

1 **SETTLEMENT AGREEMENT**

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3 1. The parties to this Agreement are the People of the State of California through the
4 Office of the Attorney General (hereafter, "California") and the R.J. Reynolds Tobacco Company
5 (hereafter, "Reynolds").

6 2. California and Reynolds are parties to the Master Settlement Agreement ("MSA")
7 which settled the litigation entitled People of the State of California, et al. v. Philip Morris Inc.,
8 et al., Sacramento Superior Court 97AS03031, Judicial Council Coordination Proceeding #4041, and
9 other claims and matters pending at the time of the settlement. Pursuant to the MSA, the Superior
10 Court entered a Consent Decree and Final Judgment ("Consent Decree") on December 9, 1998,
11 retaining continuing jurisdiction for the purposes of implementing and enforcing the MSA and the
12 Consent Decree. (Consent Decree, section VI.A.)

13 3. California investigated certain conduct and activities at Reynolds-sponsored auto
14 races in the State of California in 1999 which California believes were in violation of the MSA's
15 and/or the Consent Decree's restrictions on outdoor advertising (MSA, section III(d)(2)), prohibition
16 against combining advertising of tobacco products with advertising for a sponsored event (id., section
17 III(c)(3)(A) and (B)), and restrictions on the distribution of free samples (id., section III(g), Consent
18 Decree, section V.E). On August 26, 1999, California gave Reynolds written notice of its concerns
19 about said conduct and activities. On September 28, 1999, Reynolds responded to California's letter
20 of August 28, 1999. On September 30, 1999, California gave Reynolds formal Thirty-day Notice of
21 its intent to initiate enforcement proceedings concerning said marketing practices pursuant to section
22 VII(c)(2) of the MSA. Copies of said letters are attached hereto.

23 4. Reynolds disagrees with California's contentions. The parties have discussed the
24 disputed issues in meetings, one of which was attended by representatives of Ohio, Pennsylvania, and
25 the National Association of Attorneys General ("NAAG"), and in correspondence, and have worked
26 cooperatively to resolve these disputes informally as contemplated by section VII(c)(6) of the MSA
27 and section VI.A of the Consent Decree. The parties have decided to resolve their disputes by
28 entering into this Agreement rather than pursuant to formal enforcement proceedings. California

1 has kept the NAAG Tobacco Enforcement Committee (“the Committee”) informed of
2 the discussions and correspondence between the parties. While the Committee has not formally
3 reviewed this Agreement, no member of the Committee has expressed to California any objection to
4 its content or provisions.

5 5. The parties believe that this Agreement constitutes a good faith settlement of said
6 disputes and disagreements between the parties relating to the application of the MSA and the
7 Consent Decree to Reynolds’s signage and other activities at the sites of Brand Name Sponsorship
8 events. This Agreement is for settlement purposes only and does not constitute an admission by
9 Reynolds that either the MSA or the Consent Decree has been violated or that the facts as alleged
10 by California or any other state are true. The parties do not intend, by entering into this Agreement,
11 to modify the provisions of the MSA. It is intended by the parties that the provisions of this
12 Agreement shall apply to Reynolds’s marketing practices at Brand Name Sponsorship events in
13 California during the year 2000 and in succeeding years.

14 **Procedural Provisions:**

15 6. Except as provided in paragraph 16, the subject matter of this Agreement is limited
16 to Reynolds’s activities at Brand Name Sponsorship events in California, including the content and
17 display of signage and other activities, as described in paragraph 3, above.

18 7. This Agreement does not supercede any existing or future Federal, State, or local
19 laws or regulations governing the advertising, marketing, and/or promotion of tobacco products.

20 8. Following approval of this Agreement by the parties, California will promptly
21 submit this Agreement to the NAAG Tobacco Enforcement Committee and will request that the
22 Committee endorse the Agreement as a fair and reasonable resolution of the disputed issues and
23 recommend the Agreement to the other Settling States (as defined in the MSA) as a fair and
24 reasonable resolution of said issues.

25 9. “Most favored nation”: In the event California later settles a dispute with another
26 Participating Manufacturer (as defined in the MSA) which is a party to the MSA, which settlement
27 contains one or more terms which are more favorable to said manufacturer than a provision of this
28 Agreement, Reynolds shall be entitled to the benefit of said more favorable terms, and this Agreement

1 shall be deemed revised so that Reynolds is treated as favorably with respect to said signage or
2 activity at a Brand Name Sponsorship event.

3 10. The parties agree to discuss in good faith any disputes or other issues which may
4 arise with respect to this Agreement. In the event that California believes that Reynolds has acted
5 or is acting contrary to any provision of this Agreement and the parties are unable to resolve said
6 dispute through discussion, California may exercise its enforcement rights under the MSA and/or
7 the Consent Decree. In addition, either party may hereafter file this Agreement with the Superior
8 Court and may seek enforcement of the Agreement.

9 11. In the event that Reynolds fully complies with this Agreement, California agrees
10 to waive any and all claims for judicial relief for Reynolds's marketing practices at Brand Name
11 Sponsorship events in 1999 concerning the conduct and activities described in paragraph 3 of this
12 Agreement. However, in the event there is a material breach of this Agreement, California reserves
13 the right to assert said retroactive claims to the extent permitted by law. California also reserves its
14 right to assert any rights or claims it may have under the MSA and/or the Consent Decree for past
15 or future conduct or activities not specifically described in the attachments incorporated into
16 paragraph 3 of this Agreement.

17 **Substantive Provisions:**

18 12. Reynolds will not place or cause to be placed any signs or banners advertising
19 cigarettes ("Signs") at or on concession stands or other retail establishments at sponsored events at
20 which cigarettes are sold, except in accordance with the following:

- 21 a. Signs shall be placed on the property of the retail establishment and no more
22 than 10 feet from where cigarettes are sold;
- 23 b. No more than two (2) Signs advertising cigarettes will appear on any one (1)
24 surface or side of the retail establishment; and
- 25 c. Signs will be separated from each other, on any one (1) surface or side or on
26 adjoining surfaces or sides, by a distance at least equal to the length of the
27 longest dimension of any adjacent Sign.

28 13. Booths or facilities used to distribute free samples at sponsored events shall

1 be either:

- 2 a. Enclosed in a tent so that persons outside cannot observe activities inside the
- 3 tent unless they undertake unreasonable efforts to do so;
- 4 b. Within a free-standing, close-sided tent without a booth inside; or
- 5 c. Surrounded by a minimum six-foot high fence covered with opaque material,
- 6 with the entrance area to the booth or facility affording no visibility to persons
- 7 outside who do not undertake unreasonable efforts to see inside.

8 14. Signage used by Reynolds to identify the booth or facility from which free samples
9 will be distributed, as described in paragraph 13, will be reasonable in size and manner of display, and
10 may say "THE WINSTON BOOTH" (or similar wording, e.g., "The Camel Booth") and may not
11 bear symbols or words that would constitute cigarette advertising.

12 15. In any Adult-Only Facility operated by Reynolds at a sponsored event, Reynolds
13 will ensure that all signage which contains cigarette advertising cannot be viewed by persons outside
14 of the Adult-Only Facility who do not undertake unreasonable efforts to view such signage.

15 16. Reynolds will not display or cause to be displayed at sponsored events or at any
16 other location the following signs and banners:

- 17 a. "Never Settle for less than 100%. 100% Racing. No Bull.";
- 18 b. "Without our fans there is no sport. No bull." and showing an open pack of
- 19 Winston cigarettes;
- 20 c. "NASCAR Winston Racing is no bull. Just like our smokes. No Bull." and
- 21 showing an open pack of Winston cigarettes; and
- 22 d. "When the green drops the bull stops" and showing an open pack of Winston
- 23 cigarettes.

24 California does not waive its right to assert that any other signs that Reynolds used
25 in 1999 or may use in the future violate the requirements of section III(c)(3)(A) or (B) of the MSA
26 concerning combining advertising of tobacco products with advertising for a sponsored event,
27 although California is not aware of any other signs or banners used prior to the date of this
28 Agreement which it would contend violates these provisions of the MSA.

1 17. Upon receipt of notice of actual or intended display of any of the signs described
2 in paragraph 16 by third parties, Reynolds shall take commercially reasonable steps directed toward
3 the prevention or termination of the display of said signs by third parties.

4 18. To the extent Reynolds has not done so already, Reynolds will promptly
5 communicate the foregoing substantive provisions to those of its employees and agents who are
6 involved in Brand Name Sponsorship activities.

7 19. California has demanded that Reynolds pay California's investigative costs,
8 including legal fees, in this matter because California believes such costs should be reimbursed in
9 cases where alleged violations of law, agreements, or orders are being resolved on behalf of the
10 People of the State of California. Reynolds does not share California's belief or concede the
11 applicability of either any California policy or any provision of the MSA to the settlement of a matter
12 such as this in which Reynolds does not believe and the settlement does not constitute an admission
13 that either the MSA or the Consent Decree has been violated, and, therefore, Reynolds has refused
14 California's demand. Nevertheless, the parties agree that it would not be in the public's interest or
15 in either of their interests either to litigate this matter or to allow it to remain unresolved. Therefore,
16 without intending to or, in fact, establishing any precedent, Reynolds is willing to and will pay and
17 California is willing to and will accept \$30,000 in lieu of California's investigative costs, including
18 legal fees.

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20 Dated: May 8 , 2000

R. J. Reynolds Tobacco Company

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22 _____
 /s/

23 By: Guy M. Blynn

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25 Dated: May 15 , 2000

The People of the State of California

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27 _____
 /s/

28 By: Dennis Eckhart
 Senior Assistant Attorney General