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U.S. DEPARTMENT OF COMMERCE  
Patent and Trademark Office

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03-02-1999



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U.S. Patent & TMO/TM Mail Rpt D: #47

missione

the attached original documents or copy thereof.

1. Name of conveying party(ies):  
ARBILL INDUSTRIES, INC.

Individual(s)                       Association  
 General Partnership               Limited Partnership  
 Corporation-State PENNSYLVANIA  
 Other \_\_\_\_\_

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

2. Name and address of receiving party(ies)  
Name: PNC BANK, NATIONAL ASSOCIATION

Internal Address: \_\_\_\_\_

Street Address: 1600 MARKET STREET

City: PHILADELPHIA State: PA ZIP: 19103

Individual(s) citizenship \_\_\_\_\_  
 Association \_\_\_\_\_  
 General Partnership \_\_\_\_\_  
 Limited Partnership \_\_\_\_\_  
 Corporation-State \_\_\_\_\_  
 Other BANKING ASSOCIATION

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

3. Nature of conveyance:

Assignment                               Merger  
 Security Agreement                       Change of Name  
 Other \_\_\_\_\_

Execution Date: 02/15/99

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

A. Trademark Application No.(s)

B. Trademark Registration No.(s)  
2,061,177

Additional numbers attached?  Yes  No

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

Name: AMY LEE BRADY

Internal Address: CSC

Street Address: 80 STATE STREET, 6TH FL.

City: ALBANY State: NY ZIP: 12207

6. Total number of applications and registrations involved: ..... 1

7. Total fee (37 CFR 3.41).....\$ 40.00

Enclosed  
 Authorized to be charged to deposit account

8. Deposit account number: \_\_\_\_\_

(Attach duplicate copy of this page if paying by deposit account)

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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.

AMY LEE BRADY  
Name of Person Signing

*Amy L Brady*  
Signature

3/1/99  
Date

Total number of pages including cover sheet, attachments, and document: 12

## TRADEMARK SECURITY AGREEMENT

This Trademark Security Agreement ("Agreement"), dated January 11, 1999, is made by ARBILL INDUSTRIES, INC.,\*a Pennsylvania corporation ("Borrower") and delivered to PNC BANK, NATIONAL ASSOCIATION, AS AGENT ("Agent").\*\*

### Background

A. This Agreement is being executed contemporaneously with that certain Amended and Restated Revolving Credit Term Loan and Security Agreement, of even date herewith, between Agent and Borrower (as amended, supplemented or replaced from time to time, the "Loan Agreement"), under which Borrower is granting Agent a lien on and security interest in certain assets of Borrower associated with or relating to services or products sold under Borrower's trademarks and the goodwill associated therewith, and under which Agent is entitled to foreclose or otherwise deal with such assets under the terms and conditions set forth therein. Capitalized terms not defined herein shall have the meanings given to such terms in the Loan Agreement.

B. Borrower has adopted, used and is using (or has filed applications for the registration of) the trademarks, servicemarks and tradenames listed on Schedule "A" attached hereto and made part hereof (all such marks or names hereinafter referred to as the "Trademarks").

C. Pursuant to the Loan Agreement, Agent is acquiring a lien on, security interest in and a license to use the Trademarks and the registration thereof, together with all the goodwill of Borrower associated therewith and represented thereby, as security for all of Borrower's Obligations (as defined in the Loan Agreement), and Agent desires to have its security interest in such Trademarks confirmed by a document identifying same and in such form that it may be recorded in the United States Patent and Trademark Office.

NOW THEREFORE, with the foregoing background hereinafter deemed incorporated by reference and made a part hereof, and in consideration of the premises and mutual promises herein contained, the parties hereto, intending to be legally bound hereby, covenant and agree as follows:

1. In consideration of and pursuant to the terms of the Loan Agreement, and for other good, valuable and sufficient consideration, the receipt of which is hereby acknowledged, and to secure Borrower's Obligations, Borrower grants to Agent a lien on and security interest in all of Borrower's present and future right, title and interest in and to the Trademarks, together with all the goodwill of Borrower associated with and represented by the Trademarks, and the registration thereof and the right (but not the obligation) to sue for past, present and future

\*10450 Drummond Rd., Phila. PA 19154

\*\*1600 Market St., Phila. PA 19103

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infringements, and the proceeds thereof, including, without limitation, license royalties and proceeds of infringement suits.

2. Borrower hereby covenants and agrees to maintain the Trademarks in full force and effect until all of Borrower's Obligations are satisfied in full.

3. Borrower represents, warrants and covenants to Agent that:

(a) The Trademarks are subsisting and have not been adjudged invalid or unenforceable;

(b) All of the Trademarks are registered, valid and enforceable;

(c) To Borrower's knowledge, Borrower is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each of the Trademarks, and each of the Trademarks is free and clear of any liens, charges and encumbrances including, without limitation, pledges, assignments, licenses (other than to Agent hereunder) and covenants by Borrower not to sue third persons;

(d) Borrower has the unqualified right, power and authority to enter into this Agreement and perform its terms;

(e) Borrower has complied with, and will continue for the duration of this Agreement to comply with the requirements set forth in 15 U.S.C. §1051-1127 and any other applicable statutes, rules and regulations in connection with its use of the Trademarks except where failure to comply would not have a material adverse effect on Borrower or its Property; and

(f) Borrower has used and will continue to use for the duration of this Agreement, consistent standards of quality in services or products leased or sold under the Trademarks and hereby grants to Agent and its employees and agents the right (with no obligation of any kind upon Agent to do so) to visit Borrower's affiliates, franchises or management locations and to inspect the use of the Trademarks and quality control records relating thereto at reasonable times during regular business hours to ensure Borrower's compliance with this paragraph 3(f).

4. Borrower further covenants that:

(a) Until all the Borrower's Obligations have been satisfied in full, Borrower will not enter into any agreement, including, without limitation, license agreements or options,

which are inconsistent with Borrower's obligations under this Agreement, Borrower obligations under the Loan Agreement or which restrict or impair Agent's rights hereunder.

(b) If Borrower acquires rights to any new Trademarks, the provisions of this Agreement shall automatically apply thereto and such trademarks shall be deemed part of the Trademarks. Borrower shall give Agent prompt written notice thereof along with an amended Schedule "A."

5. So long as this Agreement is in effect and so long as Borrower has not received notice from Agent that an Event of Default has occurred and is continuing under the Loan Agreement and that Agent has elected to exercise its rights hereunder (i) Borrower shall continue to have the exclusive right to use the Trademarks; and (ii) Agent shall have no right to use the Trademarks or issue any exclusive or non-exclusive license with respect thereto, or assign, pledge or otherwise transfer title in the Trademarks to anyone else.

6. Borrower agrees not to sell, license, grant any option, assign or further encumber its rights and interest in the Trademarks to any entity or person without the prior written consent of Agent.

7. Anything herein contained to the contrary notwithstanding, if and while Borrower shall be in default hereunder or an Event of Default exists under the Loan Agreement, Borrower hereby covenants and agrees that Agent, as the holder of a security interest under the Uniform Commercial Code, as now or hereafter in effect in Pennsylvania, may take such action permitted hereunder, in its exclusive discretion, to foreclose upon the Trademarks covered hereby. For such purposes, and in the event of Borrower's default hereunder or an Event of Default under the Loan Agreement and while such default or Event of Default exists, Borrower hereby authorizes and empowers Agent to make, constitute and appoint any officer or agent of Agent as Agent may select, in its exclusive discretion, as Borrower's true and lawful attorney-in-fact, with the power to endorse Borrower's name on all applications, documents, papers and instruments necessary for Agent to use the Trademarks or to grant or issue any exclusive or non-exclusive license under the Trademarks to anyone else, or necessary for Agent to assign, pledge, convey or otherwise transfer title in or dispose of the Trademarks to anyone else including, without limitation, the power to execute a trademarks assignment in the form attached hereto as Exhibit 1. Borrower hereby ratifies all that such attorney or agent shall lawfully do or cause to be done by virtue hereof, except for the gross negligence or wilful misconduct of such attorney or agent. This power of attorney shall be irrevocable for the life of this Agreement, the Loan Documents, and until all Borrower's Obligations are indefeasibly paid and satisfied in full.

8. This Agreement shall be subject to the terms, provisions, and conditions set forth in the Loan Agreement and may not be modified without the written consent of the party against whom enforcement is being sought.

9. All rights and remedies herein granted to Agent shall be in addition to any rights and remedies granted to Agent under the Loan Documents. In the event of an inconsistency between this Agreement and Loan Agreement, the language of this Agreement shall control.

10. Upon Borrower's performance of all of the obligations under the Loan Documents and full and unconditional satisfaction of all of the Borrower's Obligations, Agent shall execute and deliver to Borrower all documents reasonably necessary to terminate Agent's security interest in the Trademarks.

11. Any and all reasonable fees, costs and expenses, of whatever kind or nature, including the reasonable attorneys' fees and legal expenses incurred by Agent in connection with the preparation of this Agreement and all other documents relating hereto and the consummation of this transaction, the filing or recording of any documents (including all taxes in connection therewith) in public offices, the payment or discharge of any taxes, reasonable counsel fees, maintenance fees, encumbrances or costs otherwise incurred in protecting, maintaining, preserving the Trademarks, or in defending or prosecuting any actions or proceedings arising out of or related to the Trademarks, in each case in accordance with the terms of this Agreement, shall be borne and paid by Borrower on demand by Agent and until so paid shall be added to the principal amount of Borrower's Obligations to Agent and shall bear interest at the rate prescribed in the Loan Agreement for the Revolving Credit.

12. Subject to the terms of the Loan Agreement, Borrower shall have the duty to prosecute diligently any application and/or registration with respect to the Trademarks pending as of the date of this Agreement or thereafter, until Borrower's Obligations shall have been satisfied in full, to preserve and maintain all rights in the Trademarks, and upon reasonable request of Agent, Borrower shall make federal application on registerable but unregistered Trademarks belonging to Borrower and licensed to Borrower. Any reasonable expenses incurred in connection with such applications shall be borne exclusively by Borrower. Borrower shall not abandon any Trademarks without the prior written consent of the Agent, which consent shall not be unreasonably withheld.

13. Borrower shall have the right to bring suit in its own name to enforce the Trademarks, in which event Agent may, if Borrower reasonably deems it necessary, be joined as a nominal party to such suit if Agent shall have been satisfied, in its sole discretion, that it is not thereby incurring any risk of liability because of such joinder. Borrower shall promptly, upon demand, reimburse and indemnify Agent for all damages, costs and expenses, including reasonable attorneys' fees and costs, incurred by Agent in the fulfillment of the provisions of this paragraph.

14. Upon the occurrence of an Event of Default under the Loan Agreement or hereunder, Agent may, without any obligation to do so, complete any obligation of Borrower hereunder, in Borrower's name or in Agent's name, but at the expense of Borrower, and

Borrower hereby agrees to reimburse Agent in full for all expenses, including, without limitation, all attorneys' fees incurred by Agent in protecting, defending and maintaining the Trademarks.

15. No course of dealing between Borrower and Agent, nor any failure to exercise, nor any delay in exercising, on the part of Agent, any right, power or privilege hereunder, shall operate as a waiver thereof, and all of Agent's rights and remedies with respect to the Trademarks, whether established hereby or by the Loan Documents, or by any other future agreements between Borrower and Agent or by law, shall be cumulative and may be exercised singularly or concurrently.

16. The provisions of this Agreement are severable and the invalidity or unenforceability of any provision herein shall not affect the remaining provisions which shall continue unimpaired and in full force and effect.

17. This Agreement shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the parties.

18. This Agreement shall be governed by and construed in conformity with the laws of the Commonwealth of Pennsylvania, without regard to its otherwise applicable principles of conflicts of laws.

19. Borrower agrees to the jurisdiction of the State and Federal Courts located in Eastern District of Pennsylvania and to service by certified mail, return receipt requested at the address of the Borrower.

20. BORROWER AND AGENT EACH WAIVES ANY AND ALL RIGHTS EITHER MAY HAVE TO A JURY TRIAL ARISING IN CONNECTION WITH ANY PROCEEDING OR CONTROVERSY RELATING TO THIS AGREEMENT OR ANY OTHER AGREEMENT BETWEEN BORROWER AND AGENT.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

**ARBILL INDUSTRIES, INC.**

By: 

Name: *Stephen G. O'Connell*

Title: *VP Legal*

Approved and accepted:

**PNC BANK, NATIONAL ASSOCIATION,  
AS AGENT**

By: 

Frank Phillips  
Vice President

CORPORATE ACKNOWLEDGMENT

UNITED STATES OF AMERICA :  
STATE OF PENNA : SS  
COUNTY OF PHILA :

On this 15<sup>th</sup> day of FEBRUARY 1999, before me personally appeared SANFORD K PEARL, who being duly sworn, deposes and says that he/she is the CFO of ARBILL INDUSTRIES INC, the corporation described in the foregoing document, that he/she in such capacity as officer of said corporation is authorized to execute on behalf of the said corporation the foregoing document for the purposes contained therein, and that, he/she is the person whose name and signature is subscribed to the foregoing document.

Evelyn M Coady  
Notary Public

My commission expires

Notarial Seal  
Evelyn M. Coady, Notary Public  
Philadelphia, Philadelphia County  
My Commission Expires June 29, 2001



SCHEDULE A  
Trademarks

REGISTERED TRADEMARKS		
Trademark/Service Mark	Registration Number	Registration Date
ARBILL	2,061,177	5/13/97

**EXHIBIT 1**  
**Trademark Assignment**

WHEREAS, ARBILL INDUSTRIES, INC., a Pennsylvania corporation ("Grantor") is the registered owner of the United States trademarks, tradenames and registrations listed on Schedule A attached hereto and made a part hereof (the "Trademarks"), which are registered in the United States Patent and Trademark Office; and

WHEREAS, \_\_\_\_\_ ("Grantee") having a place of business at \_\_\_\_\_ is desirous of acquiring said Trademarks;

NOW THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, and intending to be legally bound hereby, Grantor, its successors and assigns, does hereby transfer, assign and set over unto Grantee, its successors, transferees and assigns, all of its present and future right, title and interest in and to the Trademarks and all proceeds thereof and all goodwill associated therewith. No rights or duties of any kind are intended to be granted or conferred upon Grantee unless and until this Trademark Assignment is recorded with the United States Patent and Trademark Office.

IN WITNESS WHEREOF, the undersigned has caused this Trademark Assignment to be executed as of the \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

Witness: \_\_\_\_\_

By: \_\_\_\_\_  
As Attorney-in-fact

CORPORATE ACKNOWLEDGMENT

UNITED STATES OF AMERICA :  
STATE OF \_\_\_\_\_ : SS  
COUNTY OF \_\_\_\_\_ :

On this \_\_\_ day of \_\_\_\_\_, 1999, before me personally appeared \_\_\_\_\_, who being duly sworn, deposes and says that he/she is the \_\_\_\_\_ of \_\_\_\_\_, the corporation described in the foregoing document, that he/she in such capacity as officer of said corporation is authorized to execute on behalf of the said corporation the foregoing document for the purposes contained therein, and that, he/she is the person whose name and signature is subscribed to the foregoing document.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

SCHEDULE A  
Trademarks

REGISTERED TRADEMARKS		
Trademark/Service Mark	Registration Number	Registration Date
ARBILL	2,061,177	5/13/97