

## TRADEMARK LICENSE AGREEMENT

**THIS TRADEMARK LICENSE AGREEMENT ("Agreement")** is made this \_\_\_\_\_ day of \_\_\_\_\_, 2010 by and between **SEMINOLE TRIBE OF FLORIDA**, a federally recognized Indian tribe, organized and so recognized under Section 16 of the Indian Reorganization Act of 1934, as amended, and whose address is 6300 Stirling Road, Hollywood, FL 33024, (hereinafter "**Licensor**"); **SEMINOLE BRANDS, LLC**, a Virginia limited liability company whose address is 1057 Bill Tuck Highway, Suite 239, South Boston, Virginia, 24592 (hereinafter "**Licensee**") and **CHEROKEE TOBACCO COMPANY, LLC**, a Virginia limited liability company whose address is 1057 Bill Tuck Highway, Suite 239, South Boston, Virginia 24592 ("**CTC**") and with **FIREBIRD MANUFACTURING, LLC**, a Virginia limited liability company, whose address is 1057 Bill Tuck Highway, Suite 239, South Boston, Virginia 24592, but only for purposes of Section 4, Indemnification.

**WHEREAS** CTC previously filed an application (Application Serial No. 77652198) with the United States Patent and Trademark Office (the "**ITU Application**") to register the mark SEMINOLE (the "**Mark**") on an intent to use basis in connection with the manufacture and sale of cigarettes and other tobacco products, which application has now been deemed abandoned; and

**WHEREAS**, Licensor had expressed concern over the ITU Application filed or intends to file an objection with respect to any attempt by CTC to register the Mark; and

**WHEREAS**, CTC is willing to continue with the registration of the Mark and assign the Mark once registered to Licensor subject to Licensor providing Licensee with the right to use the Mark in connection with the manufacture and sale of the Goods on the terms and conditions set forth below; and

**WHEREAS**, CTC and Licensee are under common ownership and CTC acknowledges that based on such relationship it will receive adequate consideration for the assignment of the Mark to Licensor as contemplated herein; and

**WHEREAS**, CTC and/or Licensee intend to contract with Firebird Manufacturing, LLC ("**Firebird**") to manufacture some or all of the Goods, and in consideration of the same has agreed to indemnify Licensor in accordance with the provisions set forth in Section 4, herein, which agreement is a material inducement for Licensor to enter into this Agreement.

**NOW, THEREFORE**, in consideration of the mutual promises herein contained, and for good and valuable consideration, receipt of which is hereby acknowledged by the parties, it is hereby agreed:

1. **Registration of Mark:** CTC will proceed with the registration of the Mark and upon registration (meaning either the granting of a trademark registration or the issuance of a Notice of Allowance or similar type document with respect to the ITU application by the United States Patent and Trademark Office) will irrevocably assign all ownership and other rights (including any goodwill) in and to the Mark to Licensor. Licensor, at CTC's cost and expense, will support CTC's prosecution of the ITU Application. CTC will execute and cause to be filed with all applicable governmental agencies, all agreements, forms or other documents necessary to effectuate the aforementioned. All costs associated with the prosecution of the ITU

application and assignment of the Mark to Licensor shall be paid by CTC. In the event CTC does not promptly execute and/or file the necessary documents to affect the assignment of the Mark, then it appoints Licensor to act as its attorney in fact to execute and file any and all documents on CTC's behalf necessary to accomplish the same.

## **2. Grant of License:**

**(a) Exclusive License.** Licensor hereby grants Licensee, and Licensee hereby accepts the world-wide, exclusive license, privilege and right to use and display the Mark upon and in connection with the manufacture, sale and distribution of the following articles: cigarettes, little cigars, loose tobacco products, and smokeless tobacco products (collectively, the "Goods"). Licensor shall not, during the term of this Agreement, use the Mark for its own sake with respect to any of the Goods, or license the Mark to others to use in connection with the Goods, except that Licensor may sell Goods using the Mark on Indian reservations and lands held in trust by the United States of America for the use and benefit of an Indian tribe, so long as such Goods are purchased from Licensee. Licensor shall not knowingly sell Products bearing the Mark to persons who intend to resell the Goods bearing the Mark anywhere in the world.

**(b) Reservation of Rights/Ownership.** Except as provided herein, for all purposes of the relationship between Licensor, CTC and Licensee created hereunder, Licensor shall be deemed to be the sole and exclusive owner of all right, title and interest in and to the Mark in all forms and embodiments thereof, subject only to the specific rights granted to Licensee hereunder. Licensee and CTC specifically acknowledge that the rights granted to Licensee pursuant to this Agreement shall not prevent or prohibit Licensor or any licensee thereof to commercialize or otherwise utilize (and retain all profits from) the Mark or any other intellectual property right of Licensor in any endeavor, except as provided for in this Agreement.

**(c) Licensee May Not Register the Mark.** Neither Licensee, nor CTC, shall directly or indirectly, register or cause to be registered, in any country or with any governmental authority, or use any trademark, trade name, service mark or other intellectual property right consisting of, related to, similar to and/or deceptively similar to the Mark or any other intellectual property right of Licensor, except that Licensee may register the Mark outside of the United States in the name of Licensor in countries where Licensee sells the Goods.

**(d) No Challenge to Licensor's Ownership of the Mark.** During the term of this Agreement and thereafter, neither Licensee nor CTC shall, directly or indirectly (i) challenge the validity of Licensor's ownership of, or the right to license the Mark (except as the same may relate to licensing the Mark to other third parties with respect to the Goods) or any registration or application for registration thereof; (ii) contest the fact that Licensee's rights under this Agreement are solely those of a licensee and terminate upon termination or expiration of this Agreement; and (iii) represent that they have any right or title to the ownership, registration or use of the Mark in any manner, except as set forth in this Agreement.

**(e) No Assignment Or Subletting.** Neither Licensee nor CTC shall assign this License in whole or in part, or enter into any sublicense agreement with respect to the Mark, to or with any third party without the express written consent of Licensor, which consent may be granted or withheld in the sole discretion of Licensor. Any non-permitted assignment or sublicensing shall be void and shall cause this Agreement to immediately terminate, any other

provision concerning notice and opportunity to cure notwithstanding. Notwithstanding the foregoing, Licensee may assign this Agreement without Licensor's consent in connection with a sale of substantially all of its assets provided notice is given to Licensor and the assignee agrees in writing to be bound by the terms of this Agreement.

**(f) Term of License.** The term of this License shall commence on August 4, 2010 and shall continue until December 31, 2030, unless sooner terminated in accordance with the provisions hereof. The term of this License may be renewed for additional five (5) year periods thereafter upon the Licensee giving written notice to the Licensor of its exercise of renewal at least one hundred twenty (120) days prior to the expiration of the then expiring term and Licensor not having provided written notice that the term of the Agreement will not be renewed at least one hundred eighty (180) days notice prior to the expiration of the then expiring term. Licensor may also terminate this Agreement, upon the giving of thirty (30) days written notice for a monetary default, and ninety (90) days written notice for a non-monetary default, should Licensee (i) fail to pay the Royalties required under Section 3(a) herein; or (ii) fail to manufacture, distribute and/or sell the Goods under the Mark for a consecutive period of twelve (12) months; or (iii) be declared in default of any other material term or provision of this Agreement; or (iv) become insolvent, make an assignment for the benefit of creditors or has a petition in bankruptcy filed for or against it. Licensee shall have the ability to cure the matters set forth in this Section 2(f) during the aforesaid thirty day notice period for a monetary default and the ninety (90) day notice period for a non-monetary default. Upon termination or expiration of this Agreement, all rights granted herein shall revert to Licensor and Licensee shall be precluded from making any claim to such rights.

**(g) Use Of Marks:** Licensee agrees to comply with any reasonable requirements established by Licensor concerning the style, design, display and use of the Mark provided the same does not impair the commercialization of the Goods using the Mark; to correctly use the trademark symbol TM or registration symbol (R) with every use of the mark, to use the registration symbol (R) upon receiving notice of registration of the mark from Licensor and to submit in advance of its use all advertising copy, labels, stickers or packaging to Licensor for written approval as set forth in Section 5 below whenever such materials are changed (other than a change required by a governmental or regulatory body or entity) in a manner from those originally approved by Licensor in writing, which approval shall not be unreasonably withheld, conditioned or delayed. Licensee agrees not to use the Mark with any other trademark, service mark, trade name, logo, symbol or device in combination with the Mark without Licensor's prior written consent.

**(h) No Altering of Marks:** Licensee agrees that it will not alter, modify, dilute or otherwise misuse the Mark being licensed hereunder, or bring it into disrepute.

### **3. Terms of Payment:**

**(a) Rate.** Licensee agrees to pay Licensor as a royalty (the "**Royalty**"), the sum of four percent (4%) of the Gross Profit After Taxes (as defined hereinafter) of all Goods sold by Licensee to any third party, or which is sold by any third party who has a contractual agreement with Licensee to sell such Goods. Gross Profits After Taxes means the whole sales price less any federal excise taxes, sums due pursuant to the terms of the Tobacco Master Settlement Agreement and related legislation, sums due under the Tobacco Quota Buyout

Legislation (Title VI of P.L. 108-357) and sums due the Federal Drug Administration. A chart showing how the rate is calculated is attached hereto for illustrative purposes as Exhibit A. The Royalty shall be paid by Licensee to Licensor within Fifteen (15) days of the end of the month in which all such Goods were sold to any third party. Licensor shall not be entitled to the Royalty for any Goods sold by Licensee to Licensor or an entity controlled by Licensor. Any late payment shall bear interest at the rate of eighteen percent (18%) per annum, or if the maximum rate allowed by law is lower, at such maximum rate (the "Interest"). Notwithstanding the above, Licensee shall pay to Licensor a minimum Royalty payment of Five Thousand Dollars (\$5,000.00) per month, which minimum payment shall commence on the thirteenth (13<sup>th</sup>) month after all necessary governmental regulatory approvals that may be necessary to sell and distribute the Goods are obtained.

**(b) Periodic Statements.** Within 45 days of the initial shipment of the articles covered by this Agreement and promptly on or before the 15th day of each calendar month, Licensee shall furnish to Licensor complete statements for the prior month certified to be accurate by the president or his designee of Licensee, showing the type and number of Goods sold during the preceding calendar month and how the Royalty on the same was calculated. Receipt or acceptance by Licensor of any statement or payment shall not preclude or prevent Licensor from subsequently challenging the validity or accuracy of the statement or payment.

**(c) Records.** Licensee agrees to keep and maintain accurate books of account and records covering all transactions relating to the license hereby granted, including the manufacturing, distribution and sale of the Goods under the Mark. Such records shall, at a minimum, contain all necessary information for the Royalty to be calculated and verified. The books of account and records shall be kept and maintained by Licensee for at least three (3) years after the expiration or termination of this Agreement.

**(d) Licensor's Right to Audit, Review and Inspection.** Licensor shall have a right to request and conduct, on an annual basis, an audit of all the Goods sold and the calculation of the Royalty payments made or due. Licensor shall have free and full access to such records of Licensee during normal business hours and with at least five (5) business days prior notice for these purposes and for the purposes of making extracts therefrom and Licensor agrees to keep all such information confidential and not directly or indirectly use the same except in connection with this Agreement or disseminate the same to any third party. Licensee shall make all such records available to Licensor at 1201 Industrial Park Road, South Boston, VA 24592, or at such other place as may be mutually agreed upon. Should the results of the inspection conducted herein reveal that there are sums due Licensee to Licensor, Licensee shall pay the same to Licensor, with Interest, within five (5) business days of written demand. Should the results of the same show an overpayment by Licensee to Licensor, Licensor shall refund the same to Licensee within five (5) business days of written demand. Should the results of any audit commissioned by Licensor reveal a discrepancy between the Royalty paid and the Royalty due of five percent (5%) or more, the cost of the audit shall be borne by Licensee.

**(e) Performance Audit.** Licensor shall have the right to conduct a performance review of Licensee's performance of its obligations under this Agreement once a year. Licensee agrees, once a year upon request, to submit to Licensor and to permit Licensor or its duly authorized representative the right to inspect the Goods, containers, packages, advertisement and promotional materials offered pursuant to this Agreement for compliance.

#### 4. Indemnification:

(a) Licensee and Firebird hereby agrees to indemnify and hold harmless Licensor and each of Licensor's officers, officials, members, employees, advisors, counsel and agents (each, including Licensor, an "Indemnified Person") from and against any and all losses, claims, damages and liabilities to which any Indemnified Person may become subject (i) arising out of or based upon the manufacture, marketing, distribution and or sale of any of the Goods under the Mark, or the use of such Goods under the Mark, or (ii) arising in any manner out of or in connection with the transactions contemplated by this Agreement and shall reimburse each Indemnified Person promptly for any legal or other expenses reasonably incurred by it in connection with investigating, preparing to defend or defending, or providing evidence in or preparing to serve or serving as a witness with respect to, any lawsuits, investigations, claims or other proceedings arising in any manner out of or in connection with any of the matters as set forth above (including, without limitation, in connection with the enforcement of the indemnification obligations set forth herein).

(b) Licensee and Firebird further agree that they will not, without Licensor's prior written consent, which consent will not be unreasonably withheld, enter into any settlement of a lawsuit, claim or other proceeding arising out of any of the matters set forth in Section 4(a) unless such settlement includes an explicit and unconditional release from the party bringing such lawsuit, claim or other proceeding of all Indemnified Persons.

(c) In case any action or proceeding shall be instituted involving any Indemnified Person for which indemnification is to be sought hereunder by such Indemnified Person, then such Indemnified Person shall promptly notify the Licensee and Firebird of the commencement of any action or proceeding; *provided, however*, that the failure so to notify the Licensee and/or Firebird shall not relieve Licensee and/or Firebird from any liability that it may have to such Indemnified Person pursuant to this Section 4 or from any liability that they may have to such Indemnified Person other than pursuant to this Section 4. Notwithstanding the above, following such notification, Licensee and/or Firebird may elect in writing to assume the defense of such action or proceeding, and, upon such election, they shall not be liable for any legal costs subsequently incurred by such Indemnified Person (other than reasonable costs of investigation and providing evidence) in connection therewith, unless (i) Licensee and/or Firebird fails to provide counsel reasonably satisfactory to such Indemnified Person in a timely manner, (ii) counsel provided by Licensee and/or Firebird reasonably determines that its representation of such Indemnified Person would present it with a conflict of interest or (iii) the Indemnified Person reasonably determines that there may be legal defenses available to it which are different from or in addition to those available to Licensee and/or Firebird.

5. **Quality Control:** Simultaneous with development and creation, and once a year thereafter, Licensee agrees to send samples of the Goods, packaging, advertising and promotional materials bearing or sold under the Mark (collectively, the "**Materials**") and any other documents which may permit Licensor to determine whether the Materials and services and trademark uses meet the standards, specifications and directions set forth in this Agreement. Licensor shall review and approve or disapprove the form of the materials bearing the Mark, in writing, within fifteen (15) days of receipt thereof. If Licensor fails to disapprove of the same within the fifteen (15) day period, the same shall be deemed approved. Licensee shall not change (other than a change required by a governmental or regulatory body or entity) any

approved advertising or promotional materials without the prior written consent of Licensor, the same not be unreasonably withheld, delayed or conditioned.

**6. Relationship of Parties:** The parties agree that their relationship under this License Agreement is strictly that of licensor and licensee. Neither party shall have any right to make any commitment of any kind for or on behalf of the other party under this Agreement without the prior written consent of the other party. Nothing in this Agreement shall create or be interpreted in any way as a joint venture, partnership or formal business organization of any kind.

**7. Good Will:** Licensee recognizes the great value and publicity and good will associated with the Mark licensed under this Agreement and acknowledged that such goodwill belongs exclusively to Licensor.

**8. Licensee's Duties Regarding Infringement:** Licensee will immediately notify Licensor in writing of any infringement, or suspected infringement of, or claim of infringement of the licensed Mark, or any action constituting passing off, or any claim for passing off against the Mark, of which Licensee becomes aware. Licensee shall not institute any legal action with respect to any infringement or suspected infringement of, or claim of infringement of the licensed Mark, but will, if requested by Licensor, lend all necessary assistance in any legal action Licensor may institute against any person or entity infringing or passing off as described herein, or suspected of doing so, or any legal action Licensor may defend as described herein and Licensor shall pay to Licensee its out-of-pocket expenses incurred in connection with providing such assistance. Licensor shall, at all times, have full control of any such proceedings. Notwithstanding the foregoing, if Licensor fails to pursue a potential infringement claim and Licensee believes in good faith that such infringement impairs its ability to sell or market the Goods using the Mark, then Licensee may institute action to enjoin such infringement at its sole expense.

**9. Licensee's Duties Upon Termination:** Upon termination of this Agreement, Licensee agrees to immediately discontinue (i) the manufacture, distribution and sale of all Goods bearing the licensed Mark, and (ii) the use of the licensed Mark; provided, however, that Licensee shall have the right to dispose of its stock of all Goods bearing the licensed Mark within three (3) months after said termination. Such disposition shall be subject to the terms of this Agreement including, but not limited to, those requiring reports of sales and payment of Royalties and the obligation to maintain insurance and to indemnify Licensor. After such three (3) month period, Licensee agrees to destroy all unsold packaging, marketing materials (or Goods if the Mark is affixed to the Goods and cannot be removed) bearing the licensed Mark and to report to Licensor the number of each destroyed. Notwithstanding the foregoing provisions, Licensee's right to dispose of its stock after termination of this Agreement is subject to the condition that within thirty (30) days after termination, Licensee (x) pays to Licensor all Royalties accrued to the time of termination, and (y) delivers to Licensor a report of sales up to the time of termination in the form required by Section 3 of this Agreement, and (z) provides Licensor with an inventory of unsold Goods bearing the licensed Marks remaining and allows Licensor at its option to conduct a physical inventory to verify such a statement.

**10. Insurance:** Licensee shall maintain in effect insurance for both bodily injury and property damage liability in per occurrence limits of not less than One Million Dollars

(\$1,000,000) with Two Million Dollars (\$2,000,000) general aggregate, with excess umbrella liability of Five Million Dollars (\$5,000,000). Such coverage shall be provided with respect to all claims for damages arising out of the manufacture, distribution or sale or use of the Goods under the licensed Mark, regardless of when such claims are made or when the underlying injuries occur or manifest themselves. Policies maintained by Licensee shall (i) be underwritten by a carrier that is rated at least "A" in Best's Key Rating Guide; (ii) be primary as to any other valid and collectible insurance in force; (iii) include endorsements naming Licensor an additional insured insofar as this Agreement is concerned; and (iv) provide that notice shall be given to Licensor at least thirty (30) days prior to cancellation or material reduction in the form of such policies. Copies of certificates as evidence of said insurance shall be delivered by Licensee to Licensor upon execution of this Agreement and within fifteen (15) days of any insurance renewals.

**11. Choice of Law:** This Agreement shall be interpreted under the laws of the State of Florida.

**12. Venue:** Venue for any dispute arising between the parties under this Agreement shall lie exclusively within Broward County, Florida.

**13. Waiver:** The waiver by either party of a breach of a provision of this Agreement shall not operate or be construed to invalidate the balance of the provisions contained in this Agreement, which shall continue to remain in effect.

**14. Severability:** The finding by any court that a provision of this Agreement is invalid shall not operate or be construed to invalidate the balance of the provisions contained in this Agreement, which provisions shall continue to remain in full force and effect.

**15. Entire Agreement:** This Agreement, the documents referred to herein, and the attachments hereto, if any, constitute the entire, full and complete agreement between Licensor with CTC, Firebird and Licensee concerning the subject matter hereof, and supersede all prior agreements. No other representations having induced any of the parties to execute this Agreement. No representations, inducements, promises, or agreements, oral or otherwise, not embodied in this Agreement or attached hereto (unless of subsequent date) were made by any of the parties, and none shall be of any force or effect with reference to this Agreement or otherwise. Except as otherwise provided in this Agreement, no amendment, change or variance from this Agreement shall be binding on either party unless mutually agreed to by the parties and executed by their authorized officers or agents in writing.

**16. Notices:** Except as otherwise provided in this Agreement, all notices, demands, requests, consents, approvals and other communications (collectively "Notices"), required or permitted to be given hereunder, or which are to be given with respect to this Agreement, shall be in writing and personally delivered, or sent by facsimile (with a confirming copy mailed by registered mail as described herein), or by a recognized overnight courier service, or by registered mail, postage prepaid, return receipt requested, addressed to the party to be so notified as follows:

If to the Licensee or  
Firebird Manufacturing, Inc.,  
or CTC, to:

Seminole Cigarettes, LLC  
1057 Bill Tuck Highway, Suite 239  
South Boston, Virginia 24592  
Attention: President

Facsimile Number:

with a copy to:

Woods Rogers PLC  
341 Main Street, Suite 302  
Danville, Virginia 24541  
Attn: R. J. Lackey, Esq.

Facsimile Number: 434-797-8214

If to Licensor, to:

Seminole Tribe of Florida  
6300 Stirling Road  
Hollywood, Florida 33314  
Attention: General Counsel

Facsimile: 954-967-3487

Notices shall be deemed received on the date of delivery if personally delivered, two (2) business days after sending if sent by facsimile or overnight courier service, or seven (7) business days after sending if sent by registered mail.

**17. Headings:** The section and other headings contained herein are for convenience of reference only, and are not intended to define, limit or describe the scope or intent of any provision of this Agreement.

**18. Counterparts:** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**19. Attorneys' Fees.** The prevailing party in any dispute initiated under this Agreement shall be entitled to recover from the other its reasonable costs and attorneys' fees at trial and on appeal.

[Signatures on Next Page]

**IN WITNESS WHEREOF**, the parties have caused this instrument to be duly executed as of the day and year first written above.

Licensee:

Licensor:

**SEMINOLE BRANDS, LLC,**

**SEMINOLE TRIBE OF FLORIDA,**

a Virginia limited liability company

a federally recognized Indian tribe

By \_\_\_\_\_

By \_\_\_\_\_

Name:

Name:

As its:

As its:

**CHEROKEE TOBACCO COMPANY, LLC,**

**FIREBIRD MANUFACTURING, LLC**

a Virginia limited liability company

a Virginia limited liability company

(for purposes of Section 4, Indemnification)

By \_\_\_\_\_

By: \_\_\_\_\_

Name:

Name:

As its:

As its: