

01-10-2003



Form PTO-1594 (Rev. 10/02) OMB No. 0651-0027 (exp. 6/30/2005) Tab settings ⇌ ⇌ ⇌ ▼

T U.S. DEPARTMENT OF COMMERCE U.S. Patent and Trademark Office

102334582

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

Jonathan Drew Inc.

1-7-03

- Individual(s) Association General Partnership Limited Partnership Corporation-State New York Other

Additional name(s) of conveying party(ies) attached? Yes No

3. Nature of conveyance:

- Assignment Merger Security Agreement Change of Name Other

Execution Date: December 20, 2002

2. Name and address of receiving party(ies)

Name: General Cigar Co., Inc.

Internal Address: 387 Park Avenue South

Street Address:

City: New York State: NY Zip: 10016

- Individual(s) citizenship Association General Partnership Limited Partnership Corporation-State Delaware Other

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No (Designations must be a separate document from assignment) Additional name(s) & address(es) attached? Yes No

4. Application number(s) or registration number(s):

A. Trademark Application No.(s)

B. Trademark Registration No.(s) 2604842;

2561295; 2161913

Additional number(s) attached Yes No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Nicholas G. Mehler

Internal Address: Latham & Watkins

Street Address: 885 Third Avenue

City: New York State: NY Zip: 10022

6. Total number of applications and registrations involved:

3

7. Total fee (37 CFR 3.41) \$ 90.00

- Enclosed Authorized to be charged to deposit account

8. Deposit account number:

50-1988

DO NOT USE THIS SPACE

9. Signature.

NICHOLAS G. MEHLER

Name of Person Signing

Nicholas G. Mehler

Signature

12/31/02

Date

Total number of pages including cover sheet, attachments, and document: 8

Mail documents to be recorded with required cover sheet information to: Commissioner of Patent & Trademarks, Box Assignments Washington, D.C. 20231

01/09/2003 TDI A21 00000268 501988 2604842

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TRADEMARK REEL: 002645 FRAME: 0603

## LOAN AND SECURITY AGREEMENT

This LOAN AND SECURITY AGREEMENT is made on this 20<sup>th</sup> day of December, 2002 between Jonathan Drew Inc., a New York corporation (dba Drew Estate, and hereinafter referred to as "Debtor"), Jonathan Sann, an individual residing in the State of New York and Marvin Samel, an individual residing in the State of New York (each, a "Shareholder" and collectively, the "Shareholders"), and General Cigar Co., Inc., a Delaware corporation (hereinafter referred to as "Secured Party").

1. **ISSUANCE AND SALE.** Upon the terms and subject to the conditions contained herein, Debtor agrees to issue and sell, and Secured Party agrees to purchase, that certain promissory note in the aggregate principal amount of Eight Hundred Seventy Thousand Two Hundred Fifty U.S. Dollars (US \$870,250) in the form attached hereto as Exhibit A (the "Note").

2. **GUARANTEE.** Each Shareholder hereby irrevocably and unconditionally guarantees (a "Guaranty"), in favor of Debtor, the payment and performance of the Note and the payment and performance of all other liabilities and obligations of Debtor to Secured Party of every kind and description, direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising in connection with the Note.

3. **PLEDGE AND SECURITY INTEREST.** In consideration of the Note, (a) each Shareholder grants to Secured Party a first priority pledge (a "Pledge") of all capital stock of Debtor which such Shareholder now has or hereafter acquires, and all products and proceeds of any of such capital stock (including but not limited to all dividends, cash, options, warrants, rights, instruments, subscriptions and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such capital stock or any of the foregoing) and (b) Debtor grants to Secured Party a first priority security interest (the "Security Interest") in all right, title, interest and goodwill, which Debtor now has or hereafter acquires, in all tangible and intangible assets of Debtor (including but not limited to accounts, inventory, equipment, intellectual property, contracts (including that certain Agreement, dated as of December 15, 1999, by and between Debtor and Scott Chester, LLC, pursuant to which, among other things, Debtor licenses the trademark "ACID" (USPTO Registration Number 2440808), such trademark having been filed on the Principal Registry of the U.S. Patent and Trademark Office (the "Trademark Office") on April 3, 2001), real property, deposit accounts, cash and proceeds and products of the foregoing), collectively hereinafter referred to as the "Collateral".

4. **NOTE.** Each Pledge shall secure each Shareholder's obligations under its Guaranty. The Security Interest shall secure the payment and

performance of the Note and the payment and performance of all other liabilities and obligations of Debtor to Secured Party of every kind and description, direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising.

5. **EXECUTION OF FINANCING STATEMENTS.** Debtor acknowledges that pursuant to Section 9-509(b) of the New York UCC and any other applicable law, the Secured Party is authorized to file or record financing or continuation statements, and amendments thereto, and other filing or recording documents or instruments with respect to the Collateral in such form and in such offices as the Secured Party reasonably determines appropriate to perfect or maintain the perfection of the Security Interest of the Secured Party under this Agreement. Such financing statements may describe the Collateral in the same manner as described in this Agreement or as "all assets" or "all personal property" of the undersigned, whether now owned or hereafter existing or acquired by the undersigned. A photographic or other reproduction of this Agreement shall be sufficient as a financing statement or other filing or recording document or instrument for filing or recording in any jurisdiction.

6. **REPRESENTATIONS OF DEBTOR.** Debtor hereby represents and warrants that, except for the Pledges and the Security Interest granted to Secured Party hereby, Debtor is the owner of the Collateral, free and clear of all liens, charges, encumbrances, set-offs, defenses and counterclaims of whatsoever kind or nature and has made and will make no assignment, pledge, mortgage, hypothecation or transfer of the Collateral or of the proceeds thereof; that the execution and delivery of this instrument will not conflict with or contravene any contractual restriction binding on Debtor, including any license agreement relating to the Collateral or any part thereof; that there are no legal actions or administrative proceedings pending or threatened before any court or administrative agency involving the Collateral, or any part thereof; that Debtor will defend its title to the Collateral against the claims of all persons whatsoever; and that the shares of capital stock of Debtor being pledged hereby constitute all of the issued and outstanding shares of capital stock of Debtor and that there are no outstanding options to purchase capital stock of Debtor or other securities convertible into or exchangeable or exercisable for shares of capital stock of Debtor or any other commitments or agreements providing for the issuance of additional shares of capital stock of Debtor.

7. **COVENANTS.** Debtor hereby warrants and covenants that: (a) the Debtor will not sell, assign, dispose, or otherwise transfer or license the Collateral or any interest therein without the prior written consent of Secured Party, and the Debtor shall keep the Collateral free from unpaid charges (including fees), taxes, and liens arising after the date hereof; (b) the Debtor shall execute alone or with Secured Party any financing statement, UCC form, trademark recordation or other document and assist, at the request of Secured Party, in filing the same in all public offices wherever filing is deemed by Secured Party to be necessary or appropriate; (c) the Debtor shall maintain insurance at all times with respect to all Collateral against such risks and in such amounts as are reasonable and customary for Collateral of this type, or as Secured Party may otherwise reasonably require; the policies shall be payable to both the Secured Party and the Debtor as their interests appear and shall provide for ten (10) days written notice of cancellation to Secured Party; and (d) at its option, Secured Party may discharge taxes, liens, or other encumbrances at any time levied or placed on the Collateral, may pay fees or insurance due on the

collateral and may pay for the maintenance and preservation of the Collateral; provided that Secured Party must first provide 15 days' written notice to Debtor before making such payment to give Debtor the opportunity to make such payment or otherwise discharge such encumbrance; provided further that Secured Party shall not be required to wait the entire 15 day period if Debtor is not using commercially reasonable efforts throughout such period to make such payment or otherwise discharge such encumbrance. Debtor agrees to reimburse Secured Party on demand for any payment made, or any expense incurred, by Secured Party pursuant to the foregoing authorization.

8. **DEFAULT.** The Debtor shall be in default under this Agreement upon the happening of any of the following: (a) the failure to pay, when due, any amounts due and payable pursuant to the terms of the Note; (b) any material misrepresentation in connection with this Agreement, the Note or the Subordination Agreement on the part of the Debtor or the Subordinated Lenders, as applicable, which misrepresentation continues for thirty (30) days after receipt by Debtor of written notice of such misrepresentation from Secured Party; (c) any material noncompliance with or material nonperformance of the Debtor's, the Shareholders' or the Subordinated Lenders' respective obligations under this Agreement, the Note or the Subordination Agreement, as applicable, which noncompliance continues for thirty (30) days after receipt by Debtor of written notice of such noncompliance from Secured Party; (d) if Debtor is involved in any financial difficulty as evidenced by (i) an assignment for the benefit of creditors, or (ii) an attachment or receivership of assets not dissolved within thirty (30) days, or (iii) the institution of Bankruptcy proceedings, whether voluntary or involuntary, which is not dismissed within thirty (30) days from the date on which it is filed; or (e) any Guaranty shall cease for any reason to be in full force and effect or any Shareholder denies its obligations under its Guaranty. Upon default and at any time thereafter, Secured Party may declare all obligations secured hereby immediately due and payable and shall have the remedies of a Secured Party under the Uniform Commercial Code or United States trademark law or other applicable law, or at equity. No waiver by Secured Party of any default shall operate as a waiver of any other default or of the same default on a future occasion.

9. **INDEMNITY.** The Debtor agrees to indemnify and hold harmless Secured Party from and against any and all claims, demands, losses, judgments and liabilities (including liabilities for penalties) of whatsoever kind or nature, and to reimburse Secured Party for all reasonable costs and expenses, including attorneys' fees, growing out of or resulting from this Agreement, the Note or the Subordination Agreement or the exercise by Secured Party of any right or remedy granted to it hereunder or thereunder. In no event shall Secured Party be liable for any matter or thing in connection with this Agreement, the Note or the Subordination Agreement other than to account for monies actually received by it in accordance with the terms hereof.

10. **CLOSING.** The closing of the transactions contemplated herein (the "Closing") shall be held at 10:00 a.m., New York time on the date on which this Agreement is executed at the offices of Secured Party, 387 Park Avenue South, New York, NY 10016, or at such other time or at such other place as Debtor and Secured Party may mutually agree. To effect the purchase and sale referred to in Section 1,

Debtor shall, at the Closing, deliver to Secured Party, or cause to be delivered to Secured Party:

- (i) that certain Subordination Agreement in the form of Exhibit A attached hereto (the "Subordination Agreement") executed by Debtor and the Subordinated Lenders;
- (ii) except with respect to the Subordinated Indebtedness (as defined in the Subordination Agreement), written evidence that all secured indebtedness of Debtor, including without limitation that certain loan in the aggregate principal amount of Three Hundred Eighty Six Thousand Five Hundred Seventy U.S. Dollars (US \$386,570) made by Gerber Trade Finance, has been discharged by Debtor prior to or concurrently with the Closing, and that all liens, encumbrances, charges, security interests, recordations with the Trademark Office and other claims securing such indebtedness have been released, including the delivery to Secured Party of any Uniform Commercial Code termination statements, and any releases with respect to recordations with the Trademark Office, and all other related or necessary documentation in connection with releasing such indebtedness and claims, in each case, in form and substance reasonably satisfactory to Secured Party;
- (iii) certificates representing the shares of capital stock held by the Shareholders accompanied by stock powers in form and substance reasonable satisfactory to Secured Party; and
- (iv) that certain Consent in the Form of Exhibit B attached hereto (the "Consent") executed by Scott Chester, LLC.

11. **NOTICES.** Any notice, consent or other communication provided for in this Agreement shall be in writing and shall be delivered personally (effective upon delivery), via facsimile (effective upon confirmation of transmission), via overnight courier (effective the next business day after dispatch if instructed to deliver on next business day) or via U.S. Mail (effective 3 days after mailing, postage prepaid, first class) to the relevant party at its address(es) and/or facsimile number(s) set forth below its signature, or to such other address as such party shall specify to the other in writing from time to time.

12. **MISCELLANEOUS.** This Agreement shall inure to the benefit of and bind the heirs, executors, administrators, successors, and assigns of the parties. This Agreement shall have the effect of an instrument under seal. Each of the undersigned warrants and represents it has full authority to enter into this Loan and Security Agreement of the parties, their successors, assigns and personal representatives. This Agreement shall be construed and enforced under the laws of the State of New York.

ACCEPTED, AFFIRMED AND AGREED:

**JONATHAN DREW INC.  
dba DREW ESTATE**

By: 

Name: Marvin Samel

Title: Executive Vice President

Address for notices:

24 Commerce Street  
Suite 606  
Newark, NJ 07102  
Attn: Marvin Samel  
Facsimile: (973) 353-9490

with a copy to:

Sessler & Sessler LLP  
228 East 45<sup>th</sup> Street, 10<sup>th</sup> Floor  
New York, NY 10017  
Attn: Paul Sessler  
Facsimile: (212) 682-0767

[Signature Page to Loan and Security Agreement]

**TRADEMARK**  
**REEL: 002645 FRAME: 0608**

GENERAL CIGAR CO., INC.

By: Edgar M. Cullman, Jr.

Name: **Edgar M. Cullman, Jr**  
Title **President & Chief Executive Officer**

Address for notices:

387 Park Avenue South  
New York, NY 10016  
Attn: Nick Simeonidis  
Facsimile: (212) 561-8791

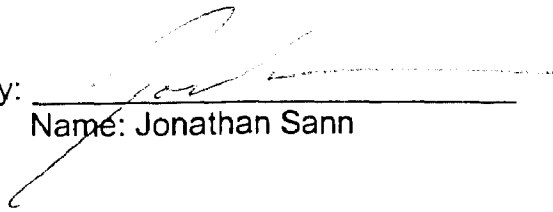
with a copy to:

Latham & Watkins  
885 Third Avenue  
New York, NY 10022  
Attn: R. Ronald Hopkinson  
Facsimile: (212) 751-4864

[Signature Page to Loan and Security Agreement]

**TRADEMARK**  
**REEL: 002645 FRAME: 0609**

SHAREHOLDER

By:   
Name: Jonathan Sann

SHAREHOLDER

By:   
Name: Marvin Samel

[Signature Page to Loan and Security Agreement]