EXHIBIT 4.1  
EXECUTION COPY  
CREDIT AGREEMENT  
THIS CREDIT AGREEMENT (this “Agreement”), dated as of December 30, 2009, is entered into by and among Castle Brands Inc., a Delaware corporation (“Borrower”), Castle Brands (USA) Corp., a Delaware corporation (the “Subsidiary”), and the lenders listed on Exhibit A (the “Lenders”).  
RECITALS  
WHEREAS, the Lenders desire to provide Borrower with a senior line of credit (the “Line of Credit”) in the amount of $2,500,000 (the “Available Amount”) on the terms set forth herein.  
NOW, THEREFORE, in consideration of the covenants, promises and representations set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby expressly and mutually acknowledged, and intending to be legally bound hereby, the parties hereto agree as follows:  
ARTICLE I  
LINE OF CREDIT  
Section 1.1. The Line of Credit. From time to time prior to the Maturity Date (as defined in the Note (as hereafter defined)), subject to the provisions below, Lenders shall make Advances (as hereafter defined) to Borrower, which Borrower shall pay and may reborrow, so long as the aggregate amount of Advances outstanding at any one time shall not exceed the Available Amount.  
Section 1.2. Note. The indebtedness of Borrower to Lenders will be evidenced by a senior note in substantially the form of Exhibit B (the “Note”) and secured by a security interest in all unencumbered inventory of the Subsidiary located in the United States and all trade accounts receivable of the Subsidiary pursuant to a security agreement in the form of Exhibit C (the "Security Agreement” and together with this Agreement, the Note and any other agreement, instrument, certificate, affidavit or other document evidencing or securing the Line of Credit, the "Loan Documents”). The parties understand and agree that certain proceeds of this Line of Credit will be provided by the Borrower to the Subsidiary or other subsidiaries of the Borrower for proper business purposes and that the grant of a security interest hereunder by the Subsidiary is at least, in part, in consideration for the Subsidiary’s receipt of such proceeds. The original principal amount of the Note will be up to $2,500,000; provided, however, that notwithstanding the face amount of the Note, Borrower’s liability under the Note shall be limited at all times to the unpaid principal amount outstanding of all Advances, accrued and unpaid interest under the Note and all fees, charges, expenses and reasonable attorneys’ fees and costs and other amounts, obligations, covenants and duties owing by Borrower to Lenders (or any permitted assignee) of any kind and description (whether pursuant to or evidenced by the Note or this Agreement), whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, including Lenders’ Expenses (collectively, the “Obligations”), in each case as then outstanding hereunder and under the Note. As used herein, “Lenders’ Expenses” means all reasonable attorneys’ fees, costs and expenses incurred in amending, enforcing or defending the Note (including fees and expenses of appeal or review), including the exercise of any rights or remedies afforded under the Loan Documents or under applicable law, whether or not suit is brought, whether before or after bankruptcy or insolvency, including without limitation all fees and costs incurred by the Lenders in connection with Lenders’ enforcement of its rights in a bankruptcy or insolvency proceeding filed by or against Borrower.  
Section 1.3. Use of Proceeds. Funds advanced under the Line of Credit shall be used for working capital or general corporate purposes of Borrower and its subsidiaries, including the Subsidiary.  
Section 1.4. Payment of Outstanding Amount. The aggregate Obligations outstanding on the Maturity Date shall be due and payable on the Maturity Date in accordance with the terms of the Note.  
Section 1.5. Interest. Interest on the outstanding principal amount of all Advances shall accrue at a rate equal to eleven percent (11%) per annum (the “Interest Rate”), compounded quarterly, and shall be payable on the last day of each calendar quarter until the repayment in full of all Obligations, the termination of this Agreement and cancellation of the Note.  
Section 1.6. Default Rate. Upon the Maturity Date, whether by acceleration, demand or otherwise, and at the Lenders’ option upon the occurrence of any Event of Default (as defined in the Note) and during the continuance thereof, the Note shall bear interest at a rate that shall be five percent (5.0%) in excess of the Interest Rate but not more than the maximum rate allowed by law (the “Default Rate”). The Default Rate shall continue to apply whether or not judgment shall be entered on the Note. The Default Rate is imposed as liquidated damages for the purpose of defraying Lenders’ expenses incident to the handling of delinquent payments, but are in addition to, and not in lieu of, Lenders exercise of any rights and remedies hereunder or under applicable law, and any fees and expenses of any agents or attorneys which Lenders may employ. In addition, the Default Rate reflects the increased credit risk to Lenders of carrying a loan that is in default. Borrower agrees that the Default Rate is a reasonable forecast of just compensation for anticipated and actual harm incurred by Lenders, and that the actual harm incurred by Lenders cannot be estimated with certainty and without difficulty.  
Section 1.7. Advances. Borrower shall give the Lenders prior written notice not later than 11:00 a.m., Eastern Time, on the third business day prior to the date of any advance of credit pursuant to the Line of Credit hereunder (an “Advance”). Any such notice shall be in the form of the Borrowing Notice set forth as Exhibit D (the “Borrowing Notice”), shall be certified by the President, Chief Operating Officer or Chief Financial Officer of Borrower, and shall set forth the aggregate amount of the requested Advance. Upon receiving a request for an Advance to which Borrower is entitled hereunder and under the Note, and provided there is no Event of Default (as defined in the Note), Lenders shall make available to Borrower the amount of the requested Advance by wire transfer of immediately available funds to a bank account designated by Borrower on the third business day after receipt of such Borrowing Notice.  
Section 1.8. Prepayment. Borrower may prepay the outstanding Obligations under the Line of Credit at any time without premium or penalty. Prepayments of all or any portion of the Obligations shall not reduce the Available Amount, and funds may be reborrowed hereunder up to the Available Amount, subject to the provision hereof and the Note.  
Section 1.9. Payment Application. Any and all payments on account of the Obligations will be applied first to accrued and unpaid interest and second to outstanding principal and other sums due hereunder. If Borrower makes a payment or payments and such payment or payments, or any part thereof, are subsequently invalidated, declared to be fraudulent or preferential, set aside or are required to be repaid to a trustee, receiver or any other person under any bankruptcy act, state, provincial or federal law, common law or equitable cause, then to the extent of such payment or payments, the Obligations or part thereof hereunder intended to be satisfied shall be revived and continued in full force and effect as if said payment or payments had not been made.  
Section 1.10. Conditions to First Advance. The obligation of Lenders to make the first Advance shall be subject to:  
(a) Lenders’ receipt of the following documents, each in form and substance satisfactory to Lenders:  
(i) This Agreement. This Agreement duly executed by Borrower, the Subsidiary and Lenders.  
(ii) Promissory Note. The Note in the form of Exhibit B attached hereto in favor of the Lenders, duly executed by Borrower.  
(iii) Security Agreement. The Security Agreement duly executed by the Subsidiary and Lenders with respect to all U.S. inventory and receivables of the Subsidiary except as set forth on the Schedule of Exceptions set forth as Exhibit E.  
(iv) Borrowing Notice. A completed Borrowing Notice required under Section 1.7 hereof.  
(v) Borrower and Subsidiary’s Secretary’s Certificates. The duly authorized Secretary of Borrower and Subsidiary, respectively, shall each have delivered a certified copy of its Certificate of Incorporation, as amended, and a certificate as to its Bylaws and resolutions adopted by its board of directors authorizing this Agreement and the transactions contemplated hereby.  
Section 1.11. Subsequent Advances(a) . The obligation of the Lenders to make additional Advances shall be subject to Lender’s receipt of a completed Borrowing Notice and such additional documents as Lenders reasonably may request, as well as the absence of any Event of Default.  
Section 1.12. Ranking. The Line of Credit and Note will rank senior in right of payment to all of Borrower’s subordinated indebtedness incurred after the date of this Agreement and equal in right of payment with all other senior indebtedness of Borrower incurred after the date of this Agreement.  
Section 1.13. Commitment Fees. On each of the date of this Agreement and the first and second anniversaries thereof, Borrower shall pay to Lenders a commitment fee of $25,000.  
ARTICLE II  
CLOSING  
Section 2.1. Closings. The closings (the “Closings”) of Advances under this Agreement shall take place at 000 X. 00xx Xxxxxx, Xxxxx 0000, Xxx Xxxx, XX, at such other location(s) as the parties may agree or by fax or e-mail commencing at 9:00 a.m. local time on the date set forth in the Borrowing Notice (provided timely delivery of such Borrowing Notice to Lenders has been made). At each such Closing, Lenders shall have timely received a completed Borrowing Notice and such additional documents as Lenders reasonably may request.  
ARTICLE III  
REPRESENTATIONS AND WARRANTIES OF BORROWER  
Borrower represents to each Lender, as of the date of this Agreement as follows:  
Section 3.1. Capacity; Execution of Agreement. Each of Borrower and Subsidiary has all requisite power, authority and capacity to enter into this Agreement and to perform the transactions and obligations to be performed by it hereunder. The execution and delivery of this Agreement, and the performance by Borrower and Subsidiary of the transactions and obligations contemplated hereby have been duly authorized by all requisite corporate action of Borrower and Subsidiary. This Agreement has been duly executed and delivered by Borrower and Subsidiary and constitutes a valid and legally binding agreement of Borrower and Subsidiary, enforceable in accordance with its terms, except as enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws, both state and federal, affecting the enforcement of creditors’ rights or remedies in general from time to time in effect and the exercise by courts of equity powers or their application of principles of public policy.  
Section 3.2. Power and Authority. Each of Borrower and Subsidiary has all requisite legal and other power and authority to execute and deliver this Agreement and to carry out and perform its other obligations hereunder.  
Section 3.3. SEC Documents, Financial Statements.  
(a) All reports, registration statements, proxy statements and other documents required to have been filed by Borrower with the SEC since April 1, 2008 (the “SEC Documents”) have been so filed on a timely basis. As of the time it was filed with the SEC (or, if amended or superseded by a filing prior to the date of this Agreement, then on the date of such filing): (i) each of the SEC Documents complied in all material respects with the applicable requirements of the Securities Act of 1933, as amended (the “Securities Act”) or the Securities Exchange Act of 1934, as amended (as the case may be); and (ii) none of the SEC Documents contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.  
(b) The financial statements contained in the SEC Documents: (i) complied as to form in all material respects with the published rules and regulations of the SEC applicable thereto; (ii) were prepared in accordance with generally accepted accounting principles applied on a consistent basis throughout the periods covered (except as may be indicated in the notes to such financial statements and, in the case of unaudited statements, as permitted by Form 10-Q of the SEC, and except that unaudited financial statements may not contain footnotes and are subject to normal and recurring year-end audit adjustments which will not, individually or in the aggregate, be material in amount); and (iii) fairly presented the consolidated financial position of Borrower as of the respective dates thereof and the consolidated results of operations and cash flows of Borrower for the periods covered thereby.  
Section 3.4. Material Adverse Effect. Since December 31, 2008, there has been no development or event which has had or could reasonably be expected to have, a Material Adverse Effect. “Material Adverse Effect” shall mean a material adverse effect on (a) the business, results of operations, condition (financial or otherwise), assets or liabilities of the Borrower and its Subsidiaries taken as a whole, (b) the ability of the Borrower to perform its obligations, when such obligations are required to be performed, under this Agreement, the Note or any other Loan Document, or (c) the validity or enforceability of this Agreement, the Note or any of the other Loan Documents or the rights or remedies of the Lenders hereunder or thereunder.  
Section 3.5. Brokers or Finders. Neither Borrower nor any of its Subsidiaries have engaged any brokers, finders or agents, or incurred, directly or indirectly, any liability for brokerage or finders’ fees or agents’ commissions or any similar charges in connection with this Agreement and the transactions contemplated hereby.  
ARTICLE IV  
REPRESENTATIONS AND WARRANTIES OF LENDERS  
Each Lender represents and warrants, individually and not severally, to Borrower and Subsidiary, as of the date of this Agreement as follows:  
Section 4.1. Capacity; Execution of Agreement. Each Lender has all requisite power, authority, and capacity to enter into this Agreement and to perform the transactions and obligations to be performed by it hereunder. The execution and delivery of this Agreement, and the performance by Lenders of the transactions and obligations contemplated hereby have been duly authorized by all requisite action of Lenders. This Agreement has been duly executed and delivered by Lenders and constitutes a valid and legally binding agreement of Lenders enforceable in accordance with its terms, except as enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws, both state and federal, affecting the enforcement of creditors’ rights or remedies in general from time to time in effect and the exercise by courts of equity powers or their application of principles of public policy.  
Section 4.2. Formation and Standing. Each Lender, if an entity, is an entity duly formed, validly existing and in good standing under the laws of the jurisdiction of its organization. Each Lender has the requisite power and authority to own and operate its properties and assets, and to carry on its business as currently conducted.  
Section 4.3. Accredited Investor. Each Lender is an “accredited investor” as defined in Rule 501(a) of Regulation D promulgated under the Securities Act.  
Section 4.4. Brokers or Finders. Lenders have not engaged any brokers, finders or agents, or incurred, directly or indirectly, any liability for brokerage or finders’ fees or agents’ commissions or any similar charges in connection with this Agreement and the transactions contemplated hereby.  
ARTICLE V  
MISCELLANEOUS  
Section 5.1. Survival of Representations and Warranties; Indemnification.  
 (a) The representations and warranties of Borrower and Lenders contained in or made pursuant to this Agreement will survive the execution and delivery of this Agreement and the Closing of the first Advance, and for an additional 12 months subsequent to the Closing of the first Advance, and with respect to the representations and warranties of Borrower only, for the longer of an additional 12 months subsequent to any subsequent Advance and the time period during which any Obligations are outstanding.  
 (b) Borrower hereby agrees to indemnify and hold harmless each Lender and, as applicable, each such Lender’s officers, directors, stockholders, agents and representatives from and against any and all claims, demands, losses, damages, expenses or liabilities (including reasonable attorneys’ fees) due to or arising out of a material breach of any representation, warranty or covenant provided, made or agreed to by Borrower hereunder or under the Note.  
 (c) Each Lender hereby agrees individually and not severally to indemnify and hold harmless Borrower and, its officers, employees, managers, directors, stockholders, members, agents and representatives from and against any and all claims, demands, losses, damages, expenses or liabilities (including reasonable attorneys’ fees) due to or arising out of a material breach of any representation, warranty or covenant provided, made or agreed to by such Lender hereunder.  
Section 5.2. Successors and Assigns. This Agreement is binding upon and inures to the benefit of the parties and their successors and assigns. Neither Borrower nor Subsidiary may assign this Agreement or any rights or obligations hereunder without the prior written consent of Lenders. Each Lender may assign its rights and obligations hereunder to an entity directly or indirectly controlled by or under common control with such Lender.  
Section 5.3. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which together shall constitute one instrument.  
Section 5.4. Facsimile. A facsimile copy of an original written signature shall be deemed to have the same effect as an original written signature.  
Section 5.5. Captions and Headings. The captions and headings used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.  
Section 5.6. Notices. Unless otherwise provided herein, all notices, requests, waivers and other communications made pursuant to this Agreement will be in writing and will be conclusively deemed to have been duly given (i) when hand delivered to the other party; (ii) upon receipt, when sent by facsimile to the number set forth below or email to the address set forth below; (iii) five business days after deposit in the U.S. mail, postage prepaid and addressed to the other party at the address set forth below; or (iv) the next business day after deposit with a national overnight delivery service, postage prepaid, addressed to the parties as set forth below with next business day delivery guaranteed. Each person making a communication hereunder by facsimile or email will promptly confirm by telephone to the person to whom such communication was addressed each communication made by it by facsimile or email pursuant hereto but the absence of such confirmation will not affect the validity of any such communication. A party may change or supplement the addresses given below, or designate additional addresses for purposes of this Section 5.6, by giving the other party written notice of the new address in the manner set forth above.  
If to Borrower or Subsidiary:  
000 Xxxx 00xx Xxxxxx  
Xxxxx 0000  
Xxx Xxxx, XX 00000  
Attention: Xxxxxx Small, Senior Vice President, Chief Financial Officer, Treasurer and Secretary of Castle Brands Inc.  
Phone: (000) 000-0000  
Facsimile: (000) 000-0000  
If to the Lenders:  
To the addresses set forth on Exhibit A.  
Section 5.7. Amendments and Waivers. Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively), only with the written consent of Borrower, Subsidiary and all Lenders.  
Section 5.8. Enforceability; Severability. If any provision of this Agreement or the application thereof to any party hereto or circumstances shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to any other party thereto of circumstances shall not be affected thereby and shall be enforced to the greater extent permitted by law.  
Section 5.9. Governing Law and Jurisdiction. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Florida, without giving effect to principles of conflict of laws, and shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto. Each of the Borrower, Subsidiary and the Lenders hereby specifically authorize any action brought upon the enforcement of this Agreement by the other to be instituted and prosecuted in the State or Federal courts located in Miami-Dade County, Florida. Each of the Borrower, Subsidiary and the Lenders hereby specifically consents and submits to the personal jurisdiction of the State and Federal courts located in Miami-Dade County, Florida in any action instituted by the other arising under or related to this Agreement.  
Section 5.10. Waiver of Jury Trial. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ITS RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT OR ANY DEALINGS BETWEEN THE PARTIES HERETO RELATING TO THE SUBJECT MATTER HEREOF. EACH OF THE PARTIES HERETO ALSO WAIVES ANY BOND OR SURETY OR SECURITY UPON SUCH BOND THAT MIGHT, BUT FOR THIS WAIVER, BE REQUIRED OF THE OTHER PARTY. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. EACH OF THE PARTIES HERETO ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO THIS AGREEMENT. EACH OF THE PARTIES HERETO HEREBY FURTHER ACKNOWLEDGES AND AGREES THAT EACH HAS REVIEWED OR HAD THE OPPORTUNITY TO REVIEW THIS WAIVER WITH ITS RESPECTIVE LEGAL COUNSEL, AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH SUCH LEGAL COUNSEL. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.  
Section 5.11. Further Assurances; Access. Lenders, Borrower and Subsidiary will from time to time and at all times hereafter make, do, execute or cause or procure to be made, done and executed such further acts, deeds, conveyances, consents and assurances, without further consideration, which may reasonably be required to effect the transactions contemplated by this Agreement. Upon reasonable written notice, Borrower and Subsidiary shall afford the officers, employees and authorized agents and representatives of Lenders reasonable access, during normal business hours, to the offices, properties, books, records and such additional financial and operating data and other information regarding the assets, goodwill and business of Borrower and its subsidiaries, including the Subsidiary, as Lenders may from time to time reasonably request.  
Section 5.12. Entire Agreement. This Agreement, the Note and the Security Agreement, and all exhibits hereto and thereto constitute the entire agreement among the parties with respect to the subject matter hereof and thereof and no party will be liable or bound to any other party in any manner by any warranties, representations or covenants except as specifically set forth herein or therein.  
Section 5.13. Delays or Omissions. No delay or omission to exercise any right, power or remedy accruing to any party under this Agreement, or upon any breach or default of any other party under this Agreement, will impair any such right, power or remedy of such non-breaching or non-defaulting party nor will it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of or in any similar breach or default thereafter occurring; nor will any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of any party of any provisions or conditions of this Agreement, must be in writing and will be effective only to the extent specifically set forth in such writing. Except as otherwise set forth herein, all remedies, either under this Agreement or by law or otherwise afforded to any party, will be cumulative and not alternative.  
Section 5.14. No Third Party Beneficiaries. This Agreement is intended for the benefit of the parties hereto and their respective permitted successors and assigns, and is not for the benefit of, nor may any provision hereof be enforced by, any other person or entity.  
Section 5.15. No Strict Construction. The language used in this Agreement is deemed to be the language chosen by the parties to express their mutual intent, and no rules of strict construction will be applied against any party.  
Section 5.16. Public Announcements. No public announcements shall be made by any party hereto relating to the transactions contemplated by this Agreement without the prior written consent of the Borrower, Subsidiary and Lenders, such consent not to be unreasonably withheld, except where required by applicable law; provided, however, that in the event of such a legally required disclosure, the disclosing party will consult with the other consenting party with respect to the text of such disclosure and will provide the other consenting party with a copy of the disclosure prior to its publication.  
Section 5.17. Expenses. Each party shall bear its own costs and expenses in connection with the transactions contemplated hereby, except to the extent that Lenders’ Expenses shall be Obligations subject to the provisions hereof.  
Section 5.18. Exhibits and Schedule of Exceptions. All exhibits, annexes and schedules, including the Schedule of Exceptions set forth as Exhibit E hereto, annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. A disclosure in any particular Schedule of the Schedule of Exceptions or otherwise in this Agreement will be deemed adequate to disclose another exception to a representation or warranty made herein if the disclosure identifies the exception with reasonable particularity so that any exception to any other Schedule is reasonably apparent.  
[Signatures begin on next page.]  
IN WITNESS THEREOF, this Agreement has been executed by the undersigned as of the day, month and year first above written.  
Castle Brands Inc.  
By: /s/ Xxxxxx X. Small  
Name: Xxxxxx X. Small  
Title: Senior Vice President, CFO, Treasurer and Secretary  
  
  
  
Castle Brands (USA) Corp.  
By: /s/ Xxxxxx X. Small  
Name: Xxxxxx X. Small  
Title: CFO  
  
  
  
Lenders  
Frost Gamma Investments Trust  
By: /s/ Xxxxxxx Xxxxx, M.D.  
Name: Xxxxxxx Xxxxx, M.D.  
Title: Trustee  
  
  
  
Vector Group Ltd.  
By: /s/ X. Xxxxxx Xxxxxxxx III  
Name: X. Xxxxxx Xxxxxxxx III  
Title: Vice President, CFO and Treasurer  
  
  
  
/s/ Xxxx Xxxxxxx  
Xxxx Xxxxxxx  
IVC Investors, LLLP  
By: /s/ Xxxxx X. Xxxxxxx  
Name: Xxxxx X. Xxxxxxx  
Title: Vice President  
  
  
  
Xxxxxxxx Ltd.  
By: /s/ Xxxxxxxx Xxxxxxxx  
Name: Xxxxxxxx Xxxxxxxx  
Title: For Azure Ltd. as Corporate Director of Xxxxxxxx Ltd.  
  
  
  
Xxxxxxxxxx Xxxxxx Trust As Amended and Restated 12/16/2003  
By: /s/ Xxxxxxxxxx Xxxxxx  
Name: Xxxxxxxxxx Xxxxxx  
Title: Trustee  
  
  
  
/s/ Xxxxxxx X. Xxxxxx  
Xxxxxxx X. Xxxxxx  
EXHIBIT A  
LENDERS  
NAME AND ADDRESSCOMMITMENT AMOUNT  
 COMMITMENT PERCENTAGE   
Frost Gamma Investments Trust  
 $ 1,100,000 44 %  
0000 Xxxxxxxx Xxxxxxxxx 00xx Xxxxx Xxxxx, Xxxxxxx 00000  
 Vector Group Ltd.  
 $ 900,000 36 %  
000 X.X. Xxxxxx Xxxxxx, 00xx Xxxxx Xxxxx, Xxxxxxx 00000  
 Xxxx Xxxxxxx  
 $ 100,000 4 %  
000 Xxxx 00xx Xxxxxx Xxxxx 0000 Xxx Xxxx, Xxx Xxxx 00000  
 IVC Investors, LLLP  
 $ 100,000 4 %  
Xxxxx 000 0000 Xxxxxxxx Xxxxxxxxx Xxxxx, Xxxxxxx 00000  
 Xxxxxxxx Ltd.  
 $ 100,000 4 %  
c/o Xx. Xxxxxx Xxxxxx Xxxxxx Xxxxxx 0-0 Xxxxxxxxxx Xxxxxxx Xxxxx Xxxxxxx Xxxxxx XX0 0XX, Xxxxxxx  
 Xxxxxxxxxx Xxxxxx Trust As Amended and Restated  
 $ 100,000 4 %  
12/16/2003 000 Xxxxxxxx Xxxxxx Xxxxx 0000 Xxxxx, Xxxxxxx 00000  
 Xxxxxxx X. Xxxxxx  
 $ 100,000 4 %  
000 Xxxxx Xxxxx Xxxxx Xxxxx Xxxxxx, XX 00000  
 TOTAL  
 $ 2,500,000 100 %  
EXHIBIT B  
NOTE  
$ New York, NY  
Dated as of \_\_\_\_\_\_\_\_\_\_\_\_ \_\_, 2010  
FOR VALUE RECEIVED, Castle Brands Inc., a Delaware corporation with offices at 000 X. 00xx Xxxxxx, Xxxxx 0000, Xxx Xxxx, XX 00000 (“Borrower”), pursuant to this promissory note (“Note”), hereby promises to pay to the lenders listed on Exhibit A hereto (“Lenders”) at such place as Lenders may designate from time to time in writing, in lawful money of the United States of America, the aggregate principal amount of up to $2,500,000, or such lesser amount as shall equal the outstanding principal balance of all Advances (the “Loan”) made to Borrower by Lenders pursuant to that certain Credit Agreement, dated as of December 30, 2009, by and among Borrower, Castle Brands (USA) Corp., a Delaware corporation (“Subsidiary”), and the Lenders (the “Credit Agreement”) and this Note, and to pay all other amounts due with respect to the Loan on the dates and in the amounts set forth in the Credit Agreement and this Note.  
1. Definitions. All terms used, but not defined herein, shall have the meanings ascribed to them in the Credit Agreement. In addition, the terms set forth below shall have the following meanings:  
(a) “Event of Default” shall mean the occurrence of one or more of the following events:  
(1) Borrower shall fail to make any payment due to Lenders under this Note, when the same shall become due and payable, whether at maturity, by acceleration or otherwise, within ten (10) business days after receipt of written notice from Lenders that such payment is due and unpaid.  
(2) Borrower violates any of the covenants contained in Sections 6 and 7 of this Note and fails to remedy such violation within ten (10) days after receipt of written notice from Lenders that such a violation has occurred.  
(3) Any material portion of Borrower’s or Subsidiary’s (each, a “Loan Party”) assets is attached, seized, subjected to a writ or distress warrant, or is levied upon, or comes into the possession of any trustee, receiver or person acting in a similar capacity and such attachment, seizure, writ or distress warrant or levy has not been removed, discharged or rescinded within ten (10) business days, or if any Loan Party is enjoined, restrained, or in any way prevented by court order from continuing to conduct all or any material part of its business affairs, or if a judgment or other claim becomes a lien or encumbrance upon any material portion of any Loan Party’s assets, or if a notice of lien, levy or assessment is filed of record with respect to any Loan Party’s assets by the United States Government, or any department, agency or instrumentality thereof, or by any state, county, municipal or governmental agency, and the same is not paid within ten (10) business days after any Loan Party receives notice thereof; provided that none of the foregoing shall constitute an Event of Default where such action or event is stayed or an adequate bond has been posted pending a good faith contest by such Loan Party.  
(4) Any document executed in connection with the Loan ceases to be, or any Loan Party asserts that such document is not, in any material respect, a legal, valid and binding obligation of such Loan Party or enforceable in accordance with its terms.  
(5) A proceeding shall have been instituted in a court having jurisdiction in the premises seeking a decree or order for relief in respect of any Loan Party in an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or for the appointment of a receiver, liquidator, assignee, custodian, trustee (or similar official) of any Loan Party or for any substantial part of its property, or for the winding-up or liquidation of its affairs, and such proceeding shall remain undismissed or unstayed and in effect for a period of sixty (60) consecutive days or such court shall enter a decree or order granting the relief sought in such proceeding.  
(6) Any Loan Party commences a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, consents to the entry of an order for relief in an involuntary case under any such law, or consents to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian (or other similar official) of such Loan Party or for any substantial part of its property, or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its debts, other than debts contested in good faith, as they become due, or shall take any corporate action in furtherance of any of the foregoing.  
(7) One or more defaults shall exist under any agreement of any Loan Party with any third party or parties which consists of the failure to pay any Indebtedness of such Loan Party at maturity or which results in the acceleration of any Indebtedness of such Loan Party prior to its stated maturity and the aggregate amount of such Indebtedness is in excess of Five Hundred Thousand Dollars ($500,000) and such acceleration is not annulled within forty-five (45) days or such payment default continues for forty-five (45) days.  
(8) A final, non-appealable judgment or judgments entered by a court or courts of competent jurisdiction for the payment of money in an amount, individually or in the aggregate, of at least Five Hundred Thousand Dollars ($500,000) shall be rendered against any Loan Party and shall remain unsatisfied, unbonded and unstayed for a period of forty-five (45) days or more.  
(9) Any material misrepresentation or material misstatement that exists now or hereafter in any warranty, representation, statement, certification or report made to Lenders by Borrower or any officer, employee, agent or director of Borrower shall prove to have been false or misleading in any material respect when made or furnished.  
(b) “Indebtedness” means, with respect to Borrower, the aggregate amount of, without duplication, (a) all obligations of Borrower for borrowed money, (b) all obligations of Borrower evidenced by bonds, debentures, notes or other similar instruments, (c) all obligations of Borrower to pay the deferred purchase price of property or services (excluding trade payables aged less than one hundred eighty (180) days), (d) all capital lease obligations of Borrower, (e) all obligations or liabilities of others secured by a Lien on any asset of Borrower, whether or not such obligation or liability is assumed, (f) all obligations or liabilities of others guaranteed by Borrower, and (g) any other obligations or liabilities which are required by GAAP to be shown as debt on the balance sheet of Borrower.  
(c) “Interest Rate” shall be 11% per annum, compounded quarterly.  
(d) “Lenders’ Expenses” means all reasonable attorneys’ fees, costs and expenses incurred in amending, enforcing or defending the Note (including fees and expenses of appeal or review), including the exercise of any rights or remedies afforded under the Note; or under applicable law, whether or not suit is brought, whether before or after bankruptcy or insolvency, including without limitation all fees and costs incurred by Lenders in connection with Lenders’ enforcement of their rights in a bankruptcy or insolvency proceeding filed by or against Borrower or its property.  
(e) “Lien” means any voluntary or involuntary security interest, pledge, bailment, lease, mortgage, hypothecation, conditional sales and title retention agreement, encumbrance or other lien with respect to any property of the Borrower in favor of any person.  
(f) “Obligations” shall mean actual indebtedness, principal, interest, fees, charges, expenses and reasonable attorneys’ fees and costs and other amounts, obligations, covenants and duties owing by Borrower to Lenders (or any permitted assignee) of any kind and description (whether pursuant to or evidenced by this Note or the Credit Agreement), whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, including Lenders’ Expenses, in each case as then outstanding hereunder and under the Credit Agreement.  
(g) “Permitted Indebtedness” means and includes:  
(1) Indebtedness of Borrower to Lenders;  
(2) Indebtedness arising from the endorsement of instruments in the ordinary course of business;  
(3) Indebtedness existing on the date hereof and disclosed in the Schedule of Exceptions to the Credit Agreement;  
(4) Indebtedness of Borrower which is subordinated to the Indebtedness of Borrower under this Note; and which is in an aggregate original principal amount not to exceed $500,000 at any time;  
(5) Indebtedness consisting of purchase money Indebtedness or capital lease obligations in the maximum aggregate amount of $500,000 at any time outstanding; and  
(6) Any extensions, refinancings, modifications, amendments and restatements of any items of Permitted Indebtedness above; provided that the principal amount thereof is not increased or the terms thereof are not modified to impose more burdensome terms upon Borrower.  
(h) “Permitted Liens” means:  
(1) Liens for fees, taxes, levies, imposts, duties or other governmental charges of any kind which are not yet delinquent or which are being contested in good faith by appropriate proceedings which suspend the collection thereof (provided that Borrower or Subsidiary has adequately bonded such Lien or reserves sufficient to discharge such Lien have been provided on the books of Borrower or Subsidiary).  
(2) Liens existing as of the date hereof and identified in the Schedule of Exceptions to the Credit Agreement, as well as Liens created pursuant to the Credit Agreement.  
(3) Carriers’, warehousemen’s, mechanics’, materialmen’s, repairmen’s or other similar Liens arising in the ordinary course of business and which are not delinquent or remain payable without penalty or which are being contested in good faith and by appropriate proceedings (provided that Borrower or Subsidiary has adequately bonded such Lien or reserves sufficient to discharge such Lien have been provided on the books of Borrower or Subsidiary).  
(4) Liens upon any equipment or other personal property acquired by Borrower after the date hereof to secure (i) the purchase price of such equipment or other personal property, or (ii) lease obligations or indebtedness incurred solely for the purpose of financing the acquisition of such equipment or other personal property; provided that such Liens are confined solely to the equipment or other personal property so acquired and the proceeds thereof and the amount secured does not exceed the acquisition price thereof.  
(5) Bankers’ liens, rights of setoff and similar Liens incurred on deposits made in the ordinary course of business and Liens in favor of financial institutions arising in connection with Borrower’s deposit accounts or securities accounts held at such institutions to secure customary fees and charges;  
(6) Any judgment, attachment or similar Lien not resulting in an Event of Default hereunder; and  
(7) Liens incurred in the extension, renewal or refinancing of the indebtedness secured by Liens described above but any extension, renewal or replacement Lien must be limited to the property encumbered by the existing Lien and the principal amount of the indebtedness may not increase.  
(i) “Person” means and includes any individual, any partnership, any corporation, any business trust, any joint stock company, any limited liability company, any unincorporated association or any other entity and any domestic or foreign national, state or local government, any political subdivision thereof, and any department, agency, authority or bureau of any of the foregoing.  
2. Advances Under the Note and Obligations. From time to time prior to the Maturity Date, subject to the provisions of the Credit Agreement, the Lenders may make Advances to the Borrower, which the Borrower may pay and reborrow, so long as the aggregate amount of Advances outstanding at any one time shall not exceed the Available Amount. Notwithstanding the face amount of the Note, Borrower’s liability under the Note shall include the Obligations. Lenders may determine to include Obligations other than interest payable at the Interest Rate in calculating the Available Amount.  
3. Payments of Obligations, including Principal and Interest. The outstanding principal amount of the Loan evidenced hereby, together with any accrued and unpaid interest hereunder, and any and all other unpaid Obligations, including unpaid costs, fees and expenses accrued, such as Lenders’ Expenses, shall be due and payable on April 1, 2013 (the “Maturity Date”). Borrower shall pay all accrued and unpaid interest hereunder on the last day of each calendar quarter until repayment in full of all Obligations.  
4. Interest; Ranking. The principal balance outstanding hereunder, together with all other amounts outstanding from time to time hereunder, shall bear interest until such amounts are paid at the Interest Rate; provided that following any Event of Default (including before or after any judgment is entered) and after the Maturity Date, the principal balance outstanding hereunder, together with all such other amounts outstanding hereunder, shall bear interest at a rate per annum equal to the Default Rate. This Note shall rank senior in right of payment to all of Borrower’s subordinated indebtedness incurred after the Initial Closing Date and equal in right of payment with all other senior indebtedness of Borrower incurred after the Initial Closing Date.  
5. Prepayments. Borrower may prepay in cash, at any time or from time to time, all or any portion of the amounts due hereunder, without penalty or premium. Prepayments of all or any portion of the Obligations shall not reduce the Available Amount, and funds may be reborrowed hereunder up to the Available Amount, subject to the provision hereof and the Credit Agreement. If Borrower makes a payment or payments and such payment or payments, or any part thereof, are subsequently invalidated, declared to be fraudulent or preferential, set aside or are required to be repaid to a trustee, receiver, or any other person under any bankruptcy act, state, provincial or federal law, common law or equitable cause, then to the extent of such payment or payments, the obligations or part thereof hereunder intended to be satisfied shall be revived and continued in full force and effect as if said payment or payments had not been made.  
6. Affirmative Covenants. Borrower covenants that, so long as any amounts are due and payable hereunder to Lenders or any commitment to make any Loan still exists, Borrower shall:  
(a) Maintain its corporate existence and its good standing in its jurisdiction of incorporation and maintain qualification in each jurisdiction in which the failure to so qualify could reasonably be expected to have a Material Adverse Effect, except that Borrower may, in its sole discretion, reincorporate in Florida. Borrower shall maintain in force all licenses, approvals and agreements, the loss of which could reasonably be expected to have a Material Adverse Effect.  
(b) Comply with all statutes, laws, ordinances and government rules and regulations to which it is subject, noncompliance with which could reasonably be expected to have a Material Adverse Effect.  
(c) As soon as possible, and in any event within five (5) days after the discovery of a default or an Event of Default, provide Lenders with an Officer’s Certificate setting forth the facts relating to or giving rise to such default or Event of Default and the action which Borrower proposes to take with respect thereto.  
7. Negative Covenants. Except as identified in the Schedule of Exceptions to the Credit Agreement, Borrower covenants that, so long as any amounts are due and payable hereunder to Lenders or any commitment to make any Loan still exists, without the prior approval of Lenders, Borrower shall not:  
(a) Change its name or principal place of business without thirty (30) days prior written notice to Lenders.  
(b) Create, incur, assume or suffer to exist any Lien of any kind upon any of Borrower’s property, whether now owned or hereafter acquired, except Permitted Liens.  
(c) (i) Prepay, redeem, purchase, defease or otherwise satisfy in any manner prior to the scheduled repayment thereof any Indebtedness for borrowed money (other than amounts due or permitted to be prepaid under this Agreement) or lease obligations or any of the indebtedness of the Company to Xxxxx & Xxxxxx, L.L.C., or (ii) amend, modify or otherwise change the terms of any Indebtedness for borrowed money or lease obligations so as to accelerate the scheduled repayment thereof.  
(d) Create, incur, assume or permit to exist any Indebtedness except Permitted Indebtedness.  
8. Lenders’ Rights and Remedies. Upon the occurrence of any Default hereunder, while such Default is continuing (provided that an Event of Default shall be continuing at all times after any cure period therefor expires), Lenders shall not have any further obligation to advance money or extend credit to or for the benefit of Borrower. In addition, upon the occurrence and during the continuance of an Event of Default, the entire unpaid principal sum hereunder, plus any and all interest accrued thereon, plus all other sums due and payable to Lenders hereunder shall, at the option of Lenders, become due and payable immediately without presentment, demand, notice of nonpayment, protest, notice of protest, or other notice of dishonor, all of which are hereby expressly waived by Borrower.  
9. Remedies Cumulative, Etc.  
(a) No right or remedy conferred upon or reserved to Lenders hereunder or now or hereafter existing at law or in equity is intended to be exclusive of any other right or remedy, and each and every such right or remedy shall be cumulative and concurrent, and in addition to every other such right or remedy, and may be pursued singly, concurrently, successively or otherwise, at the sole discretion of Lenders, and shall not be exhausted by any one exercise thereof but may be exercised as often as occasion therefor shall occur.  
(b) Borrower hereby waives presentment, demand, notice of nonpayment, protest, notice of protest, notice of dishonor and any and all other notices in connection with any default in the payment of, or any enforcement of the payment of, all amounts due under this Note. To the extent permitted by law, Borrower waives the right to any stay of execution and the benefit of all exemption laws now or hereafter in effect.  
(c) Costs and Expenses. Following the occurrence of any Event of Default, Borrower shall pay upon demand all costs and expenses (including reasonable attorneys’ fees and expenses) incurred by Lenders in the exercise of any of its rights, remedies or powers under this Note and any amount thereof not paid promptly following demand therefor shall be added to the principal sum hereunder and shall bear interest at the Default Rate from the date of such demand until paid in full.  
10. Indemnification and Waiver. Whether or not the transactions contemplated hereby shall be consummated:  
(a) General Indemnity. Borrower agrees upon demand to pay or reimburse Lenders for all liabilities, obligations and out-of-pocket expenses, including Lenders’ expenses and reasonable fees and expenses of counsel for Lenders from time to time arising in connection with the enforcement or collection of sums due under this Note or the Credit Agreement, and in connection with any amendment or modification of such documents or any “work-out” in connection with such documents. Borrower shall indemnify, reimburse and hold Lenders, and each of its respective successors, assigns, agents, attorneys, officers, directors, shareholders, servants, agents and employees (each an “Indemnified Person”) harmless from and against all liabilities, losses, damages, actions, suits, demands, claims of any kind and nature (including claims relating to environmental discharge, cleanup or compliance), all costs and expenses whatsoever to the extent they may be incurred or suffered by such Indemnified Person in connection therewith (including reasonable attorneys’ fees and expenses), fines or penalties (and other charges of any applicable governmental authority) (each, a “Claim”), directly or indirectly relating to or arising out of the use of the proceeds of the Loans or otherwise, the falsity of any representation or warranty of Borrower or Borrower’s failure to comply with the terms of this Note or the Credit Agreement. Such indemnities shall continue in full force and effect, notwithstanding the expiration or termination of this Note. Upon Lenders’ written demand, Borrower shall assume and diligently conduct, at its sole cost and expense, the entire defense of Lenders, each of its partners, and each of their respective, agents, employees, directors, officers, shareholders, successors and assigns against any indemnified Claim described in this Section. Borrower shall not settle or compromise any Claim against or involving Lenders without first obtaining Lenders’ written consent thereto, which consent shall not be unreasonably withheld.  
11. Notices. All notices required to be given to any of the parties hereunder shall be in writing and shall be deemed to have been sufficiently given for all purposes when presented personally to such party or sent by hand delivery, facsimile, courier service guaranteeing next business day delivery, or overnight U.S. express mail, return receipt requested, to such party at its address set forth in the Credit Agreement with copies to the parties designated to receive copies in the Credit Agreement. Such notice shall be deemed to be given when received. Any notice of any change in such address shall also be given in the manner set forth above. Whenever the giving of notice is required, the giving of such notice may be waived in writing by the party entitled to receive such notice.  
12. Enforceability; Severability. The parties hereto agree that each provision of this Note will be interpreted in such a manner as to be effective and valid under applicable law. If one or more provisions of this Note are nevertheless held to be prohibited, invalid or unenforceable under applicable law, such provision will be effective to the fullest extent possible excluding the terms affected by such prohibition, invalidity or unenforceability, without invalidating the remainder of such provision or the remaining provisions of this Note. If the prohibition, invalidity or unenforceability referred to in the prior sentence requires such provision to be excluded from this Note in its entirety, the balance of the Note will be interpreted as if such provision were so excluded and will be enforceable in accordance with its terms.  
13. Successors and Assigns. This Note inures to the benefit of Lenders and binds Borrower, and their respective successors and assigns, and the words “Borrower” and “Lenders” whenever occurring herein shall be deemed and construed to include such respective successors and assigns; provided, however, that neither this Note nor any rights hereunder may be assigned by Borrower without Lenders’ prior written consent, which consent may be granted or withheld in Lenders’ sole discretion.  
14. Governing Law and Jurisdiction. This Note shall be governed by and construed in accordance with the internal laws of the State of Florida, without giving effect to principles of conflict of laws, and shall inure to the benefit of and be binding upon the successors and assigns of the Borrower and the Lenders. Each of the Borrower and the Lenders hereby specifically authorize any action brought upon the enforcement of this Agreement by the other to be instituted and prosecuted in the State or Federal courts located in Miami-Dade County, Florida. Each of the Borrower and the Lenders hereby specifically consents and submits to the personal jurisdiction of the State and Federal courts located in Miami-Dade County, Florida in any action instituted by the other arising under or related to this Agreement.  
15. Entire Agreement; Construction; Amendments and Waivers.  
(a) Entire Agreement. This Note and each of the related loan documents dated as of the date hereof, taken together, constitute and contain the entire agreement between Borrower and Lenders with respect to the subject matter hereof and supersede any and all prior agreements, negotiations, correspondence, understandings and communications between the parties, whether written or oral, with respect to such subject matter. Borrower acknowledges that it is not relying on any representation or agreement made by Lenders or any employee, attorney or agent thereof, other than the specific agreements set forth in this Note and the related loan documents.  
(b) Construction. This Note is the result of negotiations between and has been reviewed by each of Borrower and Lenders as of the date hereof and their respective counsel; accordingly, this Note shall be deemed to be the product of the parties hereto, and no ambiguity shall be construed in favor of or against Borrower or Lenders. Borrower and Lenders agree that they intend the literal words of this Note and the related loan documents and that no parole evidence shall be necessary or appropriate to establish Borrower’s or Lenders’ actual intentions.  
(c) Amendments and Waivers. Any term of this Note may be amended and the observance of any terms of this Note may be waived (either generally or in a particular instance and either retroactively or prospectively), only with the written consent of Lenders and Borrower.  
16. Reliance by Lenders. All covenants, agreements, representations and warranties made herein by Borrower shall be deemed to be material to and to have been relied upon by Lenders, notwithstanding any investigation by Lenders.  
17. No Set-Offs by Borrower. All sums payable by Borrower pursuant to this Note or any of the related loan documents shall be payable without notice or demand and shall be payable in United States Dollars without set-off or reduction of any manner whatsoever.  
18. Survival. All covenants, representations and warranties made in this Agreement shall continue in full force and effect so long as any obligations hereunder or commitment to fund remain outstanding. The obligations of Borrower to indemnify Lenders with respect to the expenses, damages, losses, costs and liabilities described in Section 10 shall survive until all applicable statute of limitations periods with respect to actions that may be brought against Lenders have run.  
19. WAIVER OF TRIAL BY JURY. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ITS RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS NOTE OR ANY DEALINGS BETWEEN THE PARTIES HERETO RELATING TO THE SUBJECT MATTER HEREOF. EACH OF THE PARTIES HERETO ALSO WAIVES ANY BOND OR SURETY OR SECURITY UPON SUCH BOND THAT MIGHT, BUT FOR THIS WAIVER, BE REQUIRED OF THE OTHER PARTY. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS NOTE, INCLUDING, BUT NOT LIMITED TO, CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. EACH OF THE PARTIES HERETO ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO THIS NOTE. EACH OF THE PARTIES HERETO HEREBY FURTHER ACKNOWLEDGES AND AGREES THAT EACH HAS REVIEWED OR HAD THE OPPORTUNITY TO REVIEW THIS WAIVER WITH ITS RESPECTIVE LEGAL COUNSEL, AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH SUCH LEGAL COUNSEL. IN THE EVENT OF LITIGATION, THIS NOTE MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.  
[SIGNATURE PAGE FOLLOWS]  
IN WITNESS WHEREOF, Borrower has duly executed this Note as of the day and year first above written.  
Castle Brands Inc.  
By:   
Name:  
Title:  
EXHIBIT D  
NOTICE OF BORROWING  
[ Lenders ]  
 Re: Notice of Borrowing  
Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
Gentlemen:  
Pursuant to the terms of Credit Agreement dated as of December 30, 2009 (“Credit Agreement”), we hereby request you to make an advance in the amount of $ .  
This notice constitutes a reaffirmation by the undersigned that the representations and warranties in the Credit Agreement are true, correct and accurate in all material respects as if the date hereof was the Initial Closing Date and a certification by the undersigned that it is in compliance with the Credit Agreement and the Note in all material respects as of the date of this Notice of Borrowing as if the date hereof was the Initial Closing Date.  
Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Credit Agreement.  
 Very truly yours,  
 Castle Brands Inc.  
 By:  
 Name:  
 Title:  
EXHIBIT E  
SCHEDULE OF EXCEPTIONS  
All Inventory and receivables in which Xxxxx & Xxxxxx, L.L.C. has a security interest pursuant to that certain Security Agreement by and between Castle Brands Inc. and Xxxxx & Xxxxxx, L.L.C., dated September 21, 2009