

08-17-1998



To the Honorable Commission 100795781

attached original documents or copy thereof.

1. Name of conveying party(ies):
Ergo Development Corporation

Individual(s) Association
 General Partnership Limited Partnership
 Corporation - State - the state of Michigan
 Other _____

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

3. Nature of conveyance:
 Assignment Merger
 Security Agreement Change of Name
 Other _____

Executio. Date: October 6, 1997

2. Name and address of receiving party(ies):
Name: The Bank of Nova Scotia
Internal Address: _____
Street Address: 388 Ouellette Avenue, Windsor, Ontario N9A 6P1
City: _____ State: _____ ZIP: _____

Individual(s) citizenship _____
 Association _____
 General Partnership _____
 Limited Partnership _____
 Corporation-State the country of CANADA
 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)
75/216,643, 75/216,451, 75/217,281, 75/217,279, 75/217,280
75/216,488, 75/104,771

B. Trademark registration No.(s)

Additional numbers attached? Yes No

6. Total number of applications and registrations involved: 7

7. Total fee (37 CFR 3.41) \$190.00

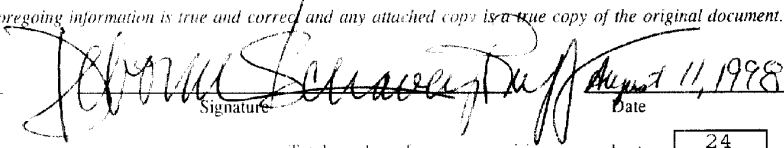
Enclosed
 Authorized to be charged to deposit account for any additional fees

8. Deposit account number: 13-0019
(Attach duplicate copy of this page if paying by deposit account)

5. Name and address of party to whom correspondence concerning document should be mailed:
Name: Deborah Schavey Ruff
Internal Address: _____
Street Address: Mayer, Brown & Platt
P.O. Box 2828
City: Chicago State: IL ZIP: 60690-2828

DO NOT USE THIS SPACE

9. 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.

Deborah Schavey Ruff
Name of Person Signing  Signature August 11, 1998 Date

Total number of pages comprising cover sheet: 24

Do not detach this portion

Mail documents to be recorded with required cover sheet information to:

08/14/1998 TTOM11 00000072 75216643 Commissioner of Patents and Trademarks
01 FC:481 40.00 OP Box Assignments
02 FC:482 150.00 OP Washington, D.C. 20231

Public burden reporting for this sample sheet is estimated to average about 30 minutes per document to be recorded, including time for reviewing the document and gathering the data needed, and completing and reviewing the sample cover sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Office of Information Systems, PK2-1000C, Washington, D.C. 20231, and to the Office of Management and Budget, Paperwork Reduction Project (0651-0011), Washington D.C. 20503.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE


In re:)
The Bank of Nova Scotia)

DESIGNATION OF DOMESTIC REPRESENTATIVE

The Bank of Nova Scotia hereby appoints the law firm of Mayer, Brown & Platt, whose postal address is 190 South LaSalle Street, Chicago, Illinois 60603-3441, as its domestic representative upon whom notices or process in proceedings affecting the following marks may be served:

1. "WE PUT THE PICK UP IN THE PICKUP TRUCK" - No. 75/216,643;
2. "WE PUT THE PICK UP IN THE PICKUP TRUCK" - No. 75/216,451;
3. "POWER BED" - No. 75/217,281;
4. "POWER BED" - No. 75/217,279;
5. "MAD DOG TOUGH" - No. 75/217,280;
6. "MAD DOG TOUGH" - No. 75/216,488;
7. "ERGO" - No. 75/104,771.

THE BANK OF NOVA SCOTIA

By: 
 Name: PAUL M. LIEBOVITZ
 Title: SENIOR MANAGER
 Date: JULY 9/98

TRADEMARK
REEL: 1768 FRAME: 0519

SCHEDULE "A"

COPYRIGHTS

NONE

SCHEDULE "B"
LICENSE AGREEMENTS

NONE

SCHEDULE "C"

PATENTS

NONE

SCHEDULE "D"

TRADEMARKS

TRADEMARK	APPLICATION NOS.
WE PUT THE PICK UP IN THE PICKUP TRUCK	75/216,643
WE PUT THE PICK UP IN THE PICKUP TRUCK	75/216,451
POWER BED	75/217,281
POWER BED	75/217,279
MAD DOG TOUGH	75/217,280
MAD DOG TOUGH	75/216,488
ERGO	75/104,771

SCHEDULE "E"
TRADE SECRETS

NONE

SCHEDULE "F"

ASSIGNMENT OF INTELLECTUAL PROPERTY COLLATERAL

THIS AGREEMENT made the ■ day of ■, ■, by and between THE BANK OF NOVA SCOTIA (the "Lender") and ■ (the "Assignee").

WITNESSETH

WHEREAS the Lender and ● (the "Grantor") are parties to an Intellectual Property Security Agreement dated ■, 1997 (said agreement, as it hereafter may be amended, supplemented, restated or replaced from time to time, being the "Security Agreement") which provides that upon the occurrence of default or of certain events specified therein, the Lender shall be entitled to execute this Assignment in favour of any purchaser of any rights in the Intellectual Property Collateral (as defined in the Security Agreement);

AND WHEREAS the aforementioned events have occurred.

NOW THEREFORE in consideration of the mutual covenants and agreements hereinafter set forth, the parties agree as follows:

1. **Incorporation**

This Assignment is made pursuant to and subject to the terms of the Security Agreement which is deemed incorporated herein by this reference and shall constitute part of this Agreement as if fully set forth herein.

2. **Assignment**

The Lender hereby absolutely conveys, sells, assigns, transfers and sets over to the Assignee all of the right, title and interest of the Lender and the Grantor in and to the Intellectual Property Collateral (as defined in the Security Agreement).

3. **Further Instruments**

The parties agree to promptly execute and deliver all further instruments necessary or desirable to carry out the purposes of this Agreement.

INTELLECTUAL PROPERTY SECURITY AGREEMENT

THIS AGREEMENT is made as of the 6th day of October, 1997.

B E T W E E N:

ERGO DEVELOPMENT CORPORATION, a
corporation incorporated under the laws of the State of Michigan

(hereinafter referred to as the "Grantor")

OF THE FIRST PART

- and -

THE BANK OF NOVA SCOTIA

(hereinafter referred to as the "Lender")

OF THE SECOND PART

RECITALS

- A. The Grantor is now or may hereafter become, indebted to the Lender by way of direct and/or contingent liabilities.
- B. The Grantor is the owner of all right, title and interest in and to the "Intellectual Property" (as herein defined).
- C. The Grantor has agreed to grant to the Lender an assignment of, and security interest in, the Intellectual Property, including the right of the Lender, upon default by the Grantor of payment of any of the "Obligations" (as herein defined), to assign all of the right, title and interest of the Grantor in the Intellectual Property to third parties on the conditions set forth in this Agreement.

NOW THEREFORE in consideration of the promises, covenants and agreements herein contained, and in consideration of advances or other accommodation made or to be made by the Lender, or for the benefit of, the Grantor, the Grantor hereby covenants and agrees with the Lender as follows:

1. Defined Terms

The following terms have the following meanings (such meanings being equally applicable to both the singular and the plural form of the terms defined):

- 1.1 **"Agreement"** means this Intellectual Property Security Agreement and Schedules "A", "B", "C", "D", "E", "F", as the same may be amended, supplemented, restated or replaced from time to time.
- 1.2 **"Copyrights"** means all of the Grantor's current and future copyrights including, but not limited to, the copyrights, if any, listed in Schedule "A".
- 1.3 **"GAAP"** means generally accepted accounting principles which are in effect from time to time in Canada, as published in the handbook of the Canadian Institute of Chartered Accountants.
- 1.4 **"including"** means "including without limitation" and the term "including" shall not be construed to limit any general statement which it follows to the specific or similar items or matters following it.
- 1.5 **"Intellectual Property"** means all Copyrights, Licenses, Patents, Trade Marks, and Trade Secrets, and all other present and future intellectual property belonging to the Grantor or of which the Grantor has any right or interest, including, but not limited to, any and all (i) income, royalties, damages and payments now and hereafter due and/or payable to the Grantor with respect thereto, including, without limitation, damages and payments for past or future infringements or misappropriations thereof; (ii) rights to sue for past, present and future infringements or misappropriations thereof; and (iii) all other rights corresponding thereto throughout the world.
- 1.6 **"Intellectual Property Collateral"** has the meaning assigned to such term in section 2 of this Agreement.
- 1.7 **"Licenses"** means all right, title and interest of the Grantor under the terms of any License Agreements, including any and all (i) renewals, extensions, supplements, amendments and continuations thereof; (ii) income, royalties, damages and payments now and hereafter due or payable to the Grantor with respect thereto, including, without limitation, damages and payments for past or future violations or infringements or misappropriations thereof; and (iii) rights to sue for past, present and future violations or infringements thereof.
- 1.8 **"License Agreements"** means all present and future license agreements to which the Grantor is a party, as either licensor or licensee, including, but not limited to, the license agreements, if any, listed in Schedule "B".
- 1.9 **"Obligations"** means all obligations of the Grantor to the Lender, including but not limited to all debts and liabilities, present or future, direct or indirect, absolute or contingent, matured or not, at any time owing by the Grantor to the Lender in any

currency or remaining unpaid by the Grantor to the Lender in any currency, whether arising from dealings between the Lender and the Grantor or from other dealings or proceedings by which the Lender may be or become in any manner whatever a creditor of the Grantor and wherever incurred, and whether incurred by the Grantor alone or with another or others and whether as principal or surety, including all interest, commissions, legal and other costs, charges and expenses in connection with the foregoing.

- 1.10 **"Patents"** means all of the Grantor's patents that have been or will be granted, including, but not limited to, any and all (i) inventions and improvements thereof; (ii) reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof; (iii) income, royalties, damages and payments now and hereafter due and/or payable to the Grantor with respect thereof, including, without limitation, damages and payments for past or future infringements or misappropriations thereof; (iv) rights to sue for past, present and future infringements or misappropriations thereof; and (v) all other rights corresponding thereto throughout the world; and includes, but is not limited to, the patents and patent applications, if any, listed in Schedule "C".
- 1.11 **"Trade Marks"** means all of the Grantor's current and future trade marks including, but not limited to, the trade marks, if any, listed in Schedule "D".
- 1.12 **"Trade Secrets"** means all of the Grantor's current and future trade secrets and other know-how or information including, but not limited to, the trade secrets, if any, listed in Schedule "E".
- 1.13 The words **"herein"**, **"hereof"** and **"hereunder"** and other words of similar import refer to this Agreement as a whole, including the Schedules hereto, and not to any particular section, subsection or clause contained in this Agreement.

2. **Grant of Security Interest in Intellectual Property Collateral**

- 2.1 As collateral security for the full and prompt payment when due (whether at stated maturity, by acceleration or otherwise) of, and the performance of, all of the Obligations of the Grantor (and to induce the Lender to extend credit or other accommodation to, or for the benefit of, the Grantor), the Grantor hereby assigns, conveys, mortgages, pledges, hypothecates and transfers to the Lender, and hereby grants to the Lender a continuing security interest in, all of the Grantor's entire right, title and interest now owned or existing and hereafter acquired or arising in the Intellectual Property (all of which being hereinafter referred to as the "Intellectual Property Collateral"), provided, however, that to the extent that the Grantor is not permitted to assign the same or to grant a security interest therein without obtaining the consent, approval or release of any other person, the Grantor shall hold the same in trust for the Lender until such time as

such consent, approval or release is obtained, whereupon the same shall be immediately included in the Intellectual Property Collateral without the necessity for the execution of any further instrument or agreement by the Grantor; and the Grantor shall take such steps as may be requested by the Lender from time to time and shall otherwise cooperate with and assist the Lender in obtaining any consent, approval or release that may be required in order to permit the assignment and the grant of a security interest to the foregoing Intellectual Property in accordance with the terms hereof.

3. Representations, Warranties

- 3.1 The Grantor represents and warrants to the Lender, and covenants with the Lender, that:
- (a) The Grantor has the full right, power and authority to enter into this Agreement, and the Grantor has the right, power and authority to grant to the Lender all of the right, title and interest in the Intellectual Property herein granted;
 - (b) This Agreement has been duly executed and delivered by the Grantor, and is a legal, valid and binding obligation of the Grantor, enforceable in accordance with its terms;
 - (c) The execution, delivery and performance by the Grantor of this Agreement does not and will not contravene any contractual restriction binding on or affecting the Grantor or any of its properties;
 - (d) The Grantor is the sole and exclusive owner of all right, title and interest in the Intellectual Property, in each case free and clear of any Encumbrances, and no other person has any claim with respect to the Intellectual Property whatsoever;
 - (e) The Intellectual Property subsists and has not been adjudged invalid or unenforceable, in whole or in part;
 - (f) The Schedules "A" through "E", attached hereto, are a complete list of all material Intellectual Property currently owned or held by the Grantor;
 - (g) The Intellectual Property does not infringe any rights owned or held by any Person;
 - (h) The authors of any of the Copyrights which form part of the Intellectual Property have waived their respective moral rights in such works;

- (i) The Grantor has implemented, and will continue to implement, such procedures as may be necessary and reasonable to maintain the confidentiality of the Trade Secrets.
- (j) Grantor will continue using all of the Trade Marks and will notify the Lender if it intends to cease doing so in respect of any Trade Mark;
- (k) Grantor will pay all applicable maintenance fees and renewal fees in connection with the Intellectual Property;
- (l) No person has infringed or is infringing any right, title or interest of the Grantor in the Intellectual Property;
- (m) There are no claims, judgments or settlements, or pending or threatened claims or litigation, relating to the Intellectual Property;
- (n) The Grantor will enforce its intellectual property rights against infringers of the Intellectual Property and will advise the Lender of any such infringement;
- (o) No other security interests have been taken or will be taken in respect of the Intellectual Property;
- (p) No security agreement, financing statement or lien instrument or continuation statement covering all or any part of the Intellectual Property is on file or of record in any public office;
- (q) The filings in the various patent and trade mark offices, and other intellectual property offices, are in good standing, and are registered in the Grantor's name, and all steps necessary to maintain such filings and to prosecute the applications have been taken and will be taken in a timely manner;
- (r) The Grantor will advise the Lender of any change of the Grantor's name, address, or commencement of business in new jurisdiction; and
- (s) Upon all appropriate filings being made in any applicable patent office, copyright office, trade mark office and all relevant personal property registries, this Agreement is effective to create a valid and continuing first priority security interest and charge in favour of the Lender in the Trade Marks, Copyrights and Patents for which any filings have been made in such offices.

4. Remedies

- 4.1** Upon default in payment of any of the Obligations or upon default by the Grantor under any of the provisions of this Agreement, the Lender may appoint or reappoint by instrument in writing, any person or persons, whether an officer or officers or an employee or employees of the Lender or not, to be a receiver or receivers (hereinafter called a "Receiver", which term when used herein shall include a receiver and manager) of the Intellectual Property Collateral (including any interest, income or profits therefrom) and may remove any Receiver so appointed and appoint another in his stead. Any such Receiver shall, so far as concerns responsibility for his acts, be deemed the agent of the Grantor and not the Lender, and the Lender shall not in any way be responsible for any misconduct, negligence, or non-feasance on the part of any such Receiver, his servants, agents or employees. Subject to the provisions of the instrument appointing him, any such Receiver shall have power to take possession of the Intellectual Property Collateral wherever it may be located and by any method permitted by law, and exercise all rights and remedies of a secured party, and to exercise all or any of the rights, powers, authorities and remedies which the Grantor has or would otherwise have had in relation to the Intellectual Property Collateral. Except as may be otherwise directed by the Lender, all money received from time to time by such Receiver in carrying out his appointment shall be received in trust for and paid over to the Lender. Every such Receiver may, in the discretion of the Lender, be vested with all or any of the rights and powers of the Lender.
- 4.2** Upon default in payment of any of the Obligations or upon default by the Grantor under any of the provisions of this Agreement, the Lender may, either directly or through its agents or nominees, exercise any or all of the powers and rights given to a Receiver by virtue of the foregoing subsection 4.1.
- 4.3** Upon default in payment of any of the Obligations or upon default by the Grantor under any of the provisions of this Agreement, the Lender or the Receiver may take possession of, collect, demand, sue on, enforce, recover, receive, accept, retain and foreclose on the Intellectual Property Collateral and give valid and binding receipts and discharges therefor and in respect thereof, and the Lender or the Receiver may sell, assign, lease, license or otherwise dispose of the Intellectual Property Collateral in such manner, at such time or times and place or places, for such consideration and upon such terms and conditions as to the Lender or the Receiver may seem reasonable, provided always, that the Lender or the Receiver shall not be liable or accountable for any failure to exercise its remedies, take possession of, collect, enforce, realize, sell, lease, license, or otherwise dispose of the Intellectual Property Collateral or to institute any proceedings for such purposes.

- 4.4 The Grantor agrees to pay all costs, charges and expenses reasonably incurred by the Lender or any Receiver appointed by it, whether directly or for services rendered (including reasonable solicitors costs and other legal expenses and Receiver remuneration), in enforcing this Agreement, taking and maintaining custody of, preserving, repairing, processing, preparing for disposition and disposing of the Intellectual Property Collateral and in enforcing or collecting Obligations and all such costs, charges and expenses, shall be a first charge on the proceeds of realization, collection or disposition of the Intellectual Property Collateral and shall be secured hereby.
- 4.5 The Lender will give the Grantor such notice, if any, of the date, time and place of any public sale or of the date after which any private disposition of the Intellectual Property Collateral is to be made, as may be required by the *Personal Property Security Act* of Ontario.
- 4.6 The powers and remedies conferred on the Lender by any statute or ordinance, the general law or otherwise in any jurisdiction will be in augmentation of the powers hereby expressly conferred and may, to the extent permissible by law, be exercisable by the Lender or the Receiver immediately upon or at any time following default in payment of any of the Obligations or default by the Grantor under any of the provisions of this Agreement upon notice to the Grantor but without expiration of time under that statute or ordinance being necessary. All other provisions of any statute or ordinance will, to the extent permissible by law, be deemed to be negated or varied to the extent that they are inconsistent with the terms and provisions herein expressed.
- 4.7 The Lender need not give notice or demand to the Grantor or allow time to elapse before exercising a right, power or remedy under this Agreement or conferred by law, unless notice or demand or lapse of time is required by an applicable law which cannot be excluded.
- 4.8 It is expressly understood that anything herein to the contrary notwithstanding, the Grantor shall remain liable with respect to any contractual obligations assumed by the Grantor arising from the exercise of any right or interest in the Intellectual Property Collateral, and the Grantor shall observe and perform all such obligations, all in accordance with and pursuant to the terms and provisions of any agreement made by the Grantor. The Lender shall have no obligation or liability in connection with any such contractual obligation or agreement by reason of or arising out of this Agreement or the granting to the Lender of a security interest in the Intellectual Property Collateral, nor shall the Lender be required or obligated in any manner to perform or fulfil any of the obligations of the Grantor under or pursuant to any such contractual obligation or agreement, or to make any payment, or to make any inquiry as to the nature or the sufficiency of any payment received by it or the sufficiency of any performance by any

party under any contractual obligation or agreement, or to present or file any claim, or to take any action to collect or enforce any performance or the payment of any amounts which may have been assigned to it or to which it may be entitled at any time or times.

- 4.9 Upon default in payment of any of the Obligations or upon default by the Grantor under any of the provisions of this Agreement, the Lender shall be entitled to execute and deliver to any purchaser of any rights in and to any of the Intellectual Property Collateral an assignment of the Intellectual Property Collateral, including all rights or interests of the Grantor and the Lender therein, which assignment shall be in substantially the form of Schedule "F" attached hereto.

5. **Execution of Documents; Other Steps**

- 5.1 The Grantor hereby authorizes the Lender, at its own cost and expense, to file such financing statements, financing change statements or other documents and file, perform and do such registrations, filings, notices, recordings, acts, matters and things, whether under the laws of Ontario or any other jurisdiction within or outside of Canada (including completing, amending and adding Schedules hereto identifying the Intellectual Property Collateral) as the Lender may deem appropriate to register and perfect on an ongoing basis and continue the security interest to protect and preserve the Intellectual Property Collateral and to realize upon the security interest, and the Grantor hereby irrevocably makes, nominates, constitutes and appoints the Lender and each of the duly authorized officers of the Lender to be the true and lawful attorney of the Grantor to exercise all or any of the powers of the Grantor in relation to the Intellectual Property Collateral and generally to do, execute and perform any act, deed, matter or thing relative to the Intellectual Property Collateral as fully and effectually as the Grantor could do in and about the Intellectual Property Collateral, including, without limitation, for the purpose of transferring title in the Intellectual Property Collateral to the Lender. The Grantor hereby covenants to ratify and confirm all and whatsoever the said attorney or any substitute lawfully does or causes to be done in and about the Intellectual Property Collateral. All governmental and other lawful authorities are hereby authorized to act upon a statutory declaration given on the part of the Lender by any of its officers as evidence of the rights of the Lender to do or perform in relation to the Intellectual Property Collateral.
- 5.2 Upon the non-performance or nonpayment when due, whether by acceleration or otherwise, of all or any part of the Obligations or the failure of the Grantor to observe or perform any obligation, covenant, term, provision or condition contained in this Agreement, the Lender may, but shall not be obligated to, perform any or all of such obligations, covenants, terms, provisions or conditions, and the Grantor shall pay to the Lender, forthwith upon written demand therefor, an amount equal to the expense incurred by the Lender in so doing plus interest thereon from the date such expense is incurred

until it is paid at the rate of 3% per annum over the Prime Rate of The Bank of Nova Scotia from time to time in effect. The "Prime Rate" means the variable per annum reference rate of interest announced and adjusted by The Bank of Nova Scotia from time to time for loans made in Canada by the Lender in Canadian dollars.

- 5.3 The Lender may grant extensions of time and other indulgences, take and give up security, accept compositions, compound, compromise, settle, grant releases and discharges and otherwise deal with the Grantor, debtors of the Grantor, sureties and others and with Intellectual Property Collateral and other security as the Lender may see fit without prejudice to the liability of the Grantor or the Lender's right to hold and realize the security interest granted hereunder.
- 5.4 The Lender shall have the right, but shall in no way be obligated, to bring suit in its own name to protect or enforce the Intellectual Property, and if the Lender shall commence any such suit, the Grantor shall, at the request of the Lender, do any and all lawful acts and execute any and all proper documents required by the Lender in aid of such protection or enforcement.
- 5.5 No delay or omission by the Lender in exercising any right or remedy hereunder or with respect to any Obligations shall operate as a waiver thereof or of any other right or remedy, and no single or partial exercise thereof shall preclude any other or further exercise thereof or the exercise of any other right or remedy. Furthermore, the Lender may remedy any default by the Grantor with respect to all or any part of the Obligations or any obligation, covenant, term, provision or condition contained in this Agreement, any other agreement between the Grantor and the Lender, in any manner without waiving the default remedied and without waiving any other prior or subsequent default by the Grantor. All rights and remedies of the Lender granted or recognized herein are cumulative and may be exercised at any time and from time to time independently or in combination.
- 5.6 The Grantor waives protest of any instrument or document constituting the Intellectual Property Collateral at any time held by the Lender on which the Grantor is in any way liable and notice of any other action taken by the Lender.
6. **Security Interest Absolute**
- 6.1 To the extent permitted by law, the security interest and the liability of the Grantor under this Agreement will not be affected:
- (a) by reason of any transaction or arrangement that may take place between the Lender and any other person;

- (b) by reason of the Lender becoming a party to or bound by any compromise, assignment of property, scheme or arrangement, composition of debts or scheme of reconstruction by or relating to any person;
- (c) by the Lender failing or neglecting to recover by the realization of any security or otherwise any of the monies owed hereunder;
- (d) by the release, discharge, abandonment or transfer either in whole or in part and either with or without consideration of any security now or hereafter held by the Lender or otherwise relating to the Obligations or from any other person;
- (e) by reason that the Obligations or any part thereof will have become void or voidable or unenforceable;
- (f) by the liquidation or dissolution of the Grantor;
- (g) by any legal limitation, disability, incapacity, immunity or other matter or circumstances relating to the Grantor;
- (h) by any moratorium or other stay or suspension by statute, order of any court or authority or otherwise of all or any of the Lender's rights, powers or remedies against the Grantor;
- (i) by any other acts, omissions, laches or defaults on the part of the Lender whereby the whole or part of the liability of the Grantor to the Lender would but for this provision have been affected or discharged; or
- (j) by any other reason whatsoever.

7. Use and Protection of Intellectual Property Collateral

- 7.1 Unless and until the Grantor has failed to pay any of the Obligations when due or is in default under any of the provisions of this Agreement, the Grantor may continue to exploit, license, franchise, use, enjoy and protect (whether in Canada or any foreign jurisdiction) the Intellectual Property in the ordinary course of business and the Lender shall from time to time execute and deliver, upon written request of the Grantor, and at the Grantor's sole cost and expense, such instruments, certificates or other documents as may be reasonably necessary to enable the Grantor to do so.

8. Duties of the Grantor

8.1 The Grantor shall have the duty to preserve and maintain all rights in the Intellectual Property so as to enable the Grantor to exercise all rights therein, and to carry on its business and operations in the normal course. Such duties shall include, but not be limited to, the following:

- (a) The Grantor shall take appropriate action at its expense to halt the infringement of any rights in or to the Intellectual Property if such infringement would have a material adverse effect on the value of the Intellectual Property or the ability of the Grantor to use the Intellectual Property; and
- (b) The Grantor shall not amend, modify, terminate or waive any provisions of any contract to which the Grantor is a party in any manner which might have a material adverse effect on the Intellectual Property.

9. Payment of Obligations

9.1 The Grantor will pay promptly when due, all taxes, assessments and governmental charges or levies imposed upon any of the Intellectual Property or in respect of its income or profits therefrom and all claims of any kind, except that no such charge need be paid if (i) such non-payment does not involve any danger of forfeiture or loss of any of the Intellectual Property or any interest therein; and (ii) such charge is adequately reserved against in accordance with and to the extent required by GAAP.

10. Maintenance of Records

10.1 The Grantor will keep and maintain at its own cost and expense satisfactory and complete records of the Intellectual Property Collateral, including, without limitation, a record of all payments received and all credits granted with respect to the Intellectual Property Collateral and all other dealings with the Intellectual Property Collateral. For the Lender's further security, the Grantor agrees that the Lender shall have a special property interest in all of the Grantor's books and records pertaining to the Intellectual Property Collateral, and upon the occurrence and during the continuation of any Event of Default, the Grantor shall deliver and turn over any such books and records to the Lender or its representatives at any time on demand of the Lender. Prior to the occurrence of an Event of Default, and upon reasonable notice from the Lender, the Grantor shall permit any representative of the Lender to inspect such books and records as set forth in section 11.

11. Right of Inspection

- 11.1 Upon reasonable notice to the Grantor (unless default has occurred in payment of any of the Obligations or under any of the provisions of this Agreement), the Lender shall at all times have full and free access during normal business hours to all the books and records and correspondence of the Grantor, and the Lender or its representatives may examine the same, take extracts therefrom and make photocopies thereof, and the Grantor agrees to render to the Lender, at the Grantor's cost and expense, such clerical and other assistance as may be reasonably requested with regard thereto.

12. Address for Notice

- 12.1 Notice to be given under this Agreement shall, except as otherwise specifically provided, be in writing addressed to the party for whom it is intended and, unless the law deems a particular notice to be received earlier, a notice shall not be deemed received until actual receipt thereof by the other party. The addresses of the parties hereto for the purposes hereof shall be the addresses specified beside their respective signatures to this Agreement, or such other mailing or telecopier addresses as each party from time to time may notify the other as aforesaid.

13. Assignment

- 13.1 This Agreement shall be binding upon the parties hereto and their respective successors and assigns, and shall enure to the benefit of the parties hereto and their respective successors and assigns, provided, however, that except as expressly provided herein, the Grantor may not assign its rights or obligations hereunder or in connection herewith or any interest herein, including any right or interest of the Grantor in the Intellectual Property (voluntarily, by operation of law or otherwise) without the prior written consent of the Lender.

14. Further Documentation

- 14.1 The Grantor agrees that at any time and from time to time, at the expense of the Grantor, the Grantor will promptly execute and deliver such further instruments and documents, and take such further action, as may be necessary or desirable, or as the Lender may request, in order to perfect and protect any security interest granted or purported to be granted hereby or to enable the Lender to exercise and enforce the rights and remedies pursuant hereto with respect to any of the Intellectual Property.

15. General Provisions

- 15.1** Save for any schedules which may be added hereto pursuant to the provisions hereof, no modification, variation or amendment of any provision of this Agreement shall be made except by a written agreement, executed by the parties hereto and no waiver of any provision hereof shall be effective unless in writing.
- 15.2** This Agreement and the security afforded hereby is in addition to and not in substitution for any other security now or hereafter held by the Lender and is, and is intended to be a continuing security agreement and shall remain in full force and effect until all Obligations and any extensions or renewals thereof together with interest accruing thereon, shall be performed and paid in full.
- 15.3** The headings used in this Agreement are for convenience only and are not to be considered a part of this Agreement and do not in any way limit or amplify the terms and provisions of this Agreement.
- 15.4** When the context so requires, the singular number shall be read as if the plural were expressed and the provisions hereof shall be read with all grammatical changes necessary dependant upon the person referred to being a male, female, firm or corporation.
- 15.5** The security interest created hereby is intended to attach when this Agreement is signed by the Grantor and delivered to the Lender.
- 15.6** Any rights or remedies given to a party in this Agreement are additional to and not in derogation of any other rights or remedies of that party conferred or implied by law.
- 15.7** (a) This Agreement is governed by and is to be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. With respect to any suit, action or proceeding relating to this Agreement, each of the parties hereby irrevocably submits to the non-exclusive jurisdiction of the courts of the Province of Ontario.
- (b) Each party irrevocably waives any objection to the venue of any legal process on the basis that the process has been brought in an inconvenient forum.
- (c) Each party irrevocably waives any immunity in respect of its obligations under this Agreement that it may acquire from the jurisdiction of any court or any legal process for any reason including, but not limited to, the service of notice, attachment prior to judgment, attachment in aid of execution or execution.

- 15.8 Any provision of, or the application of any provision of this Agreement, or any right, power, authority, discretion or remedy conferred on a party by this Agreement or any applicable law, which is prohibited in any jurisdiction is, in that jurisdiction, ineffective only to the extent of that prohibition. Any provision of, or the application of any provision of this Agreement, which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction.
- 15.9 The Grantor agrees to indemnify the Lender upon demand against any claim, action, damage, loss, liability, cost, charges, expenses, taxes, outgoing or payment which the Lender suffers, incurs or is liable for in respect of the enforcement or preservation or attempted enforcement or preservation of any right, power or remedy of the Lender under this Agreement.
- 15.10 This Agreement may be executed in any number of original or facsimile counterparts, all of which taken together will constitute one and the same instrument, and any of the parties may execute this Agreement by signing any such counterpart.
- 15.11 The parties acknowledge that this Agreement does not limit the obligations or remedies of the Lender and the Grantor to each other under the Credit Agreement or any Credit Document.
- 15.12 The Grantor hereby acknowledges receipt of a copy of this Agreement.


IN WITNESS WHEREOF the parties have executed this Agreement as of the date first above written.

Address for Notice

Ergo Development Corporation
3005 Deziel Drive
Windsor, Ontario
N9A 6P1

Attention: Paul Boucher
Fax No.: (519) 974-6221

**ERGO DEVELOPMENT
CORPORATION**

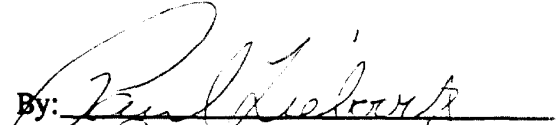
By: 
Name: Paul Boucher
Title: Authorized Signing Officer

Address for Notice

The Bank of Nova Scotia
388 Ouellette Avenue
Windsor, Ontario
N9A 6P1

Attention: D.E.F. Marlatt
Vice-President & Manager
Fax No.: (519) 973-5332

THE BANK OF NOVA SCOTIA

By: 
Name: PAUL LIEBOWITZ
Title: SENIOR MANAGER

4. **Headings**

The headings in this Agreement are for purposes of reference only and shall not in any way limit or otherwise affect the meaning or interpretation of any of the terms hereof.

IN WITNESS WHEREOF the parties have executed this Assignment as of the date first above written.

THE BANK OF NOVA SCOTIA

By: _____
Name:
Title:

[ASSIGNEE]

By: _____
Name:
Title:

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