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05-03-1999

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

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



101026344

4-21-99

RECORDATION FORM COVER SHEET  
TRADEMARKS ONLY

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

Submission Type

- New
- Resubmission (Non-Recordation)  
Document ID #
- Correction of PTO Error  
Reel #  Frame #
- Corrective Document  
Reel #  Frame #

Conveyance Type

- Assignment  License
- Security Agreement  Nunc Pro Tunc Assignment
- Merger  Effective Date  
Month Day Year
- Change of Name
- Other

Conveying Party

Mark if additional names of conveying parties attached

Name  Execution Date  
Month Day Year

Formerly  First Amendment  
dated 01291999

- Individual  General Partnership  Limited Partnership  Corporation  Association
- Other
- Citizenship/State of Incorporation/Organization

Receiving Party

Mark if additional names of receiving parties attached

Name

DBA/AKA/TA

Composed of

Address (line 1)

Address (line 2)

Address (line 3)

City State/Country Zip Code

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

04/29/1999 JSHBAZZ 00000059 333574

FOR OFFICE USE ONLY

01 FC:481  
02 FC:482

40.00 OP  
25.00 OP

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

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

TRADEMARK  
REEL: 1890 FRAME: 0711

**Domestic Representative Name and Address**

Enter for the first Receiving Party only.

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

**Correspondent Name and Address**

Area Code and Telephone Number

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

**Pages**

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

#

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

Mark if additional numbers attached

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

Trademark Application Number(s)

Registration Number(s)

<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="333574"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="1048116"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

**Number of Properties**

Enter the total number of properties involved.

#

**Fee Amount**

Fee Amount for Properties Listed (37 CFR 3.41):

\$

Method of Payment:

Enclosed

Deposit Account

Deposit Account

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

Deposit Account Number:

#

Authorization to charge additional fees:

Yes

No

**Statement and Signature**

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

Betty G. Smith



4/20/99

Name of Person Signing

Signature

Date Signed

# INTELLECTUAL PROPERTY SECURITY AGREEMENT

This INTELLECTUAL PROPERTY SECURITY AGREEMENT ("Agreement"), dated as of September 21, 1994, made by SHEPHERD TISSUE, INC., a Delaware corporation having an office at 400 Mahannah Avenue, Memphis, Tennessee 38107 ("Pledgor"), in favor of NATIONSBANK OF NORTH CAROLINA, N.A. having an office at NationsBank Corporate Center, 8th floor, 100 North Tryon Street, Charlotte, North Carolina 28255, as pledgee, assignee and secured party, and in its capacity as collateral agent (in such capacity and together with any successors in such capacity, "Collateral Agent") for the lending institutions (the "Banks") under the Credit Agreement (as hereinafter defined).

## R E C I T A L S :

A. Pursuant to a certain credit agreement dated as of the date hereof (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Credit Agreement"; unless otherwise defined herein, capitalized terms used herein have the meanings assigned to them in the Credit Agreement) by and among Pledgor, Shepherd Holdings, Inc., the Banks, NationsBank, as Administrative Agent, and NationsBank and Banque Indosuez, New York Branch, as Co-Agents for the Banks, the Banks have agreed (i) to make to or for the account of Pledgor certain Term Loans up to an aggregate principal amount of \$55,000,000 and certain Revolving Loans up to an aggregate principal amount of \$15,000,000 and (ii) to issue certain Letters of Credit for the account of Pledgor.

B. It is contemplated that Pledgor may, at its option, enter into one or more Interest Rate Agreements with one or more of the Banks regarding the interest rates with respect to Loans under the Credit Agreement (all obligations of Pledgor now existing or hereafter arising under any Interest Rate Agreement between Pledgor and a Bank, collectively, the "Interest Rate Obligations").

C. Pledgor is the owner of the Pledged Collateral (as hereinafter defined).

D. It is a condition to the obligations of the Banks to make the Loans under the Credit Agreement and a condition to any Bank issuing Letters of Credit under the Credit Agreement or entering into Interest Rate Agreements that

Pledgor execute and deliver the applicable Credit Documents, including this Agreement.

E. This Agreement is given by Pledgor in favor of Collateral Agent for its benefit and the benefit of the Banks, the Administrative Agent and the Co-Agents (collectively, the "Secured Parties") to secure the payment and performance of all of the Secured Obligations (as defined in Section 2).

A G R E E M E N T :

NOW, THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Pledgor and Collateral Agent hereby agree as follows:

Section 1. Pledge. As collateral security for the payment and performance when due of all the Secured Obligations, Pledgor hereby pledges, assigns, transfers and grants to Collateral Agent for its benefit and the benefit of the Secured Parties, a continuing first priority security interest in and to all of the right, title and interest of Pledgor in, to and under the following property, whether now existing or hereafter acquired (collectively, the "Pledged Collateral"):

(i) Patents issued or assigned to and all patent applications made by Pledgor, including, without limitation, the patents and patent applications listed on Schedule A hereto, along with any and all (A) inventions and improvements described and claimed therein, (B) reissues, divisions, continuations, extensions and continuations-in-part thereof, (C) income, royalties, damages, claims and payments now and hereafter due and/or payable under and with respect thereto, including, without limitation, damages and payments for past or future infringements thereof, and (D) rights to sue for past, present and future infringements thereof (collectively, the "Patents");

(ii) Trademarks (including service marks), federal and state trademark registrations and applications made by Pledgor, common law trademarks and trade names owned by or assigned to Pledgor and all registrations and applications for the foregoing, including, without limitation, the registrations and applications listed on Schedule B hereto, along with any and all (A) renewals thereof, (B) income, royalties, damages and payments now and hereafter due

and/or payable with respect thereto, including, without limitation, damages, claims and payments for past or future infringements thereof, and (C) rights to sue for past, present and future infringements thereof (collectively, the "Trademarks");

(iii) Copyrights, owned by or assigned to Pledgor, including, without limitation, the registrations and applications listed on Schedule C hereto, along with any and all (A) renewals and extensions thereof, (B) income, royalties, damages, claims and payments now and hereafter due and/or payable with respect thereto, including, without limitation, damages and payments for past, present or future infringements thereof, and (C) rights to sue for past, present and future infringements thereof (collectively, the "Copyrights");

(iv) License agreements and covenants not to sue with any other party with respect to any Patent, Trademark, or Copyright listed on Schedule D hereto, along with any and all (A) renewals, extensions, supplements and continuations thereof, (B) income, royalties, damages, claims and payments now and hereafter due and/or payable to Pledgor with respect thereto, including, without limitation, damages and payments for past, present or future breaches thereof; (C) rights to sue for past, present and future breaches thereof and (D) any other rights to use, exploit or practice any or all of the Patents, Trademarks or Copyrights (collectively, the "Licenses");

(v) the entire goodwill of Pledgor's business and other general intangibles (including, know-how (including, without limitation, the know-how listed on Schedule E hereto), trade secrets, customer lists, proprietary information, inventions, methods, procedures and formulae) connected with the use of and symbolized by the Trademarks of Pledgor; and

(vi) all Proceeds (as defined under the Uniform Commercial Code as in effect in any relevant jurisdiction (the "UCC") or under any other relevant law) of any of the foregoing, and in any event, including, without limitation, any and all (i) proceeds of any insurance (except payments made to a Person which is not a party to this Agreement), indemnity, warranty or guarantee payable to Collateral Agent or to Pledgor from time to time with respect to any of the Pledged Collateral, (ii) payments (in any form whatsoever) made or due and payable to

Pledgor from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the Pledged Collateral by any Governmental Authority (as hereinafter defined) (or any person acting under color of a Governmental Authority), (iii) instruments representing amounts receivable in respect of any Patents, Trademarks or Copyrights, (iv) products of the Pledged Collateral and (v) other amounts from time to time paid or payable under or in connection with any of the Pledged Collateral.

Section 2. Secured Obligations. This Agreement secures, and the Pledged Collateral is collateral security for, the payment and performance in full when due, whether at stated maturity, by acceleration or otherwise (including, without limitation, the payment of interest and other amounts which would accrue and become due but for the filing of a petition in bankruptcy or the operation of the automatic stay under Section 362(a) of the Bankruptcy Code, 11 U.S.C. § 362(a)), of (i) all Obligations of Pledgor now existing or hereafter arising under or in respect of the Credit Agreement and all Interest Rate Obligations of Pledgor now existing or hereafter arising under or in respect of any Interest Rate Agreement with one or more of the Banks (including, without limitation, Pledgor's obligations to pay principal, interest and all other charges, fees, expenses, commissions, reimbursements, premiums, indemnities and other payments related to or in respect of the Obligations contained in the Credit Agreement and the obligations contained in any Interest Rate Agreement with one or more of the Banks) and (ii) without duplication of the amounts described in clause (i), all Obligations of Pledgor now existing or hereafter arising under or in respect of this Agreement or the other Security Documents, including, without limitation, all charges, fees, expenses, commissions, reimbursements, premiums, indemnities and other payments related to or in respect of the Obligations contained in this Agreement or in any other Security Document (the obligations described in clauses (i) and (ii), collectively, the "Secured Obligations").

Section 3. No Release. Nothing set forth in this Agreement shall relieve Pledgor from the performance of any term, covenant, condition or agreement on Pledgor's part to be performed or observed under or in respect of any of the Pledged Collateral or from any liability to any Person under or in respect of any of the Pledged Collateral or shall impose any obligation on Collateral Agent or any Secured Party to perform or observe any such term, covenant, condition or agreement on Pledgor's part to be so performed or observed or shall impose

any liability on Collateral Agent or any Secured Party for any act or omission on the part of Pledgor relating thereto or for any breach of any representation or warranty on the part of Pledgor contained in this Agreement, any Interest Rate Agreement or any other Credit Document, or under or in respect of the Pledged Collateral or made in connection herewith or therewith. The obligations of Pledgor contained in this Section 3 shall survive the termination of this Agreement and the discharge of Pledgor's other obligations under this Agreement, any Interest Rate Agreement and under the other Credit Documents.

Section 4. Use and Pledge of Pledged Collateral.

Unless an Event of Default shall have occurred and be continuing, Collateral Agent shall from time to time execute and deliver, upon written request of Pledgor and at Pledgor's sole cost and expense, any and all instruments, certificates or other documents, in the form so requested, necessary or appropriate in the reasonable judgment of Pledgor to enable Pledgor to continue to exploit, license, use, enjoy and protect the Pledged Collateral throughout the world. Pledgor and Collateral Agent acknowledge that this Agreement is intended to grant to Collateral Agent for the benefit of the Secured Parties a security interest in and Lien upon the Pledged Collateral and shall not constitute or create a present assignment of the Pledged Collateral.

Section 5. Supplements; Further Assurances. (a)

Pledgor agrees that at any time and from time to time, it will execute and, at its sole cost and expense, file and refile, or permit Collateral Agent to file and refile, such financing statements, continuation statements and other documents (including, without limitation, this Agreement), in such offices (including, without limitation, the United States Patent and Trademark Office and the United States Copyright Office) as Collateral Agent may reasonably deem necessary or appropriate, wherever required or permitted by law in order to perfect and preserve the rights and interests granted to Collateral Agent hereunder.

(b) Pledgor hereby authorizes Collateral Agent, without relieving Pledgor of any obligations hereunder, to file financing statements, continuation statements, amendments thereto and other documents, relative to all or any part thereof, without the signature of Pledgor where permitted by law, and Pledgor agrees to do such further acts and things, and to execute and deliver to Collateral Agent such additional assignments, agreements, powers and instruments, as Collateral Agent may require to carry into effect the purposes of this

Agreement or better to assure and confirm unto Collateral Agent its respective rights, powers and remedies hereunder. Pledgor shall, upon the request of Collateral Agent, and hereby authorizes Collateral Agent to, take any and all such actions as may reasonably be deemed necessary or advisable by Collateral Agent to perfect and preserve the rights and interests granted to Collateral Agent with respect to the Pledged Collateral. All of the foregoing shall be at the sole cost and expense of Pledgor.

Section 6. Representations and Warranties of the Pledgor. (a) Pledgor hereby represents and warrants as follows:

(i) Necessary Filings. Upon filing and the acceptance thereof in the appropriate offices under the UCC and in the United States Patent and Trademark Office and the United States Copyright Office, the security interest granted to Collateral Agent for the benefit of the Secured Parties pursuant to this Agreement in and to the Pledged Collateral constitutes and hereafter will constitute a valid and duly perfected security interest in the Pledged Collateral subject to no Liens.

(ii) No Liens. Pledgor is, and as to Pledged Collateral acquired by it from time to time after the date hereof will be unless otherwise permitted hereunder, the sole and exclusive owner or, as applicable, licensee of the Pledged Collateral free from any Lien or other right, title or interest of any Person other than the Lien granted by this Agreement. Pledgor shall defend the Pledged Collateral against all claims and demands of all Persons at any time claiming any interest therein adverse to Collateral Agent or any Secured Party.

(iii) Other Financing Statements. There is no financing statement (or similar statement or instrument of registration under the law of any jurisdiction) covering or purporting to cover any interest of any kind in the Pledged Collateral and so long as the Secured Obligations remain unpaid, Pledgor shall not execute or authorize to be filed in any public office any financing statement (or similar statement or instrument of registration under the law of any jurisdiction) or statements relating to the Pledged Collateral, except, in each case, financing statements filed or to be filed in respect of and covering the security interests granted by Pledgor pursuant to this Agreement.

(iv) Authorization; Enforceability. Pledgor has full corporate power, authority and legal right to pledge and grant



a security interest in all the Pledged Collateral pursuant to this Agreement, and this Agreement constitutes the legal, valid and binding obligation of Pledgor, enforceable against Pledgor in accordance with its terms.

(v) No Consents, etc. Except for the filings contemplated in Section 6(a)(i) above and assignment instruments that may be required to be filed with the United States Patent and Trademark Office and/or the United States Copyright Office in connection with or as a condition to the exercise by Collateral Agent of its remedies hereunder, no authorization, consent, approval, license, qualification or formal exemption from, nor any filing, declaration or registration with, any court, governmental agency or regulatory authority, or with any securities exchange or any other Person is required in connection with (x) the execution, delivery or performance by Pledgor of this Agreement, (y) the assignment of, and the grant of a Lien (including the priority thereof) in, the Pledged Collateral by Pledgor in the manner and for the purpose contemplated by this Agreement or (z) the exercise of the rights and remedies of Collateral Agent and the Secured Parties created hereby.

(vi) No Claims. Pledgor owns or has rights to use all the Pledged Collateral and all rights with respect to any of the foregoing used in, necessary for or material to Pledgor's business as currently conducted and as contemplated to be conducted pursuant to the Credit Documents. To Pledgor's knowledge, the use by Pledgor of such Pledged Collateral and all such rights with respect to the foregoing does not infringe on the rights of any Person. No claim has been made and remains outstanding that Pledgor's use of the Pledged Collateral does or may violate the rights of any third person.

(vii) Pledged Collateral. Pledgor represents and warrants to Collateral Agent that Schedules A, B, C, D and E hereto, respectively, are true, accurate and complete lists as of the date hereof of all issued, registered or applied for Patents, Trademarks, Copyrights, Licenses and all know-how owned by Pledgor.

#### Section 7. Covenants Concerning Pledged Collateral.

(a) Protection of Collateral Agent's Security. On a continuing basis, Pledgor will, at the sole cost and expense of Pledgor, make, execute, acknowledge and deliver, and file and record in the proper filing and recording offices, all such instruments or documents, including, without limitation,

appropriate financing and continuation statements and collateral agreements, and take all such action as may reasonably be deemed necessary by Collateral Agent to carry out the intent and purposes of this Agreement, to assure and confirm to Collateral Agent the grant or perfection of a first priority security interest in the Pledged Collateral for the benefit of the Secured Parties, and to enable Collateral Agent to exercise and enforce its rights and remedies hereunder with respect to any Pledged Collateral. Without limiting the generality of the foregoing, Pledgor (i) will not enter into any agreement that would impair or conflict with Pledgor's obligations hereunder; (ii) will, from time to time, upon Collateral Agent's request, cause its books and records to be marked with such legends or segregated in such manner as Collateral Agent may reasonably specify and take or cause to be taken such other action and adopt such procedures as Collateral Agent may reasonably specify to give notice to or to perfect the security interest in the Pledged Collateral intended to be conveyed hereby; (iii) will, promptly following its becoming aware thereof, notify Collateral Agent of (A) any adverse determination in any proceeding in the United States Patent and Trademark Office or the United States Copyright Office with respect to any Patent, Trademark or Copyright, or (B) the institution of any proceeding or any adverse determination in any federal, state or local court or administrative bodies regarding Pledgor's claim of ownership in or right to use any of the Pledged Collateral, its right to register the Pledged Collateral, or its right to keep and maintain such registration in full force and effect; (iv) will maintain and protect the Pledged Collateral necessary for the operation of Pledgor's business; (v) will not permit to lapse or become abandoned any Pledged Collateral necessary for the operation of Pledgor's business, and will not settle or compromise any pending or future litigation or administrative proceeding with respect to the Pledged Collateral necessary for the operation of Pledgor's business, in each case, without the consent of Collateral Agent; (vi) upon Pledgor obtaining knowledge thereof, will promptly notify Collateral Agent in writing of any event which may reasonably be expected to adversely affect the value or utility of the Pledged Collateral or any portion thereof necessary for the operation of Pledgor's business, the ability of Pledgor or Collateral Agent to dispose of the Pledged Collateral or any portion thereof or the rights and remedies of Collateral Agent in relation thereto including, without limitation, a levy or threat of levy or any legal process against the Pledged Collateral or any portion thereof; (vii) will not license the Pledged Collateral other than licenses entered into by Pledgor in, or incidental to, the ordinary course of business, or amend or permit the amendment

of any of the licenses in a manner that adversely affects in any material respect the right to receive payments thereunder, or in any manner that would impair the value of the Pledged Collateral or the Lien on the Pledged Collateral intended to be granted to Collateral Agent for the benefit of Secured Parties without the consent of Collateral Agent; (viii) until Collateral Agent exercises its rights to make collection, will diligently keep adequate records respecting the Pledged Collateral; (ix) will furnish to Collateral Agent from time to time statements and amended schedules further identifying and describing the Pledged Collateral and such other materials evidencing or reports pertaining to the Pledged Collateral as Collateral Agent may from time to time reasonably request, all in reasonable detail; (x) will pay when due any and all taxes, levies, maintenance fees, charges, assessments, license fees and similar taxes or impositions payable in respect of each item of Pledged Collateral; and (xi) will comply with all laws, rules and regulations applicable to the Pledged Collateral the failure to comply with which would have an adverse effect on the value or use of the Pledged Collateral or an adverse effect on the Lien on the Pledged Collateral granted to the Collateral Agent hereunder.

(b) After-Acquired Property. If, before the Secured Obligations shall have been paid and satisfied in full, Pledgor shall (i) obtain any rights to any additional Pledged Collateral or (ii) become entitled to the benefit of any additional Pledged Collateral or any renewal or extension thereof, including any reissue, division, continuation, or continuation-in-part of any Patent, or any improvement on any Patent, the provisions of this Agreement shall automatically apply thereto and any such item enumerated in clause (i) or (ii) with respect to Pledgor shall automatically constitute Pledged Collateral if such would have constituted Pledged Collateral at the time of execution of this Agreement, and be subject to the Lien created by this Agreement without further action by any party other than actions required to perfect such Lien. Pledgor shall promptly provide to Collateral Agent written notice of any of the foregoing. Pledgor agrees, promptly following the written request by Collateral Agent, to confirm the attachment of the Lien created by this Agreement to any rights described in clauses (i) and (ii) above if such would have constituted Pledged Collateral at the time of execution of this Agreement by execution of an instrument in form reasonably acceptable to Collateral Agent.

(c) Modifications. Pledgor authorizes Collateral Agent to modify this Agreement by amending Schedules A, B, C, D

and/or E annexed hereto to include any future Pledged Collateral of Pledgor, including, without limitation, any of the items listed in Section 7(b).

(d) Applications. Pledgor shall file and prosecute diligently all applications for the Patents, the Trademarks or the Copyrights now or hereafter pending that would be necessary to the businesses of Pledgor to which any such applications pertain, and shall do all acts necessary to preserve and maintain all rights in the Pledged Collateral necessary for the operation of Pledgor's business. Any and all costs and expenses incurred in connection with any such actions shall be borne by Pledgor. Pledgor shall not abandon any right to file a Patent or Trademark or Copyright application, or any pending Patent, Trademark or Copyright application or any Patent, Trademark or Copyright necessary for the operation of Pledgor's business without the consent of Collateral Agent.

Section 8. Transfers and Other Liens. Except in accordance with the Credit Agreement, Pledgor shall not (i) sell, convey, assign or otherwise dispose of, or grant any option with respect to, any of the Pledged Collateral other than licenses entered into by Pledgor in, or incidental to, the ordinary course of business or (ii) create or permit to exist any Lien upon or with respect to any of the Pledged Collateral, other than the Lien granted to Collateral Agent under this Agreement.

Section 9. Reasonable Care. Collateral Agent shall be deemed to have exercised reasonable care in the custody and preservation of the Pledged Collateral in its possession if such Pledged Collateral is accorded treatment substantially equivalent to that which Collateral Agent, in its individual capacity, accords its own property, it being understood that neither Collateral Agent nor any of the Secured Parties shall have responsibility for taking any necessary steps to preserve rights against any Person with respect to any Pledged Collateral.

Section 10. Remedies Upon Default.

(a) Remedies; Disposition of Collateral. If any Event of Default shall have occurred and be continuing, then and in every such case, Collateral Agent may, (i) to the full extent permitted by law, and without advertisement, hearing or process of law of any kind, (A) exercise any and all rights as beneficial and legal owner of the Pledged Collateral, including, without limitation, perfecting assignment of any and all

consensual rights and powers with respect to the Pledged Collateral and (B) sell or assign or grant a license to use, or cause to be sold or assigned or a license granted to use any or all of the Pledged Collateral (in the case of Trademarks, along with the goodwill associated therewith) or any part thereof, in each case, free of all rights and claims of Pledgor therein and thereto. In that connection, Collateral Agent shall have the right to cause any or all of the Pledged Collateral to be transferred of record into the name of Collateral Agent or its nominee and the right to impose (1) such limitations and restrictions on the sale or assignment of the Pledged Collateral as Collateral Agent may deem to be necessary or appropriate to comply with any law, rule or regulation (federal, state or local) having applicability to the sale or assignment, and (2) any necessary or appropriate requirements for any required governmental approvals or consents;

(ii) Exercise in respect of the Pledged Collateral, in addition to other rights and remedies provided for herein or otherwise available to it, all the rights and remedies of a secured party under the UCC to the extent permitted by applicable law and whether or not the UCC is applicable thereto. Pledgor agrees that, to the extent notice of sale shall be required by law, 5 days' notice from Collateral Agent of the time and place of any public sale or of the time after which a private sale or other intended disposition is to take place shall constitute commercially reasonable notification of such matters. No notification need be given to Pledgor if it has signed, after the occurrence of an Event of Default, a statement renouncing or modifying any right to notification of sale or other intended disposition;

(iii) To the extent permitted by applicable law, Collateral Agent or any other Secured Party or any of their respective Affiliates may be the purchaser of any or all of the Pledged Collateral at any public or private sale and shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Pledged Collateral sold at such sale, to use and apply any of the Secured Obligations owed to such Person as a credit on account of the purchase price of such item of Collateral payable by such Person at such sale. Each purchaser at any such sale shall acquire the property sold absolutely free from any claim or right on the part of Pledgor. Collateral Agent shall not be obligated to make any sale of the Pledged Collateral regardless of notice of sale having been given. Collateral Agent may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such

sale may, without further notice, be made at the time and place to which it was so adjourned. Pledgor hereby waives, to the fullest extent permitted by applicable law, any claims against Collateral Agent arising by reason of the fact that the price at which any Pledged Collateral may have been sold at such a private sale was less than the price which might have been obtained at a public sale, even if Collateral Agent accepts the first offer received and does not offer such Pledged Collateral to more than one offeree.

(b) (i) Waiver of Notice and Claims. Pledgor hereby expressly waives, to the fullest extent permitted by applicable law, any and all notices, advertisements, hearings or process of law in connection with the exercise by Collateral Agent of any of its rights and remedies hereunder. Collateral Agent shall not be liable to any Person for any incorrect or improper payment made pursuant to this Section 10 in the absence of gross negligence or willful misconduct.

(ii) Pledgor hereby waives, to the fullest extent permitted by applicable law, notice or judicial hearing in connection with Collateral Agent's taking possession or Collateral Agent's disposition of any of the Pledged Collateral, including, without limitation, any and all prior notice and hearing for any prejudgment remedy or remedies and any such right which Pledgor would otherwise have under law, and Pledgor hereby further waives to the extent permitted by applicable law: (i) all damages occasioned by such taking of possession; (ii) all other requirements as to the time, place and terms of sale or other requirements with respect to the enforcement of Collateral Agent's rights hereunder; and (iii) all rights of redemption, appraisal, valuation, stay, extension or moratorium now or hereafter in force under any applicable law. Any sale of, or the grant of options to purchase, or any other realization upon, any Pledged Collateral shall operate to divest all right, title, interest, claim and demand, either at law or in equity, of Pledgor therein and thereto, and shall be a perpetual bar both at law and in equity against Pledgor and against any and all Persons claiming or attempting to claim the Pledged Collateral so sold, optioned or realized upon, or any part thereof, from, through or under Pledgor.

Section 11. Application of Proceeds. The proceeds received by Collateral Agent in respect of any sale of, collection from or other realization upon all or any part of the Pledged Collateral pursuant to the exercise by Collateral Agent of its remedies as a secured creditor as provided in Section 10 hereof shall be applied, together with any other sums then held

by Collateral Agent pursuant to this Agreement, promptly by Collateral Agent as follows:

First, to the payment of all costs and expenses, fees, commissions and taxes of such sale, collection or other realization, including, without limitation, reasonable compensation to Collateral Agent and its agents and counsel, and all expenses, liabilities and advances made or incurred by Collateral Agent in connection therewith, together with interest on each such amount at the highest rate then in effect under the Credit Agreement from and after the date such amount is due, owing or unpaid until paid in full;

Second, to the payment of all other costs and expenses of such sale, collection or other realization, including, without limitation, reasonable compensation to the Banks and their agents and counsel and all costs, liabilities and indebtedness made or incurred by the Banks in connection therewith, together with interest on each such amount at the highest rate then in effect under the Credit Agreement from and after the date such amount is due, owing or unpaid until paid in full;

Third, to the indefeasible payment in full in cash of interest and all amounts other than principal under the Credit Agreement or any Interest Rate Agreement with one or more of the Banks at any time and from time to time owing by Pledgor under or in connection with the Credit Agreement or any Interest Rate Agreement with one or more of the Banks, ratably according to the unpaid amounts thereof, without preference or priority of any kind among amounts so due and payable, together with interest on each such amount at the highest rate then in effect under the Credit Agreement from and after the date such amount is due, owing or unpaid until paid in full;

Fourth, to the indefeasible payment in full in cash of principal at any time and from time to time owing by Pledgor under or in connection with the Credit Agreement or any Interest Rate Agreement with one or more of the Banks, ratably according to the unpaid amounts thereof, without preference or priority of any kind among amounts of principal so due and payable; provided that the principal amount of the outstanding Interest Rate Obligations owing to any Bank at the time any such payments are to be distributed in accordance with this clause Fourth shall be the amount of Pledgor's obligations then due and payable,

including any early termination payments then due (exclusive of expenses or similar liabilities) to such Bank under the applicable Interest Rate Agreement(s), together, without duplication of the preceding clause THIRD, with interest on each such amount at the highest rate then in effect under the Credit Agreement from and after the date such amount is due, owing or unpaid until paid in full; and

Fifth, to Pledgor, or its successors or assigns, or to whomsoever may be lawfully entitled to receive the same or as a court of competent jurisdiction may direct, any surplus then remaining from such proceeds.

Section 12. Expenses. Pledgor will upon demand pay to Collateral Agent the amount of any and all reasonable expenses, including the reasonable fees and expenses of its counsel and the reasonable fees and expenses of any experts and agents, which Collateral Agent may incur in connection with (i) the collection of the Secured Obligations, (ii) the enforcement and administration of this Agreement, (iii) the custody or preservation of, or the sale of, collection from, or other realization upon, any of the Pledged Collateral, (iv) the exercise or enforcement of any of the rights of Collateral Agent or any Secured Party hereunder or (v) the failure by Pledgor to perform or observe any of the provisions hereof. All amounts payable by Pledgor under this Section 12 shall be due upon demand and shall be part of the Secured Obligations. Pledgor's obligations under this Section 12 shall survive the termination of this Agreement and the discharge of Pledgor's other obligations hereunder.

Section 13. No Waiver; Cumulative Remedies.

(a) No failure on the part of Collateral Agent to exercise, no course of dealing with respect to, and no delay on the part of Collateral Agent in exercising, any right, power or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any such right, power or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The remedies herein provided are cumulative and are not exclusive of any remedies provided by law.

(b) In the event Collateral Agent shall have instituted any proceeding to enforce any right, power or remedy under this instrument by foreclosure, sale or otherwise, and such proceeding shall have been discontinued or abandoned for



any reason or shall have been determined adversely to Collateral Agent, then and in every such case, Pledgor, Collateral Agent and each holder of any of the Secured Obligations shall be restored to their respective former positions and rights hereunder with respect to the Pledged Collateral, and all rights, remedies and powers of Collateral Agent and the Secured Parties shall continue as if no such proceeding had been instituted.

Section 14. Collateral Agent. Collateral Agent has been appointed as collateral agent pursuant to the Credit Agreement. The actions of Collateral Agent hereunder are subject to the provisions of the Credit Agreement. Collateral Agent shall have the right hereunder to make demands, to give notices, to exercise or refrain from exercising any rights, and to take or refrain from taking action (including, without limitation, the release or substitution of Pledged Collateral), in accordance with this Agreement and the Credit Agreement. Collateral Agent may resign and a successor Collateral Agent may be appointed in the manner provided in the Credit Agreement. Upon the acceptance of any appointment as Collateral Agent by a successor Collateral Agent, that successor Collateral Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Collateral Agent under this Agreement, and the retiring Collateral Agent shall thereupon be discharged from its duties and obligations under this Agreement. After any retiring Collateral Agent's resignation, the provisions of this Agreement shall inure to its benefit as to any actions taken or omitted to be taken by it under this Agreement while it was Collateral Agent.

Section 15. Collateral Agent May Perform; Collateral Agent Appointed Attorney-in-Fact. If Pledgor shall fail to do any act or thing that it has covenanted to do hereunder or any warranty on the part of Pledgor contained herein shall be breached, Collateral Agent or any Secured Party may (but shall not be obligated to) do the same or cause it to be done or remedy any such breach, and may expend funds for such purpose. Any and all amounts so expended by Collateral Agent or such Secured Party shall be paid by Pledgor promptly upon demand therefor, with interest at the highest rate then in effect under the Credit Agreement during the period from and including the date on which such funds were so expended to the date of repayment. Pledgor's obligations under this Section 15 shall survive the termination of this Agreement and the discharge of Pledgor's other obligations under this Agreement, the Credit Agreement, any other Credit Document and any Interest Rate Agreement. Pledgor hereby appoints Collateral Agent its

attorney-in-fact with an interest, with full authority in the place and stead of Pledgor and in the name of Pledgor, or otherwise, from time to time in Collateral Agent's discretion to take any action and to execute any instrument consistent with the terms of this Agreement and the other Credit Documents which Collateral Agent may deem necessary or advisable to accomplish the purposes of this Agreement. The foregoing grant of authority is a power of attorney coupled with an interest and such appointment shall be irrevocable for the term of this Agreement. Pledgor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof.

Section 16. Indemnity.

(a) Indemnity. Pledgor agrees to indemnify, pay and hold harmless Collateral Agent and each of the Secured Parties and the officers, directors, employees, agents and affiliates of Collateral Agent and each of the Secured Parties (collectively called the "Indemnitees") from and against any and all other liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs (including, without limitation, settlement costs), expenses or disbursements of any kind or nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel for such Indemnitees in connection with any investigative, administrative or judicial proceeding commenced or threatened, whether or not such Indemnitee shall be designated a party thereto), which may be imposed on, incurred by, or asserted against that Indemnitee, in any manner relating to or arising out of this Agreement, any other Credit Document or any Interest Rate Agreement (including, without limitation, any misrepresentation by Pledgor in this Agreement, any Interest Rate Agreement or any other Credit Document) (the "indemnified liabilities"); pro-  
vided that Pledgor shall have no obligation to an Indemnitee hereunder with respect to indemnified liabilities that arose from the gross negligence or willful misconduct of that Indemnitee. To the extent that the undertaking to indemnify, pay and hold harmless set forth in the preceding sentence may be unenforceable because it is violative of any law or public policy, Pledgor shall contribute the maximum portion which it is permitted to pay and satisfy under applicable law, to the payment and satisfaction of all indemnified liabilities incurred by the Indemnitees or any of them.

(b) Survival. The obligations of Pledgor contained in this Section 16 shall survive the termination of this Agreement and the discharge of Pledgor's other obligations under

this Agreement, any Interest Rate Agreement and under the other Credit Documents.

(c) Reimbursement. Any amounts paid by any Indemnitee as to which such Indemnitee has the right to reimbursement shall constitute Secured Obligations secured by the Pledged Collateral.

Section 17. Litigation.

(a) Unless there shall occur and be continuing an Event of Default, Pledgor shall have the right to commence and prosecute in its own name, as real party in interest, for its own benefit and at its sole cost and expense, such applications for protection of Pledged Collateral, suits, proceedings or other actions for infringement, counterfeiting, unfair competition, dilution or other damage as are in its reasonable business judgment necessary to protect the Pledged Collateral. Pledgor shall promptly notify Collateral Agent in writing as to the commencement and prosecution of any such actions, or threat thereof relating to the Pledged Collateral and shall provide to Collateral Agent such information with respect thereto as may be reasonably requested by Collateral Agent. Pledgor shall indemnify and hold harmless each Secured Party for any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, expenses or disbursements (including reasonable attorneys' fees and expenses) of any kind whatsoever which may be imposed on, incurred by or asserted against such Secured Party in connection with or in any way arising out of such suits, proceedings or other actions.

(b) Upon the occurrence and during the continuance of an Event of Default, Collateral Agent shall have the right but shall in no way be obligated to file applications for protection of the Pledged Collateral and/or bring suit in the name of Pledgor, Collateral Agent or the Secured Parties to enforce the Pledged Collateral and any license thereunder; in the event of such suit, Pledgor shall, at the request of Collateral Agent, do any and all lawful acts and execute any and all documents reasonably required by Collateral Agent in aid of such enforcement and Pledgor shall promptly, upon demand, reimburse and indemnify Collateral Agent, as the case may be, for all reasonable costs and expenses (including reasonable fees and expenses of counsel) incurred by Collateral Agent in the exercise of its rights under this Section 17. In the event that Collateral Agent shall elect not to bring suit to enforce the Pledged Collateral, Pledgor agrees, at the request of Collateral Agent, to use all reasonable measures, whether by action,

suit, proceeding or otherwise, to prevent the infringement, counterfeiting or other diminution in value of any of the Pledged Collateral by others and for that purpose agrees to diligently maintain any action, suit or proceeding against any person so infringing necessary to prevent such infringement unless Pledgor has determined that the Pledged Collateral that is the subject of any pending or contemplated infringement or enforcement action or proceeding does not contain or represent any value or utility (other than of an immaterial nature), consistent with prudent business practice.

Section 18. Modification in Writing. No amendment, modification, supplement, termination or waiver of or to any provision of this Agreement, nor consent to any departure by Pledgor therefrom, shall be effective unless the same shall be done in accordance with the terms of the Credit Agreement and unless in writing and signed by Collateral Agent; provided that without the consent of the Banks to whom a majority of the Interest Rate Obligations are owed, no such amendment, modification, supplement, termination or waiver may (i) exclude the Interest Rate Obligations from the definition of Secured Obligations or (ii) change the provisions of clause Fourth of Section 11 hereof. Any amendment, modification or supplement of or to any provision of this Agreement, any waiver of any provision of this Agreement, and any consent to any departure by Pledgor from the terms of any provision of this Agreement, shall be effective only in the specific instance and for the specific purpose for which made or given. Except where notice is specifically required by this Agreement or any other Credit Document, no notice to or demand on Pledgor in any case shall entitle Pledgor to any other or further notice or demand in similar or other circumstances.

Section 19. Termination; Release. When all the Secured Obligations have been paid in full and the Commitments of the Banks to make any Loan or to issue any Letter of Credit under the Credit Agreement shall have expired or been sooner terminated, this Agreement shall terminate. Upon termination of this Agreement or any release of Pledged Collateral in accordance with the provisions of the Credit Agreement, Collateral Agent shall, upon the request and at the sole cost and expense of Pledgor, forthwith assign, transfer and deliver to Pledgor, against receipt and without recourse to or warranty by Collateral Agent, such of the Pledged Collateral to be released (in the case of a release) as shall not have been sold or otherwise applied pursuant to the terms hereof, and shall deliver to Pledgor proper instruments (including UCC termination statements on Form UCC-3 and documents suitable for

recordation in the United States Patent and Trademark Office, the United States Copyright Office or similar domestic or foreign authority) acknowledging the termination of this Agreement or the release of such Pledged Collateral, as the case may be.

Section 20. Definitions. The following term shall have the following meaning:

"Governmental Authority" means any federal, state, local, foreign or other governmental or administrative (including self-regulatory) body, instrumentality, department or agency or any court, tribunal, administrative hearing body, arbitration panel, commission or other similar dispute-resolving body including, without limitation, those governing the regulation and protection of the environment.

Section 21. Notices. Unless otherwise provided herein or in the Credit Agreement, any notice or other communication herein required or permitted to be given shall be given in the manner set forth in the Credit Agreement, if to Pledgor, addressed to it at the address set forth in the Credit Agreement, if to Collateral Agent, addressed to it at the address set forth on the signature page of this Agreement, or as to any party at such other address as shall be designated by such party in a written notice to the other party complying as to delivery with the terms of this Section 21; provided that notices to Collateral Agent shall not be effective until received by Collateral Agent.

Section 22. Continuing Security Interest; Assignment. This Agreement shall create a continuing security interest in the Pledged Collateral and shall (i) be binding upon Pledgor, its successors and assigns, and (ii) inure, together with the rights and remedies of Collateral Agent hereunder, to the benefit of Collateral Agent and the other Secured Parties and each of their respective successors, transferees and assigns; no other Persons (including, without limitation, any other creditor of the Pledgor) shall have any interest herein or any right or benefit with respect hereto. Without limiting the generality of the foregoing clause (ii), any Bank may assign or otherwise transfer any indebtedness held by it secured by this Agreement to any other Person, and such other Person shall thereupon become vested with all the benefits in respect thereof granted to such Bank, herein or otherwise, subject however, to the provisions of the Credit Agreement.

Section 23. GOVERNING LAW; TERMS. THIS AGREEMENT SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN

ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS, EXCEPT TO THE EXTENT THAT THE VALIDITY OR PERFECTION OF THE SECURITY INTEREST HEREUNDER, OR REMEDIES HEREUNDER, IN RESPECT OF ANY PARTICULAR PROPERTY ARE GOVERNED BY THE LAWS OF A JURISDICTION OTHER THAN THE STATE OF NEW YORK.

Section 24. CONSENT TO JURISDICTION AND SERVICE OF PROCESS. ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST PLEDGOR WITH RESPECT TO THIS AGREEMENT MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION IN THE STATE OF NEW YORK AND BY EXECUTION AND DELIVERY OF THIS AGREEMENT PLEDGOR ACCEPTS FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, GENERALLY AND UNCONDITIONALLY, THE NONEXCLUSIVE JURISDICTION OF THE AFORESAID COURTS, AND IRREVOCABLY AGREES TO BE BOUND BY ANY JUDGMENT RENDERED THEREBY IN CONNECTION WITH THIS AGREEMENT. PLEDGOR DESIGNATES AND APPOINTS CT CORPORATION SYSTEMS, WITH AN ADDRESS AT 1633 BROADWAY, NEW YORK, NEW YORK 10019 AND SUCH OTHER PERSONS AS MAY HEREAFTER BE SELECTED BY PLEDGOR IRREVOCABLY AGREEING IN WRITING TO SO SERVE, AS ITS AGENT TO RECEIVE ON ITS BEHALF, SERVICE OF ALL PROCESS IN ANY SUCH PROCEEDINGS IN ANY SUCH COURT, SUCH SERVICE BEING HEREBY ACKNOWLEDGED BY PLEDGOR TO BE EFFECTIVE AND BINDING SERVICE IN EVERY RESPECT. A COPY OF SUCH PROCESS SO SERVED SHALL BE MAILED BY REGISTERED MAIL TO PLEDGOR AT ITS ADDRESS PROVIDED FOR IN SECTION 21 HEREOF EXCEPT THAT UNLESS OTHERWISE PROVIDED BY APPLICABLE LAW, ANY FAILURE TO MAIL SUCH COPY SHALL NOT AFFECT THE VALIDITY OF SERVICE OF PROCESS. IF ANY AGENT APPOINTED BY PLEDGOR REFUSES TO ACCEPT SERVICE, PLEDGOR HEREBY AGREES THAT SERVICE UPON IT BY MAIL SHALL CONSTITUTE SUFFICIENT NOTICE. NOTHING HEREIN SHALL AFFECT THE RIGHT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR SHALL LIMIT THE RIGHT OF COLLATERAL AGENT TO BRING PROCEEDINGS AGAINST PLEDGOR IN THE COURTS OF ANY OTHER JURISDICTION.

Section 25. Severability of Provisions. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

Section 26. Execution in Counterparts. This Agreement and any amendments, waivers, consents or supplements hereto may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an

original, but all such counterparts together shall constitute one and the same agreement.

Section 27. Headings. The Section headings used in this Agreement are for convenience of reference only and shall not affect the construction of this Agreement.

Section 28. Obligations Absolute. All obligations of Pledgor hereunder shall be absolute and unconditional irrespective of:

(i) any bankruptcy, insolvency, reorganization, arrangement, readjustment, composition, liquidation or the like of Pledgor or any other Credit Party;

(ii) any lack of validity or enforceability of the Credit Agreement, any Letter of Credit, any Interest Rate Agreement or any other Credit Document, or any other agreement or instrument relating thereto;

(iii) any change in the time, manner or place of payment of, or in any other term of, all or any of the Secured Obligations, or any other amendment or waiver of or any consent to any departure from the Credit Agreement, any Letter of Credit, any Interest Rate Agreement or any other Credit Document, or any other agreement or instrument relating thereto;

(iv) any exchange, release or non-perfection of any other collateral, or any release or amendment or waiver of or consent to any departure from any guarantee, for all or any of the Secured Obligations;

(v) any exercise or non-exercise, or any waiver of any right, remedy, power or privilege under or in respect of this Agreement, any Interest Rate Agreement or any other Credit Document except as specifically set forth in a waiver granted pursuant to the provisions of Section 18 hereof; or

(vi) any other circumstances which might otherwise constitute a defense available to, or a discharge of, Pledgor.

Section 29. Collateral Agent's Right to Sever Indebtedness.

(a) Pledgor acknowledges that (i) the Pledged Collateral does not constitute the sole source of security for the payment and performance of the Secured Obligations and that the Secured Obligations are also secured by other types of property of Pledgor and its Affiliates in other jurisdictions (all such property, collectively, the "Collateral"), (ii) the number of such jurisdictions and the nature of the transaction of which this instrument is a part are such that it would have been impracticable for the parties to allocate to each item of Collateral a specific loan amount and to execute in respect of such item a separate credit agreement, and (iii) Pledgor intends that Collateral Agent have the same rights with respect to the Pledged Collateral, in any judicial proceeding relating to the exercise of any right or remedy hereunder or otherwise, that Collateral Agent would have had if each item of collateral had been pledged or encumbered pursuant to a separate credit agreement and security instrument. In furtherance of such intent, Pledgor agrees to the greatest extent permitted by law that Collateral Agent may at any time by notice (an "Allocation Notice") to Pledgor allocate a portion of the Secured Obligations (the "Allocated Indebtedness") to the Pledged Collateral and sever from the remaining Secured Obligations the Allocated Indebtedness. From and after the giving of an Allocation Notice with respect to the Pledged Collateral, the Secured Obligations hereunder shall be limited to the extent set forth in the Allocation Notice and (as so limited) shall, for all purposes, be construed as a separate credit obligation of Pledgor unrelated to the other transactions contemplated by the Credit Agreement. To the extent that the proceeds of any judicial proceeding relating to the exercise of any right or remedy hereunder of the Pledged Collateral shall exceed the Allocated Indebtedness, such proceeds shall belong to Pledgor and shall not be available hereunder to satisfy any Secured Obligations of Pledgor other than the Allocated Indebtedness. In any action or proceeding to exercise any right or remedy under this Agreement which is commenced after the giving by Collateral Agent of an Allocation Notice, the Allocation Notice shall be conclusive proof of the limits of the Secured Obligations hereby secured, and Pledgor may introduce, by way of defense or counterclaim, evidence thereof in any such action or proceeding. Notwithstanding any provision of this Section 29, the proceeds received by Collateral Agent pursuant to this Agreement shall be applied by Collateral Agent in accordance with the provisions of Section 11 hereof.



(b) Pledgor hereby waives to the greatest extent permitted under law the right to a discharge of any of the Secured Obligations under any statute or rule of law now or hereafter in effect which provides that the exercise of any particular right or remedy as provided for herein (by judicial proceedings or otherwise) constitutes the exclusive means for satisfaction of the Secured Obligations or which makes unavailable any further judgment or any other right or remedy provided for herein because Collateral Agent elected to proceed with the exercise of such initial right or remedy or because of any failure by Collateral Agent to comply with laws that prescribe conditions to the entitlement to such subsequent judgment or the availability of such subsequent right or remedy. In the event that, notwithstanding the foregoing waiver, any court shall for any reason hold that such subsequent judgment or action is not available to Collateral Agent, Pledgor shall not (i) introduce in any other jurisdiction any judgment so holding as a defense to enforcement against Pledgor of any remedy in the Credit Agreement or any other document executed in connection with the Credit Agreement or (ii) seek to have such judgment recognized or entered in any other jurisdiction, and any such judgment shall in all events be limited in application only to the state or jurisdiction where rendered and only with respect to the collateral referred to in such judgment.

(c) In the event any instrument in addition to the Allocation Notice is necessary to effectuate the provisions of this Section 29, including, without limitation, any amendment to this Agreement, any substitute promissory note or affidavit or certificate of any kind, Collateral Agent may execute and deliver such instrument as the attorney-in-fact of Pledgor.

(d) Notwithstanding anything set forth herein to the contrary, the provisions of this Section 29 shall be effective only to the maximum extent permitted by law.

Section 30. Future Advances. This Agreement shall secure the payment of any amounts advanced from time to time pursuant to the Credit Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

SHEPHERD TISSUE, INC.,  
as Pledgor

By: 

Name: MARTIN D. KOFFMAN  
Title: PRESIDENT

NATIONSBANK OF NORTH CAROLINA, N.A.,  
as Collateral Agent

By: 

Name: MICHAEL CONRAD  
Title: Vice President

Notice Address:

NationsBank of North Carolina, N.A.  
NationsBank Corporate Center  
8th Floor  
100 North Tryon Street  
Charlotte, North Carolina 28255  
Attention: MARGARET LYDON

Schedule A

1. U.S. Patent Registrations:

None

2. Pending Applications for U.S. Patents:

None

3. Pending Applications for U.S. Patents in which Debtor has  
a partial legal interest:

None

Schedule B

1. U.S. Trademark Registrations:

	<u>Trademark</u>	<u>U.S. Registration No.</u>	<u>Registration Date</u>
1.	WONDERSOFT	333,574	June 9, 1936
2.	WONDERSOFT	1,048,116	September 14, 1976

Schedule C

U.S. Copyright Registrations:

None

Schedule D

Proprietary Rights for which Debtor has a license from a third party:

Pursuant to Exhibit G of the Asset Purchase Agreement, Kimberly Clark has licensed to the Pledgor U.S. Design Patent No. 319,350 to A.C. Paschke et al. entitled "EMBOSSSED TISSUE OR SIMILAR ARTICLE," issued August 27, 1991.

Schedule E

Know-how:

All of the know-how related to the manufacture of private label bathroom tissue, paper towels and napkins transferred pursuant to the Asset Purchase Agreement between Pledgor and Kimberly-Clark Corporation dated as of September 7, 1994.

FIRST AMENDMENT TO GENERAL SECURITY AGREEMENT AND  
INTELLECTUAL PROPERTY SECURITY AGREEMENT

THIS FIRST AMENDMENT (the "First Amendment") to the (a) General Security Agreement (as amended, restated, supplemented or modified, the "General Security Agreement") dated as of September 21, 1994 made by Shepherd Tissue, Inc. (the Pledgor") in favor of NationsBank, N.A. (f/k/a NationsBank of North Carolina, N.A.), as pledgee, assignee and secured party and in its capacity as collateral agent (the "Collateral Agent") for the lending institutions (the "Banks") under the Credit Agreement referred to below and (b) Intellectual Property Security Agreement (as amended, restated, supplemented or modified, the "Intellectual Property Security Agreement" and, together with the General Security Agreement, the "Security Agreements") dated as of September 21, 1994 made by the Pledgor in favor of the Collateral Agent for the Banks is made and entered into as of this 29th day of January 1999 by and between the Pledgor and the Collateral Agent on behalf of itself and the Banks.

STATEMENT OF PURPOSE

The Security Agreements were originally executed in connection with the Credit Agreement dated as September 21, 1994 (as amended, restated, supplemented, or otherwise modified from time to time, the "Original Credit Agreement"), by and among the Pledgor, as borrower (in such capacity, the "Borrower"), Shepherd Holdings, Inc., as guarantor, the banks party thereto (the "Original Banks"), NationsBank, N.A., as Administrative Agent (the "Administrative Agent"), NationsBank and Banque Indosuez, New York Branch, as Co-Agents (the "Co-Agents"), and the Collateral Agent. Because of certain changes in its financial condition, the Borrower has requested that the Administrative Agent, the Collateral Agent and Banks agree to certain amendments to the Original Credit Agreement. Pursuant to that certain Amended and Restated Credit Agreement dated as of the date hereof (as amended, amended and restated, supplemented, or otherwise modified, the "Credit Agreement") by and among the Borrower, the Banks, the Collateral Agent and the Administrative Agent, the Banks have agreed to amend and restate the Original Credit Agreement in its entirety and to make certain Loans and Letters of Credit to the Borrower pursuant to the terms thereof. As a condition to the closing of the Credit Agreement, the Lenders have required that the Security Agreements be amended to reflect the transactions contemplated by the Credit Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

SECTION 1. Definitions. All capitalized undefined terms used in this First Amendment and shall have the meanings assigned thereto in the Credit Agreement.

SECTION 2. Amendments to General Security Agreement.

**Section 2.1.** Amendment to Recital (A). Recital (A) on page 1 of the General Security Agreement is hereby deleted in its entirety and the following is substituted in lieu thereof:

1645624.01  
LIB: CH

**TRADEMARK  
REEL: 1890 FRAME: 0742**



“A. Pursuant to that certain Amended and Restated Credit Agreement dated as of January 29, 1999 (as amended, restated, supplemented, or otherwise modified, the “Credit Agreement”; unless otherwise defined herein, capitalized terms used herein have the meanings assigned to them in the Credit Agreement), by and among Pledgor, as borrower, the Banks party thereto (the “Banks”), NationsBank, as Collateral Agent and NationsBank as Administrative Agent which amends and restates in its entirety that certain Credit Agreement, dated as September 21, 1994, as amended by the First Amendment to Credit Agreement dated as of January 26, 1996, as amended by the Second Amendment to Credit Agreement dated as of March 19, 1996, as amended by the Third Amendment to Credit Agreement dated as of September 12, 1996 (as so amended, the “Original Credit Agreement”) by and among Pledgor, as borrower, Shepherd Holdings, Inc., as guarantor, the banks party thereto (the “Original Banks”), NationsBank, as Administrative Agent, and NationsBank and Banque Indosuez, New York Branch, as Co-Agents for the Banks, the Banks have agreed to make to the Pledgor certain Loans and issue certain Letters of Credit.”

**Section 2.2.** Section 5(c) of the General Security Agreement is hereby amended by deleting the word “Commitment” and inserting the word “commitment” in lieu thereof.

**Section 2.3.** Section 11 of the General Security Agreement is hereby deleted in its entirety and the following Section 11 is inserted in lieu thereof:

“Section 11. Application of Proceeds. The proceeds received by the Collateral Agent in respect of any sale of, collection from or other realization upon all or any part of the Pledged Collateral pursuant to the exercise by the Collateral Agent of its remedies as a secured creditor as provided in Section 10 hereof shall be applied, together with any other sums held by the Collateral Agent, as set forth in Section 5.5 of the Credit Agreement.”

**Section 2.4.** Section 18 of the General Security Agreement is hereby amended by deleting the word “Commitments” and inserting the word “commitments” in lieu thereof.

**Section 2.5.** Section 22 of the General Security Agreement is hereby amended by deleting the references to “New York” and inserting the words “North Carolina” in lieu thereof.

**Section 2.6.** Section 23 of the General Security Agreement is hereby deleted in its entirety and inserting the following in lieu thereof:

(a) Consent to Jurisdiction. The Pledgor hereby irrevocably consents to the personal jurisdiction of the state and federal courts located in Mecklenburg County, North Carolina, in any action, claim or other proceeding arising out of or any dispute in connection with this Agreement, any rights or obligations hereunder, or the performance of such rights and obligations. The Pledgor hereby irrevocably consents to the service of a summons and complaint and other process in any action, claim or proceeding brought by the Collateral Agent, the Administrative Agent or any Bank in connection with this Agreement, any rights or obligations hereunder, or the performance of such

rights and obligations, on behalf of itself or its property, in the manner provided in Section 13.1 of the Credit Agreement. Nothing in this Paragraph 23(a) shall affect the right of the Administrative Agent or any Bank to serve legal process in any other manner permitted by Applicable Law or affect the right of the Collateral Agent, Administrative Agent or any Bank to bring any action or proceeding against the Pledgor or its properties in the courts of any other jurisdictions.

(b) Arbitration. ANY CONTROVERSY OR CLAIM BETWEEN OR AMONG THE PARTIES HERETO, INCLUDING, BUT NOT LIMITED TO, THOSE ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE CREDIT DOCUMENTS OR ANY RELATED AGREEMENTS OR INSTRUMENTS, INCLUDING ANY CLAIM BASED ON OR ARISING FROM AN ALLEGED TORT (THE "DISPUTES"), SHALL BE DETERMINED BY BINDING ARBITRATION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT (OR IF NOT APPLICABLE, THE APPLICABLE STATE LAW), THE RULES OF PRACTICE AND PROCEDURE FOR THE ARBITRATION OF COMMERCIAL DISPUTES OF JUDICIAL ARBITRATION AND MEDIATION SERVICES, INC. (J.A.M.S.), AND THE "SPECIAL RULES" SET FORTH BELOW. IN THE EVENT OF ANY INCONSISTENCY, THE SPECIAL RULES SHALL CONTROL. JUDGMENT UPON ANY ARBITRATION AWARD MAY BE ENTERED IN ANY COURT HAVING JURISDICTION. ANY PARTY TO THIS AGREEMENT MAY BRING AN ACTION, INCLUDING A SUMMARY OR EXPEDITED PROCEEDING TO COMPEL ARBITRATION OF ANY CONTROVERSY OR CLAIM TO WHICH THIS AGREEMENT APPLIES IN ANY COURT HAVING JURISDICTION OVER SUCH ACTION.

(i) SPECIAL RULES. THE ARBITRATION SHALL BE CONDUCTED IN THE CITY OF THE PLEDGOR'S DOMICILE AT THE TIME OF THIS AGREEMENT'S EXECUTION AND ADMINISTERED BY J.A.M.S. WHO WILL APPOINT AN ARBITRATOR; IF J.A.M.S. IS UNABLE OR LEGALLY PRECLUDED FROM ADMINISTERING THE ARBITRATION, THEN THE AMERICAN ARBITRATION ASSOCIATION WILL SERVE. ALL ARBITRATION HEARINGS WILL BE COMMENCED WITHIN NINETY (90) DAYS OF THE DEMAND FOR ARBITRATION; FURTHER, THE ARBITRATOR SHALL ONLY, UPON A SHOWING OF CAUSE, BE PERMITTED TO EXTEND THE COMMENCEMENT OF SUCH HEARING FOR UP TO AN ADDITIONAL SIXTY (60) DAYS.

(ii) RESERVATION OF RIGHTS. NOTHING IN THIS AGREEMENT SHALL BE DEEMED TO (i) LIMIT THE APPLICABILITY OF ANY OTHERWISE APPLICABLE STATUTES OF LIMITATION OR REPOSE AND ANY WAIVERS CONTAINED IN THIS AGREEMENT; OR (ii) BE A WAIVER BY THE COLLATERAL AGENT, ADMINISTRATIVE AGENT OR ANY BANK OF THE PROTECTION AFFORDED TO IT BY 12 U.S.C. SEC

91 OR ANY SUBSTANTIALLY EQUIVALENT STATE LAW; OR (iii) LIMIT THE RIGHT OF THE ADMINISTRATIVE AGENT OR ANY BANK (A) TO EXERCISE SELF HELP REMEDIES SUCH AS (BUT NOT LIMITED TO) SETOFF, OR (B) TO FORECLOSURE AGAINST ANY REAL OR PERSONAL PROPERTY COLLATERAL, OR (C) TO OBTAIN FROM A COURT PROVISIONAL OR ANCILLARY REMEDIES SUCH AS (BUT NOT LIMITED TO) INJUNCTIVE RELIEF, WRIT OF POSSESSION OR THE APPOINTMENT OF A RECEIVER. THE COLLATERAL AGENT, THE ADMINISTRATIVE AGENT AND EACH BANK MAY EXERCISE SUCH SELF HELP RIGHTS, FORECLOSURE UPON SUCH PROPERTY, OR OBTAIN SUCH PROVISIONAL OR ANCILLARY REMEDIES BEFORE, DURING OR AFTER THE PENDENCY OF ANY ARBITRATION PROCEEDING BROUGHT PURSUANT TO THIS AGREEMENT. NEITHER THIS EXERCISE OF SELF HELP REMEDIES NOR THE INSTITUTION OR MAINTENANCE OF AN ACTION FOR FORECLOSURE OR PROVISIONAL OR ANCILLARY REMEDIES SHALL CONSTITUTE A WAIVER OF THE RIGHT OF ANY PARTY, INCLUDING THE CLAIMANT IN ANY SUCH ACTION, TO ARBITRATE THE MERITS OF ANY DISPUTE OCCASIONING RESORT TO SUCH REMEDIES.

(c) Injunctive Relief: Punitive Damages.

(i) The Pledgor recognizes that, in the event the Pledgor fails to perform, observe or discharge any of its obligations or liabilities under this Agreement, any remedy of law may prove to be inadequate relief to the Banks. Therefore, the Pledgor agrees that the Banks, at the Banks' option, shall be entitled to temporary and permanent injunctive relief in any such case without the necessity of proving actual damages.

(ii) The parties hereto agree that no such Person shall have a remedy of punitive or exemplary damages against any other party hereto and each such Person hereby waives any right or claim to punitive or exemplary damages that they may now have or may arise in the future in connection with any Dispute, whether such Dispute is resolved through arbitration or judicially.

**Section 2.7.** Global Amendment. All references to "Co-Agent" and "Co-Agents" in the General Security Agreement are hereby deleted.

**SECTION 3.** Amendments to Intellectual Property Security Agreement.

**Section 3.1.** Amendment to Recital (A). Recital (A) on page 1 of the Intellectual Property Security Agreement is hereby deleted in its entirety and the following is substituted in lieu thereof:

“”A. Pursuant to that certain Amended and Restated Credit Agreement dated as of January 29, 1999 (as amended, restated, supplemented, or otherwise modified, the “Credit Agreement”; unless otherwise defined herein, capitalized terms used herein have the meanings assigned to them in the Credit Agreement), by and among Pledgor, as borrower, the Banks party thereto (the “Banks”), NationsBank, as Collateral Agent and NationsBank as Administrative Agent which amends and restates in its entirety that certain Credit Agreement, dated as September 21, 1994, as amended by the First Amendment to Credit Agreement dated as of January 26, 1996, as amended by the Second Amendment to Credit Agreement dated as of March 19, 1996, as amended by the Third Amendment to Credit Agreement dated as of September 12, 1996 (as so amended, the “Original Credit Agreement”) by and among Pledgor, as borrower, Shepherd Holdings, Inc., as guarantor, the banks party thereto (the “Original Banks”), NationsBank, as Administrative Agent, and NationsBank and Banque Indosuez, New York Branch, as Co-Agents for the Banks, the Banks have agreed to make to the Pledgor certain Loans and issue certain Letters of Credit.”

**Section 3.2.** Section 11 of the Intellectual Property Security Agreement is hereby deleted in its entirety and the following Section 11 is inserted in lieu thereof:

“”Section 11. Application of Proceeds. The proceeds received by the Collateral Agent in respect of any sale of, collection from or other realization upon all or any part of the Pledged Collateral pursuant to the exercise by the Collateral Agent of its remedies as a secured creditor as provided in Section 10 hereof shall be applied, together with any other sums held by the Collateral Agent, as set forth in Section 5.5 of the Credit Agreement.”

**Section 3.3.** Section 23 of the Intellectual Property Agreement is hereby amended by deleting the references to “New York” and inserting the words “North Carolina” in lieu thereof.

**Section 3.4.** Section 24 of the Intellectual Property Security Agreement is hereby deleted in its entirety and inserting the following in lieu thereof:

(a) Consent to Jurisdiction. The Pledgor hereby irrevocably consents to the personal jurisdiction of the state and federal courts located in Mecklenburg County, North Carolina, in any action, claim or other proceeding arising out of or any dispute in connection with this Agreement, any rights or obligations hereunder, or the performance of such rights and obligations. The Pledgor hereby irrevocably consents to the service of a summons and complaint and other process in any action, claim or proceeding brought by the Collateral Agent, the Administrative Agent or any Bank in connection with this Agreement, any rights or obligations hereunder, or the performance of such rights and obligations, on behalf of itself or its property, in the manner provided in Section 13.1 of the Credit Agreement. Nothing in this Paragraph 23(a) shall affect the right of the Administrative Agent or any Bank to serve legal process in any other manner permitted by Applicable Law or affect the right of the Collateral Agent, Administrative Agent or any Bank to bring any action or proceeding against the Pledgor or its properties in the courts of any other jurisdictions.

(b) Arbitration. ANY CONTROVERSY OR CLAIM BETWEEN OR AMONG THE PARTIES HERETO, INCLUDING, BUT NOT LIMITED TO, THOSE ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE CREDIT DOCUMENTS OR ANY RELATED AGREEMENTS OR INSTRUMENTS, INCLUDING ANY CLAIM BASED ON OR ARISING FROM AN ALLEGED TORT (THE "DISPUTES"), SHALL BE DETERMINED BY BINDING ARBITRATION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT (OR IF NOT APPLICABLE, THE APPLICABLE STATE LAW), THE RULES OF PRACTICE AND PROCEDURE FOR THE ARBITRATION OF COMMERCIAL DISPUTES OF JUDICIAL ARBITRATION AND MEDIATION SERVICES, INC. (J.A.M.S.), AND THE "SPECIAL RULES" SET FORTH BELOW. IN THE EVENT OF ANY INCONSISTENCY, THE SPECIAL RULES SHALL CONTROL. JUDGMENT UPON ANY ARBITRATION AWARD MAY BE ENTERED IN ANY COURT HAVING JURISDICTION. ANY PARTY TO THIS AGREEMENT MAY BRING AN ACTION, INCLUDING A SUMMARY OR EXPEDITED PROCEEDING TO COMPEL ARBITRATION OF ANY CONTROVERSY OR CLAIM TO WHICH THIS AGREEMENT APPLIES IN ANY COURT HAVING JURISDICTION OVER SUCH ACTION.

(i) SPECIAL RULES. THE ARBITRATION SHALL BE CONDUCTED IN THE CITY OF THE PLEDGOR'S DOMICILE AT THE TIME OF THIS AGREEMENT'S EXECUTION AND ADMINISTERED BY J.A.M.S. WHO WILL APPOINT AN ARBITRATOR; IF J.A.M.S. IS UNABLE OR LEGALLY PRECLUDED FROM ADMINISTERING THE ARBITRATION, THEN THE AMERICAN ARBITRATION ASSOCIATION WILL SERVE. ALL ARBITRATION HEARINGS WILL BE COMMENCED WITHIN NINETY (90) DAYS OF THE DEMAND FOR ARBITRATION; FURTHER, THE ARBITRATOR SHALL ONLY, UPON A SHOWING OF CAUSE, BE PERMITTED TO EXTEND THE COMMENCEMENT OF SUCH HEARING FOR UP TO AN ADDITIONAL SIXTY (60) DAYS.

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REMEDIES SUCH AS (BUT NOT LIMITED TO) INJUNCTIVE RELIEF, WRIT OF POSSESSION OR THE APPOINTMENT OF A RECEIVER. THE COLLATERAL AGENT, THE ADMINISTRATIVE AGENT AND EACH BANK MAY EXERCISE SUCH SELF HELP RIGHTS, FORECLOSURE UPON SUCH PROPERTY, OR OBTAIN SUCH PROVISIONAL OR ANCILLARY REMEDIES BEFORE, DURING OR AFTER THE PENDENCY OF ANY ARBITRATION PROCEEDING BROUGHT PURSUANT TO THIS AGREEMENT. NEITHER THIS EXERCISE OF SELF HELP REMEDIES NOR THE INSTITUTION OR MAINTENANCE OF AN ACTION FOR FORECLOSURE OR PROVISIONAL OR ANCILLARY REMEDIES SHALL CONSTITUTE A WAIVER OF THE RIGHT OF ANY PARTY, INCLUDING THE CLAIMANT IN ANY SUCH ACTION, TO ARBITRATE THE MERITS OF ANY DISPUTE OCCASIONING RESORT TO SUCH REMEDIES.

(c) Injunctive Relief; Punitive Damages.

(i) The Pledgor recognizes that, in the event the Pledgor fails to perform, observe or discharge any of its obligations or liabilities under this Agreement, any remedy of law may prove to be inadequate relief to the Banks. Therefore, the Pledgor agrees that the Banks, at the Banks' option, shall be entitled to temporary and permanent injunctive relief in any such case without the necessity of proving actual damages.

(ii) The parties hereto agree that no such Person shall have a remedy of punitive or exemplary damages against any other party hereto and each such Person hereby waives any right or claim to punitive or exemplary damages that they may now have or may arise in the future in connection with any Dispute, whether such Dispute is resolved through arbitration or judicially.

SECTION 4. Representations and Warranties; No Default.

**Section 4.1.** By its execution hereof, the Pledgor hereby certifies that each of the representations and warranties set forth in the Credit Agreement and the other Loan Documents is true and correct as of the date hereof (unless such representations and warranties are stated to relate solely to an earlier date), in which case such representations and warranties shall be true and correct as of such earlier date as if fully set forth herein.

**Section 4.2.** Pledgor hereby represents to the Collateral Agent, the Administrative Agent and each Bank that, as of the date hereof, except with respect to covenants, representations and warranties and other agreements amended by this First Amendment, no Default or Event of Default has occurred and is continuing under the Credit Agreement or any other Loan Document and, after giving effect to the transactions contemplated hereby, no Default or Event of Default has occurred and is continuing under the Credit Agreement.

SECTION 5. Limited First Amendment. Except as expressly amended herein, (a) the Security Agreements shall continue to be, and shall remain, in full force and effect as in existence immediately prior to the date hereof and (b) this First Amendment shall not be deemed (i) to be a waiver of, or consent to, or a modification or amendment of, any other term or condition of the Security Agreements or (ii) to prejudice any other right or rights which the Collateral Agent, the Administrative Agent or Banks may now have or may have in the future under or in connection with the Credit Agreement or the Loan Documents or any of the instruments or agreements referred to therein, as the same may be amended, restated or otherwise modified from time to time.

SECTION 6. Expenses. The Borrower shall pay all reasonable out-of-pocket expenses of the Collateral Agent in connection with the preparation, execution and delivery of this First Amendment, including without limitation, the reasonable fees and disbursements of counsel for the Administrative Agent.

SECTION 7. Governing Law. This First Amendment shall be governed by and construed in accordance with the laws of the State of North Carolina.

SECTION 8. Counterparts. This First Amendment may be executed in separate counterparts, each of which when executed and delivered is an original but all of which taken together constitute one and the same instrument.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to be duly executed as of the date and year first above written.

PLEDGOR:

[CORPORATE SEAL]

SHEPHERD TISSUE, INC.

By: *DC Angel*  
Name: Donald Charles Angel  
Title: President and Secretary

COLLATERAL AGENT:

NATIONSBANK, N.A.

By: *Charles A Kerr*  
Name: Charles A. Kerr  
Title: Senior Vice President

[First Amendment]