

FORM PTO-1618A  
Expires 06/30/99  
OMB 0651-0027

U.S. Department of Commerce  
Patent and Trademark Office  
TRADEMARK

### RECORDATION FORM COVER SHEET TRADEMARKS ONLY

TO: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies).

#### Submission Type

New

Resubmission (Non-Recordation)  
Document ID #

Correction of PTO Error  
Reel #  Frame #

Corrective Document  
Reel #  Frame #

#### Conveyance Type

Assignment  License

Security Agreement  Nunc Pro Tunc Assignment

Merger  
Effective Date  
Month Day Year

Change of Name

Other

#### Conveying Party

Mark if additional names of conveying parties attached

Name  Execution Date  
Month Day Year

Individual  General Partnership  Limited Partnership  Corporation  Association

Other

Citizenship/State of Incorporation/Organization

#### Receiving Party

Mark if additional names of receiving parties attached

Name

DBA/AKA/TA

Composed of

Address (line 1)

Address (line 2)

Address (line 3)

Individual  General Partnership  Limited Partnership  If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative should be attached. (Designation must be a separate document from Assignment.)

Corporation  Association

Other

Citizenship/State of Incorporation/Organization

FOR OFFICE USE ONLY

Public burden reporting for this collection of information is estimated to average approximately 30 minutes per Cover Sheet to be recorded, including time for reviewing the document and gathering the data needed to complete the Cover Sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Chief Information Officer, Washington, D.C. 20231 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (0651-0027), Washington, D.C. 20503. See OMB Information Collection Budget Package 0651-0027, Patent and Trademark Assignment Practice. DO NOT SEND REQUESTS TO RECORD ASSIGNMENT DOCUMENTS TO THIS ADDRESS.

Mail documents to be recorded with required cover sheet(s) information to TRADEMARK Commissioner of Patents and Trademarks, Box Assignments, Washington, D.C. 20231

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**Domestic Representative Name and Address**

Enter for the first Receiving Party only.

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

**Correspondent Name and Address**

Area Code and Telephone Number

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

**Pages** Enter the total number of pages of the attached conveyance document including any attachments. #

**Trademark Application Number(s) or Registration Number(s)**

Mark if additional numbers attached

Enter either the Trademark Application Number or the Registration Number (DO NOT ENTER BOTH numbers for the same property).

Trademark Application Number(s)			Registration Number(s)		
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="615,115"/>	<input type="text" value="655,733"/>	<input type="text" value="665,289"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="2,111,763"/>	<input type="text" value="2,552,316"/>	<input type="text" value="2,612,149"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="2,715,041"/>	<input type="text"/>	<input type="text"/>

**Number of Properties** Enter the total number of properties involved. #

**Fee Amount** Fee Amount for Properties Listed (37 CFR 3.41): \$

Method of Payment: Enclosed  Deposit Account

Deposit Account (Enter for payment by deposit account or if additional fees can be charged to the account.) #

Deposit Account Number: #   
Authorization to charge additional fees: Yes  No

**Statement and Signature**

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document. Charges to deposit account are authorized, as indicated herein.

Stewart L. Gitler

1-31-2006

Name of Person Signing

Signature

Date Signed

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## AGREEMENT

AGREEMENT made and entered into as of this 31<sup>st</sup> day of December, 2001, by and between M. MARSH & SON, 915 Market Street, Wheeling, West Virginia 26003, a West Virginia corporation; and a wholly owned subsidiary of John Berger & Son Company, 407 North Main Street, Frankfort, Indiana 46041, an Ohio corporation (hereinafter called "SELLER") and NATIONAL CIGAR CORPORATION, 407 North Main Street, Frankfort, Indiana 46041, a Delaware corporation (hereinafter called "BUYER").

1. SELLER agrees to sell and BUYER agrees to buy the following assets of SELLER.

(a) Certain machinery and equipment, at BUYER'S option, including spare parts, located at 915 Market Street, City of Wheeling, Ohio County, state of West Virginia, the location at which SELLER trading as M. Marsh & Son, Inc., is engaged in the manufacture of cigars, except such machinery and equipment as is being leased by SELLER. With respect to such leased machinery or equipment, SELLER will execute and deliver to BUYER assignments or such leases and will use its best efforts to obtain the consent of Lessors, if required, to any such assignments.

(b) All those trademarks and brand names listed in Exhibit "A", which is attached hereto and made a part hereof.

(c) All of SELLER'S merchantable "Finished Goods", which means finished cigars of the brands included in those listed in Exhibit "B".

(d) All of SELLER'S merchantable "Raw Material", which means all of the SELLER'S stocks of tobacco, homogenized binder, wrapper and reinforcement tape, used in the production of the cigars sold under names listed on Exhibit "B".

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(e) All of SELLER'S usable "Packaging Materials", which means all property other than tobacco which is currently used in the wrapping, labeling, display and packing of cigars (sold under names included in Exhibit "B") to put the same into the normal condition in which they are ultimately sold. "Packaging Materials" also included shipping containers.

(f) All of SELLER'S accounts receivable for the sale of cigars on the date of closing at net book value.

(g) All real estate of the SELLER located in Wheeling, Ohio County, West Virginia, at SELLER'S Net Book Value (\$189,911.10) (Exhibit B-1).

(h) SELLER'S interest as Lessee under that certain Equipment Lease dated March 22, 1957, with International Cigar Machinery Company, and its successors and assigns, leasing certain cigar manufacturing equipment.

2. BUYER agrees to pay to SELLER the following amounts for the assets specified in Paragraph 1 above:

(a) machinery & equipment at SELLER'S Book Value (\$4,799.50) (Exhibit B-1).

(b) trademarks and brand names

A royalty of 4% of National Cigar Corporation's net estimated annual sales for five (5) years, paid at once according to the calculations on attached Exhibit "C", with a credit applied for estimated returns of outstanding merchandise.

(c) merchantable finished goods

The net price per thousand as shown on the price list that is a part of Exhibit "B" annexed hereto, less 25% and less excise tax.

(d) merchantable raw materials SELLER'S Book Value (Per Exhibit B).

(e) usable packaging material at SELLER'S Book Value (Per Exhibit B).

3. Immediately prior to the Closing, physical inventories will be taken of all of the SELLER'S merchantable finished goods, merchantable raw materials and usable packaging materials. Such inventories shall be taken by representatives of the SELLER with representatives of the BUYER observing and verifying the physical count. The aforesaid representatives shall at the same time arrange to set aside that which may be considered unmerchantable raw material and finished goods and in the case of packaging material that which may be obsolete or cannot be consumed. The valuation of the inventories in accordance with the provisions hereof shall be certified to the BUYER by the SELLER and may be verified by the BUYER. The parties shall mutually resolve any differences and jointly agree on the value of the inventories.

4. All cigar boxes or packs bearing tradenames, frontmarks and brand names which are the subject of this agreement coded by SELLER and returned by customers following the closing shall be accepted for return for SELLER'S account, provided the same are unsalable. For purposes of this Agreement, "unsalable" shall mean only cigars which are broken, wormy, dried-out or discolored. BUYER shall credit the account of or otherwise make reimbursement to each of said customers for such boxes of returned cigars, as accounted for as an estimate in Exhibit "C". It is understood and agreed by and between the parties that BUYER shall be entitled to any federal excise tax refund resulting from all such returned merchandise.

5. All machinery and equipment subject to this Agreement with the exception of any such machinery and equipment being leased by SELLER, and all finished goods, raw material and packaging materials shall be conveyed by SELLER to BUYER by bill of sale with covenant or warranty of title and freedom from liens and encumbrances, and possession thereof shall be delivered contemporaneously with the delivery of said bill of sale which, in turn, shall be delivered upon payment by the BUYER to the SELLER of the purchase price provided for herein.

To the extent permitted by law, assignments of trademark and trade or brand name registrations and applications for any said registrations shall be implemented by delivery to BUYER, at its request at closing or thereafter, of executed assignments in forms suitable for recording in the United States Patent Office or any other appropriate Federal, State Office, territories and foreign countries.

Furthermore, SELLER and BUYER agree that at the time of closing all other documents and instruments necessary to effect the purpose and intent of this Agreement will be executed and delivered by the respective parties.

6. BUYER shall be responsible for obtaining such approvals or consents of the Bureau of Alcohol, Tobacco and Firearms, United States Department of Treasury, as may be required in connection with the transactions contemplated by this Agreement.

7. After closing, at BUYER'S request and at BUYER'S expense, SELLER shall assist BUYER in preparing for and effecting shipment of all property being acquired hereunder to such destination or destinations as may be directed by BUYER. BUYER agrees to provide sufficient manpower to complete the moving of all of the property purchased

from SELLER. Such property shall be shipped F.O.B. Wheeling, West Virginia, and all such property shall be removed by December 31, 2001, unless storage arrangements are otherwise made between SELLER and BUYER.

8. SELLER warrants that the trademarks set forth in Exhibit "A" being transferred hereunder are registered in the United States Patent Office, and some of which may be registered in territories or foreign countries. To the best of SELLER'S knowledge, the trademarks do not infringe on the trademarks of any other persons.

9. All remaining liabilities of SELLER unpaid as of the date of closing shall be assumed by the John Berger & Son Company and BUYER shall be held harmless with respect thereto.

10. BUYER warrants that all necessary and proper corporate proceedings have been taken by the Board of Directors of the BUYER to authorize and direct the purchase and payment for the property to be purchased and transferred hereunder.

11. BUYER shall have delivered to SELLER copies of resolutions of the Board of Directors certified by the Secretary of the BUYER and under its corporate seal that this Agreement and the payment of the purchase price made pursuant hereto have been duly authorized, executed and delivered.

12. SELLER shall have conformed and complied with all agreements and conditions required by the Agreement to be performed by SELLER on or before closing date.

13. SELLER warrants that it is a duly organized and existing corporation and in good standing under the laws of the state of West Virginia and that all instruments as provided in this Agreement to be

executed by SELLER have been validly authorized, executed and delivered by SELLER and, subject to any requirements as to the filing, recording or registration thereof, are in the form for transfer and conveyance to the BUYER of all of SELLER'S right, title and interest in and to the assets purported to be transferred and conveyed thereby, and that all necessary and proper corporate proceedings have been taken by the Board of Directors and the Stockholders of the SELLER to authorize and direct the sale and transfer of the property to be sold and transferred hereunder.

14. This Agreement shall be and become effective upon the execution hereof, but closing shall take place on or about December 31, 2001 at the office of M. Marsh & Son, Inc., Wheeling, West Virginia, or at such other date or at such other place as shall be mutually agreed upon by the parties.

15. This Agreement shall be governed by the laws of the State of West Virginia.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their proper corporate officers and their corporate seals to be hereunto affixed, duly attested by their respective Secretaries or a fellow officer, the day and year first above written.

M. MARSH & SON (SELLER)

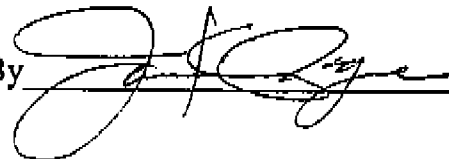
By Samuel S Clark  
President

ATTEST:

Barbara A Kovalski  
Secretary



NATIONAL CIGAR CORPORATION (BUYER )

By  \_\_\_\_\_  
President

ATTEST:

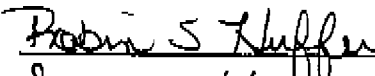
 \_\_\_\_\_  
Secretary/Treasurer

EXHIBIT A

M. MARSH & SON  
REGISTERED TRADEMARKS  
STATUS SCHEDULE

REG. NO.	MARK	REG. DATE	APPROD.	RENEWED	EXP. DATE	STATUS
EXPIRED	Old Reliable Wheeling Stogies					Registration Pending - PTO
EXPIRED	1840 Marsh Est.					Registration Pending - Gitler/PTO
EXPIRED	Mountainers	11/01/55	Filed	11/01/95	11/01/05	Need decision re registration of mt Marsh
2,071,584	Melo-Crown	06/17/97	06/17/03	--	06/17/07	
655,733	Marsh Original and Genuine Wheeling	12/17/57	Filed	12/17/97	12/17/07	
12/27/01			Filed	08/05/98	08/05/08	

BRAND NAMES

- Deluxe
- Mifflin's Choice
- Olde Style Stogies
- Cristal DeLeon

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