Venue staff, and Venue patrons on a nightly basis for the following purposes, all at SPONSOR's discretion and to the extent allowed by applicable law:

1. Delivery of Product;
2. Promotion of Special Events and other marketing and promotional activities;
3. Marketing research purposes; and
4. Orientation of Venue staff and providing program briefings.

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F. GUEST LIST PRIVILEGES. Venue Owner guarantees that Venue management and staff will grant guest list privileges to SPONSOR's employees, guests and designees (and Client's employees, guests and designees) at all times. SPONSOR will provide guest list names to Venue staff in a timely manner.

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G. VENUE RELOCATION. This Agreement shall continue in effect regardless of any physical relocation or reconfiguration of the Venue during the Term, unless otherwise stated in writing by SPONSOR.

V. ADDITIONAL TERMS AND CONDITIONS.

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A. INVALIDITY. The determination that any provision of this Agreement is invalid or unenforceable will not invalidate this Agreement, all of said provisions being inserted conditionally upon their being considered legally valid, and this Agreement will be construed and performed in all respects as if such invalid or unenforceable provision(s) were omitted.

B. TRADEMARKS. The names, trademarks, label designs, emblems, product identifications, slogans, insignia, artwork, and other symbols and devices associated with the Product ("Trademarks"), are and will remain at all times the property of Client. Venue Owner agrees that it does not have, and will not claim, any right, title, or interest in or to the same or the use thereof. Venue Owner shall not create, print or distribute any advertisement or signage containing a Trademark or any other Product-related terminology, images or icons.

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- C. TERM AND TERMINATION; ASSUMPTION; ASSIGNMENT.** This Agreement shall become effective on the date first above written and shall expire December 31, 2002 thereafter, unless terminated earlier or renewed pursuant to the terms hereof (the "Term"). Notwithstanding the foregoing, SPONSOR and/or Client may terminate this Agreement in its sole discretion upon 24 hours notice to Venue Owner. Upon termination, SPONSOR and Client shall have no liability or obligations to Venue Owner except to provide those funds for special events that were specifically approved in writing prior to termination. If this Agreement shall provide for SPONSOR to make direct payments to Venue Owner, and in the event of early termination hereof, SPONSOR shall make one final direct payment to Venue Owner. The amount of the final payment shall be a *pro rata* share of the next scheduled payment after termination, based upon the number of days in the calendar quarter that have elapsed prior to termination, notwithstanding any other term or provision hereof. All of SPONSOR's rights with all of SPONSOR's obligations under this Agreement may be assigned to Client or assumed at any time by Client without Venue Owner's consent upon written notice by Client or its agent to Venue Owner. Client may elect to assume all of SPONSOR's rights, duties and privileges provided under this Agreement by providing Venue Owner five (5) business days notice of such assignment. No other assignment of this Agreement is permitted without the express written consent of the parties.
- D. RIGHT OF FIRST REFUSAL.** During the Term of this Agreement and for a period of six months after its termination or expiration, SPONSOR shall have the right of first refusal to renew this Sponsorship Agreement provided SPONSOR conducts this promotion during the duration of this Agreement. As used herein, the right of first refusal shall mean that if Venue Owner receives a "bonafide offer" (as hereinafter defined) regarding sponsorship from a third party, then Venue Owner shall be obligated to communicate such offer to SPONSOR and permit SPONSOR at its option to offer to contract with Venue Owner, on terms no less favorable to Venue Owner than those contained in the bonafide offer of the third party. In no event shall Venue Owner enter into a contract with a third party upon terms and conditions more favorable to such third party than those offered to SPONSOR, unless such terms have first been offered to and rejected by SPONSOR, in writing. As used herein, the term "bonafide offer" shall mean a proposed agreement concerning rights and obligations similar to those herein, which agreement if executed by Venue Owner and the third party, would be legally binding.
- E. RELATIONSHIP OF THE PARTIES.** The relationship between SPONSOR and Venue Owner is, and at all times, shall be, only that of independent contractors. Venue Owner is not and shall not hold itself out as an agent, employee, legal representative, subsidiary, joint venturer, or partner of SPONSOR, its parent and/or affiliates, or Client, and nothing in this Agreement or elsewhere shall be construed to create any relationship between SPONSOR, its parent and/or affiliates, or Client and Venue Owner other than independent contractors. Venue Owner shall not have any right or power to and shall not attempt to bind, make liable, or obligate SPONSOR, its parent and/or affiliates, or Client, in any manner whatsoever. No agreement negotiated or obtained by Venue Owner shall be binding upon SPONSOR unless pre-approved in writing and subsequently signed by SPONSOR.
- F. GOVERNING LAW.** This agreement will be governed by the laws of the United States and the State of _____, without regard to conflicts of law provisions. The parties hereby consent to the exclusive jurisdiction of the federal and state courts located within the County of _____, State of _____ with respect to any controversy arising under this Agreement.
- D. INDEMNIFICATION.** Venue Owner shall indemnify, defend, and hold harmless SPONSOR and Client, and each of their respective parents, subsidiaries and affiliates, officers, directors, agents and employees, from and against any and all claims, demands, actions, or causes of action and liabilities and expenses (including reasonable attorneys' fees and costs) (collectively "Claims") incurred by SPONSOR and/or Client, and their respective parents, subsidiaries and affiliates, officers, directors, agents and employees, which Claims arise out of Venue Owner's performance of this Agreement, including without limitation any Claims concerning personal injury, bodily injury (including death), or property damage. Venue Owner also agrees to indemnify and hold harmless SPONSOR and Client, and each of their respective parents, subsidiaries and/or affiliates against the loss, theft, destruction and/or damage of any nature of Client's Products and/or other property of SPONSOR while such property and/or Products are in Venue Owner's possession, care, control or custody.
- E. LIMITATION OF LIABILITY.** Except in connection with the Indemnification provisions set forth in Section V.G. above, neither SPONSOR nor Venue Owner shall be liable to the other for any special, consequential, incidental, or indirect damages (including, but not limited to, lost profits, lost business, or other economic damages), resulting from SPONSOR's and Venue Owner's obligations arising hereunder. Notwithstanding the foregoing, any such liability arising under this Section V.H. shall be limited to \$50,000.00 in the aggregate; provided, however, in no event shall operation of this Section V.H. effect or otherwise limit third-party liability.
- I. COMPLIANCE WITH LAWS.** Venue Owner, in the execution of this Agreement, will comply with all applicable local, state, and federal laws, regulations, ordinances, and court orders bearing on the performance of Venue Owner's obligations and the activities of Venue management and staff, including the provisions of 15 U.S.C. Section 1331, *et seq.* and of the Master Settlement Agreement executed as of November 23, 1998, by certain tobacco manufacturers and the Settling States (as defined in the Master Settlement Agreement), where applicable. Notwithstanding any other term of this Agreement, SPONSOR shall not be obligated to perform any duties that may be restricted by applicable law or regulation and SPONSOR may exercise all rights granted hereunder to the extent permitted by law. In the event of federal, state or local legislative, judicial, administrative or other governmental action that prohibits, impairs, inhibits or declares unlawful the advertising and/or promotion of cigarettes or that restricts the activities contemplated hereunder, or that in any way affects or frustrates the advertising or promotional activity under this Agreement, then in any event, SPONSOR may terminate this contract effective upon the earlier of (i) the delivery of written notification by SPONSOR of such termination or (ii) the effective date of such legislative, judicial or administrative action. Except as otherwise provided herein, neither party shall have further liability to the other on account of termination pursuant to this paragraph.

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J. **CANCELLATION AND FORCE MAJEURE.** In the event that any or all of the Special ~~Events, on going promotion or Product promotion participation~~ does not take place, in whole or in part, due to permanent closing of business, temporary closing of business, bankruptcy, or any natural disasters or force majeure, including without limitation, weather, fire, flood, strike, terrorism, labor dispute or similar cause beyond the control of the parties, then SPONSOR shall be entitled to an immediate refund of the Sponsorship Fee ~~for a pro rata portion thereof if the promotion took place only in part~~. Venue owner will secure adequate rain, cancellation and business interruption/loss of business insurance to cover its obligations under this Agreement.

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K. **EXECUTION OF COUNTERPARTS.** This Agreement may be executed in one or more counterparts, each of which will be deemed an original agreement, but all of which will be considered one instrument.

L. **COMPLETE AGREEMENT.** This Agreement represents the entire agreement between the parties and supersedes all other agreements, express or implied, whether written or oral. The parties have made no representations of any kind to each other, except those specifically set forth herein.

M. **SIGNING AUTHORITY.** The individual signing below on behalf of Venue Owner warrants and represents that he/she does so with actual or apparent authority to bind the Venue Owner and has sufficient control over the business activities of the Venue to dictate and control the actions of Venue management and staff so as to ensure fulfillment of all duties of Venue Owner and rights of SPONSOR. This Agreement shall be binding upon the parties, their successors, and assigns.

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N. **CONFIDENTIALITY.** Venue Owner agrees to hold the terms and conditions of this Agreement in confidence and not disclose it to any third party.

O. **MISCELLANEOUS.** No alteration or amendment may be made to this Agreement shall be binding on the parties unless in writing signed by a duly authorized representative of the party to be charged. No delay or omission by either party to exercise any right or power shall be construed as a waiver of such right or power.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized others as of the date first above written.

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By: _____
Signature

By: _____
Signature

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Print Name

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[If over \$10,000]
SURGE at Draft Worldwide (Group Account Director)

[If over \$25,000]
SURGE at Draft Worldwide (EVP or President)

By: _____
Signature

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