

***[INDICATES PAGINATION IN ORIGINAL DOCUMENT]**

**AMENDMENT NO. 9
TO THE MASTER SETTLEMENT AGREEMENT**

WHEREAS, Top Tobacco, L.P. (“Top Tobacco”) desires to execute the Master Settlement Agreement (“MSA”) among the Settling States and certain Tobacco Product Manufacturers, and the Settling States and such Tobacco Product Manufacturers desire that Top Tobacco execute the MSA;

WHEREAS, the MSA contains provisions necessitating the determination of Top Tobacco’s 1997 and 1998 Market Share;

WHEREAS, Top Tobacco manufactures “roll your own” tobacco, on which federal excise taxes were not collected in 1997 or 1998 and will not be collected in 1999;

WHEREAS, Top Tobacco has audited records of its volume of sales of Tobacco Products during 1997 and 1998 only on the basis of fiscal years beginning on November 1 running through October 31 of the subsequent year;

IT IS THEREFORE AGREED THAT,

Top Tobacco hereby signs and executes the Master Settlement Agreement subject to the following:

(a) For purposes of section IX(i) of the MSA, the greater of (1) Top Tobacco’s 1998 Market Share or (2) 125 percent of Top Tobacco’s 1997 Market Share shall be Top Tobacco’s 1998 Market Share. Top Tobacco’s 1998 Market Share shall be determined by dividing (and expressing as a percentage): (1) 125 percent of the audited number of individual Cigarettes sold by Top Tobacco in the fifty United States, the District of Columbia and Puerto Rico during Top Tobacco’s fiscal year 1997 (i.e., November 1, 1997 through October 31, 1998); by (2) the total number of individual Cigarettes sold in the fifty United States, the District of Columbia and Puerto Rico during calendar year 1998, as measured in the manner described in section II(z) of the MSA. For purposes of these calculations, and pursuant to section II(z) of the MSA, 0.09 ounces of “roll your own” tobacco shall constitute one individual Cigarette. Top Tobacco hereby represents and warrants that 125 percent of the audited number of individual Cigarettes sold by Top Tobacco in the fifty United States, the District of Columbia and Puerto Rico during Top Tobacco’s fiscal year 1997 does not exceed the number of individual Cigarettes sold by Top Tobacco in the fifty United States, the District of Columbia and Puerto Rico during calendar year 1998 (based on the best available information).

(b) For purposes of section IX(d)(1) of the MSA, Top Tobacco’s 1997 Market Share shall be determined by dividing (and expressing as a percentage): (1) the audited number of individual Cigarettes sold by Top Tobacco in the fifty United States, the District of Columbia and Puerto Rico during Top Tobacco’s fiscal year 1997 (i.e., November 1, 1997 through October 31, 1998); by (2) the total number of individual Cigarettes sold in the fifty United States, the

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[begin page 2]* District of Columbia and Puerto Rico during calendar year 1997, as measured in the manner described in section II(z) of the MSA. For purposes of these calculations, and pursuant to section II(z) of the MSA, 0.0325 ounces of “roll your own” tobacco shall constitute one individual Cigarette.

(c) Top Tobacco represents and warrants that it will obtain audited records of its sales of Tobacco Products during calendar year 1999. Top Tobacco’s 1999 Market Share shall be determined by dividing (and expressing as a percentage): (1) the audited number of individual Cigarettes sold by Top Tobacco in the fifty United States, the District of Columbia and Puerto Rico during calendar year 1999; by (2) the total number of individual Cigarettes sold in the fifty United States, the District of Columbia and Puerto Rico during calendar year 1999, as measured in the manner described in section II(z) of the MSA. Pursuant to section II(z) of the MSA: 0.09 ounces of “roll your own” tobacco shall constitute one individual Cigarette when performing these calculations for purposes of section IX(j) of the MSA; and 0.0325 ounces of “roll your own” tobacco shall constitute one individual Cigarette when performing these calculations for purposes of section IX(d)(1) of the MSA.

(d) Pursuant to section II(z) of the MSA, bulk sales of tobacco by Top Tobacco to another Tobacco Product Manufacturer that is to be used by such other Tobacco Product Manufacturer in manufacturing Cigarettes intended for sale to consumers (whether directly or through a retailer, distributor or other intermediary or intermediaries) will not be included either: (1) in the audited number of individual Cigarettes sold by Top Tobacco in the fifty United States, the District of Columbia and Puerto Rico during Top Tobacco’s fiscal year 1997 (i.e., November 1, 1997 through October 31, 1998); or (2) in calculating Top Tobacco’s Market Share for any year.

All capitalized terms not otherwise defined have the meaning given such terms in the MSA.

Dated: New York, New York
February 10, 1999

TOP TOBACCO, L.P.

By: /s/ Seth I. Gold, Executive V.P.

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