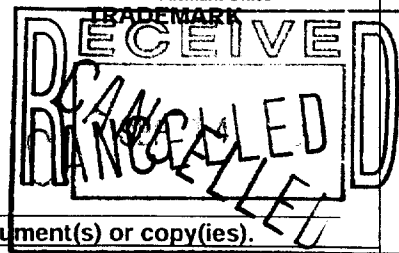


09-16-1999



101147996

RECORDATION FORM COVER SHEET  
TRADEMARKS ONLY



MRP  
9-13-99

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
- ☐ Change of Name
- ☐ Other

Effective Date  
Month Day Year  
08 25 99

Conveying Party

☐ Mark if additional names of conveying parties attached

Name

Execution Date  
Month Day Year  
08 25 99

Formerly

- ☐ 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

09/16/1999 DNGUYEN 00000023 75588175

FOR OFFICE USE ONLY

01 FC:481 40.00 OP  
02 FC:482 975.00 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: 001958 FRAME: 0840

**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 (404) 815-2235

Name

Melissa Cales Schwartz, Esq.

Address (line 1)

Paul, Hastings, Janofsky & Walker, LLP

Address (line 2)

600 Peachtree Street, N.E., Suite 2400

Address (line 3)

Atlanta, Georgia 30308

Address (line 4)

**Pages**

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

#

14

**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)**

75/588,175

75/590,098

75/681,384

1,997,803

1,254,221

1,841,128

75/688,242

75/681,743

75/698,341

2,185,147

1,257,289

1,858,103

75/681,353

75/681,746

75/688,241

1,661,372

2,166,068

1,704,520

**Number of Properties**

Enter the total number of properties involved.

#

40

**Fee Amount**

Fee Amount for Properties Listed (37 CFR 3.41):

\$

1,015.00

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:

#

16-0752

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.

Melissa Cales Schwartz, Esq.

Name of Person Signing



Signature

09/10/99

Date Signed

RECORDATION FORM COVER SHEET  
CONTINUATION  
TRADEMARKS ONLY

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

**Conveying Party**

Enter Additional Conveying Party

☐ Mark if additional names of conveying parties attached

Execution Date  
Month Day Year

Name

Formerly

☐ Individual ☐ General Partnership ☐ Limited Partnership ☐ Corporation ☐ Association

☐ Other

☐ Citizenship State of Incorporation/Organization

**Receiving Party**

Enter Additional 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

☐ Corporation ☐ Association

☐ Other

☐ Citizenship/State of Incorporation/Organization

☐ 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 the Assignment.)

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

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

☐ Mark if additional numbers attached

**Trademark Application Number(s)**

**Registration Number(s)**

75/590,397	75/175,746	
75/687,671	75/175,745	
75/687,659		
75/590,396		
75/175,614		
75/175,615		
75,175,744		

1,865,137	2,006,918	
2,016,523	438,253	
2,200,014	1,522,360	
2,178,741	1,567,808	
1,179,778	2,098,543	
2,042,927	2,140,304	
1,262,792		

# INTELLECTUAL PROPERTY SECURITY AGREEMENT

THIS INTELLECTUAL PROPERTY SECURITY AGREEMENT (this "Agreement") is made as of August 25, 1999, between CUMBERLAND SWAN HOLDINGS, INC., a Tennessee corporation (the "Pledgor") and FOOTHILL CAPITAL CORPORATION, a California corporation with an office in Atlanta, Georgia (the "Lender").

## WITNESSETH:

WHEREAS, the Pledgor and the Lender have entered into that certain Loan and Security Agreement of even date herewith (as the same may hereafter be amended, restated, supplemented or otherwise modified from time to time, the "Loan Agreement"), pursuant to which the Lender has agreed to extend credit to the Pledgor from time to time, and the Pledgor has granted a security interest in all of its assets to the Lender; and

WHEREAS, the Lender has required the Pledgor to execute and deliver this Agreement (i) in order to secure the prompt and complete payment, observance and performance of all of the Obligations (as defined in the Loan Agreement) and (ii) as a condition precedent to any extension of credit under the Loan Agreement;

NOW, THEREFORE, in consideration of the premises set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Pledgor agrees as follows:

### 1. Defined Terms.

(a) Unless otherwise defined herein, each capitalized term used herein that is defined in the Loan Agreement shall have the meaning specified for such term in the Loan Agreement.

(b) The words "hereof," "herein" and "hereunder" and words of like import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and paragraph references are to this Agreement unless otherwise specified.

(c) All terms defined in this Agreement in the singular shall have comparable meanings when used in the plural, and vice versa, unless otherwise specified.

2. Incorporation of Premises. The premises set forth above are incorporated into this Agreement by this reference thereto and are made a part hereof.

3. Incorporation of the Loan Agreement. The Loan Agreement and the terms and provisions thereof are hereby incorporated herein in their entirety by this reference thereto.

4. Security Interest in Trademarks. To secure the complete and timely payment, performance and satisfaction of all of the Obligations, the Pledgor hereby grants to the Lender a security interest in, as and by way of a first mortgage and security interest having priority over all other security interests, with power of sale to the extent permitted by applicable

law, all of the Pledgor's now owned or existing and hereafter acquired or arising: (i) trademarks, trade names, registered trademarks, trademark applications, service marks, registered service marks and service mark applications, including, without limitation, the trademarks, trade names, registered trademarks, trademark applications, service marks, registered service marks and service mark applications listed on Schedule 1 attached hereto and made a part hereof, and (a) all renewals thereof, (b) all income, royalties, damages and payments now and hereafter due and/or payable under and with respect thereto, including, without limitation, payments under all licenses entered into in connection therewith and damages and payments for past or future infringements or dilutions thereof, (c) the right to sue for past, present and future infringements and dilutions thereof, (d) the goodwill of the Pledgor's business symbolized by the foregoing and connected therewith, and (e) all of the Pledgor's rights corresponding thereto throughout the world (all of the foregoing trademarks, trade names, registered trademarks and trademark applications, service marks, registered service marks and service mark applications, together with the items described in clauses (a)-(e) in this paragraph 4(i), are sometimes hereinafter individually and/or collectively referred to as the "Trademarks"); and (ii) all proceeds of any and all of the foregoing, including, without limitation, license royalties and proceeds of infringement suits.

5. Grant of Security Interest in Patents. To secure the complete and timely payment, performance and satisfaction of all of the Obligations, the Pledgor hereby grants to the Lender a security interest, as and by way of a first mortgage and security interest having priority over all other security interests, with power of sale to the extent permitted by applicable law, in all of the Pledgor's right, title and interest in and to the Pledgor's owned or existing and hereafter acquired or arising: (i) patents and patent applications, including, without limitation, the patents and patent applications listed on Schedule 2 attached hereto and made a part hereof, and (a) all renewals thereof, (b) all income, royalties, damages and payments now and hereafter due and/or payable under and with respect thereto, including, without limitation, payments under all licenses entered into in connection therewith and damages and payments for past or future infringements or dilutions thereof, (c) the right to sue for past, present and future infringements and dilutions thereof, (d) the goodwill of the Pledgor's business symbolized by the foregoing and connected therewith, and (e) all of the Pledgor's rights corresponding thereto throughout the world (all of the foregoing patents and patent applications, together with the items described in clauses (a)-(e) in this paragraph 5(i), are sometimes hereinafter individually and/or collectively referred to as the "Patents"); and (ii) all proceeds of any and all of the foregoing, including, without limitation, license royalties and proceeds of infringement suits.

6. Grant of Security Interest in Trademark and Patent Licenses. To secure the complete and timely payment, performance and satisfaction of all of the Obligations, the Pledgor hereby grants to the Lender a security interest, as and by way of a first mortgage and security interest having priority over all other security interests, with power of sale to the extent permitted by applicable law, in all of the Pledgor's right, title and interest in and to the Pledgor's owned or existing and hereafter acquired or arising rights under or interest in any license agreements with any other party, whether the Pledgor is a licensee or licensor under any such license agreement, including, without limitation, license agreements listed on Schedule 3 attached hereto and made a part hereof, and the right to use the foregoing in connection with the enforcement of the Lender's rights under the Loan Agreement, including without limitation, the right to prepare for sale and sell any and all Inventory now or hereafter owned by the Pledgor and now or hereafter covered by such licenses (all of the foregoing are hereinafter referred to collectively as the "Licenses"). Notwithstanding the foregoing provisions of this paragraph 6,

the Licenses shall not include any license agreement in effect as of the date hereof which by its terms prohibits the grant of the security contemplated by this Agreement; provided, however, that upon the termination of such prohibitions for any reason whatsoever, the provisions of this paragraph 6 shall be deemed to apply thereto automatically.

7. Restrictions on Future Agreements. The Pledgor will not, without the Lender's prior written consent, enter into any agreement, including, without limitation, any license agreement, which is inconsistent with this Agreement, and the Pledgor further agrees that it will not take any action, and will use its best efforts not to permit any action to be taken by others subject to its control, including, without limitation, licensees, or fail to take any action, which would in any material respect affect the validity or enforcement of the rights transferred to the Lender under this Agreement or the rights associated with the Trademarks, the Patents or the Licenses.

8. New Trademarks, Patents and Licenses. The Pledgor represents and warrants that, from and after the Closing Date, (a) the Trademarks listed on Schedule 1 include all of the trademarks, trade names, registered trademarks, trademark applications, service marks, registered service marks and service mark applications now owned or held by the Pledgor, (b) the Patents listed on Schedule 2 include all of the patents and patent applications now owned or held by the Pledgor, (c) the Licenses listed on Schedule 3 include all of the license agreements under which the Pledgor is the licensee or licensor, and (d) no Liens, claims or security interests in such Trademarks, Patents or Licenses have been granted by the Pledgor to any Person other than the Lender and except as disclosed in the Loan Agreement. If, prior to the termination of this Agreement, the Pledgor shall (i) obtain rights to or become entitled to the benefit of any new trademarks, trade names, registered trademarks, trademark applications, service marks, registered service marks or service mark applications, (ii) obtain rights to or become entitled to the benefit of any patent or patent application or any reissue, division, continuation, renewal, extension or continuation-in-part of any Patent or any improvement on any Patent, (iii) obtain rights to or become entitled to the benefit of any new license agreements, whether as licensee or licensor, or license renewals, or (iv) enter into any new license agreement, the provisions of paragraph 4, 5 and 6 above shall automatically apply thereto (to the extent permitted by licensors under agreements in connection with the granting of such licenses). The Pledgor shall give to the Lender written notice of events described in clauses (i), (ii), (iii), and (iv) of the preceding sentence promptly, and in any event within thirty (30) days, after the occurrence thereof. The Pledgor hereby authorizes the Lender to modify this Agreement unilaterally (i) by amending Schedule 1 to include any future trademarks, trade names, registered trademarks, trademark applications, service marks, registered service marks and service mark applications that are Trademarks under paragraph 4 above or under this paragraph 8, (ii) by amending Schedule 2 to include any future patents and patent applications, which are Patents under paragraph 5 above or under this paragraph 8, (iii) by amending Schedule 3 to include any future license agreements that are Licenses under paragraph 6 above or under this paragraph 8, and (iv) by filing, in addition to and not in substitution for this Agreement, a duplicate original of this Agreement containing on Schedule 1 thereto, as the case may be, such future trademarks, tradenames, registered trademarks, trademark applications, service marks, registered service marks and service mark applications and containing on Schedule 2 thereto, as the case may be, such future patents and patent applications and containing on Schedule 3 thereto, as the case may be, such future license agreements.

9. Royalties. The Pledgor hereby agrees that the use by the Lender of the Trademarks, Patents and Licenses as authorized hereunder in connection with the Lender's exercise of its rights and remedies under paragraph 18 or pursuant to any Loan Document shall be coextensive with the Pledgor's rights thereunder and with respect thereto and without any liability for royalties or other related charges from the Lender to the Pledgor.

10. Right to Inspect; Further Assignments and Security Interest. The Lender may from time to time hereafter (at the Pledgor's expense) have access to, examine, audit, make copies and extracts from and inspect the Pledgor's premises and examine the Pledgor's books, records and operations relating to the Trademarks, Patents and Licenses. The Pledgor agrees (i) not to sell or assign any of its interests in, or grant any license under, the Trademarks or the Patents without the prior and express written consent of the Lender, and (ii) not to sell or assign its respective interests in the Licenses without the prior and express written consent of the Lender; provided, however, that without the Lender's consent the Pledgor may grant licenses and sublicenses in the ordinary course of business that will not materially affect the value to the Pledgor of the rights so licensed or sublicensed.

11. Nature and Continuation of the Lender's Security Interest; Termination of the Lender's Security Interest. This Agreement is made for collateral security purposes only. This Agreement shall create a continuing security interest in the Trademarks, Patents and Licenses and shall terminate only when the Obligations have been paid in full in cash and the Loan Agreement has been terminated. When this Agreement has terminated, the Lender shall promptly execute and deliver to the Pledgor, at the Pledgor's expense, all termination statements and other instruments as may be necessary or proper to terminate the Lender's security interest in the Trademarks, Patents and Licenses, subject to any disposition thereof which may have been made by the Lender pursuant to this Agreement.

12. Duties of the Pledgor. The Pledgor shall have the duty, to the extent desirable in the normal conduct of the Pledgor's business, (a) to prosecute diligently any trademark application or service mark application that is part of the Trademarks pending as of the date hereof or hereafter until the termination of this Agreement, (b) to prosecute diligently any patent application that is part of the Patents pending as of the date hereof or hereafter until the termination of this Agreement, and (c) to take all reasonable and necessary action to preserve and maintain all of the Pledgor's rights in the Trademarks, the Patents and the Licenses. The Pledgor further agrees (i) not to abandon any Trademark, Patent or License that is necessary or economically desirable in the operation of the Pledgor's business without the prior written consent of the Lender, and (ii) to use its best efforts to maintain in full force and effect the Trademarks, Patents and Licenses that are or shall be necessary or economically desirable in the operation of the Pledgor's business. Any expenses incurred in connection with the foregoing shall be borne by the Pledgor. The Lender shall not have any duty with respect to the Trademarks, the Patents or the Licenses. Without limiting the generality of the foregoing, the Lender shall not be under any obligation to take any steps necessary to preserve rights in the Trademarks, the Patents or the Licenses against any other parties, but the Lender may do so at its option from and after the occurrence and during the continuance of an Event of Default, and all expenses incurred in connection therewith shall be for the sole account of the Pledgor and shall be added to the Obligations secured hereby.

13. Indemnification by the Pledgor. The Pledgor hereby agrees to indemnify and hold harmless the Lender for any and all liabilities, obligations, losses, damages, penalties,

actions, judgments, suits, costs, expenses or disbursements (including reasonable attorneys' fees) of any kind whatsoever which may be imposed on, incurred by or asserted against the Lender in connection with or in any way rising out of any suits, proceedings or other actions, relating to any or all of the Trademarks, the Patents or the Licenses (including, without limitation, whether brought by the Pledgor or any other Person, suits, proceedings or other actions in which an allegation of liability, strict or otherwise, is or may be made by any Person who alleges or may allege having suffered damages as a consequence of alleged improper, imprudent, reckless, negligent, willful, faulty, defective or substandard design, testing, specification, manufacturing supervision, manufacturing defect, manufacturing deficiency, publicity or advertisement or improper use, howsoever arising or by whomsoever caused, of any inventions disclosed and claimed in the Patents or any of them); unless with respect to any of the above, the Lender is judicially determined to have acted or failed to act with gross negligence or willful misconduct. The indemnification in this paragraph shall survive the termination of this Agreement.

14. The Lender's Right to Sue. From and after the occurrence and during the continuance of an Event of Default, the Lender shall have the right, but shall not be obligated, to bring suit in its own name to enforce the Trademarks, the Patents and the Licenses and, if the Lender shall commence any such suit, the Pledgor shall, at the request of the Lender, do any and all lawful acts and execute any and all proper documents reasonably required by the Lender in aid of such enforcement. The Pledgor shall, upon demand, promptly reimburse the Lender for all costs and expenses incurred by the Lender in the exercise of its rights under this paragraph 14 (including, without limitation, reasonable fees and expenses of attorneys and paralegals for the Lender).

15. Waivers. The Lender's failure, at any time or times hereafter, to require strict performance by the Pledgor of any provision of this Agreement shall not waive, affect or diminish any right of the Lender thereafter to demand strict compliance and performance therewith nor shall any course of dealing between the Pledgor and the Lender have such effect. No single or partial exercise of any right hereunder shall preclude any other or further exercise thereof or the exercise of any other right. None of the undertakings, agreements, warranties, covenants and representations of the Pledgor contained in this Agreement shall be deemed to have been suspended or waived by the Lender unless such suspension or waiver is in writing signed by an officer of the Lender, and directed to the Pledgor and specifying such suspension or waiver.

16. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but the provisions of this Agreement are severable, and if any clause or provision shall be held invalid and unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision, or part hereof, in such jurisdiction, and shall not in any manner affect such clause or provision in any other jurisdiction, or any other clause or provision of this Agreement in any jurisdiction.

17. Modification. This Agreement cannot be altered, amended or modified in any way, except as specifically provided in paragraph 8 hereof or by a writing signed by the parties hereto.

18. Power of Attorney; Cumulative Remedies. (a) The Pledgor hereby irrevocably designates, constitutes and appoints the Lender (and all officers and agents of the

Lender designated by the Lender in its sole and absolute discretion) as the Pledgor's true and lawful attorney-in-fact, and authorizes the Lender and any of the Lender's designees, in the Pledgor's or the Lender's name, upon the occurrence and during the continuation of an Event of Default to take any action and execute any instrument necessary or reasonably advisable to accomplish the purposes of this Agreement, including, without limitation, to (i) endorse the Pledgor's name on all applications, documents, papers and instruments necessary or reasonably desirable for the Lender in the use of the Trademarks, the Patents or the Licenses, (ii) assign, pledge, convey or otherwise transfer title in or dispose of the Trademarks, the Patents or the Licenses to anyone, (iii) grant or issue any exclusive or nonexclusive license under the Trademarks, the Patents or the Licenses to anyone, and (iv) take any other actions with respect to the Trademarks, the Patents or the Licenses as the Lender reasonably deems in its best interest for the payment of the Obligations. The Pledgor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof. This power of attorney is coupled with an interest and shall be irrevocable until this Agreement is terminated. The Pledgor acknowledges and agrees that this Agreement is not intended to limit or restrict in any way the rights and remedies of the Lender under the Loan Agreement or any other Loan Document, but rather is intended to facilitate the exercise of such rights and remedies.

(b) The Lender shall have, in addition to all other rights and remedies given it by the terms of this Agreement, all rights and remedies allowed by law and the rights and remedies of a secured party under the Uniform Commercial Code as enacted in any jurisdiction in which the Trademarks, the Patents or the Licenses may be located or deemed located. Upon the occurrence and during the continuance of an Event of Default and the election by the Lender to exercise any of its remedies under Section 9-504 or Section 9-505 of the Uniform Commercial Code with respect to the Trademarks, the Patents or the Licenses, the Pledgor agrees to assign, convey and otherwise transfer title in and to the Trademarks, the Patents and the Licenses, to the Lender or any transferee of the Lender and to execute and deliver to the Lender or any such transferee all such agreements, documents and instruments as may be necessary, in the Lender's sole discretion, to effect such assignment, conveyance and transfer. All of the Lender's rights and remedies with respect to the Trademarks, the Patents and the Licenses, whether established hereby, by the Loan Agreement or by any other agreements or by law, shall be cumulative and may be exercised separately or concurrently. Notwithstanding anything set forth herein to the contrary, it is hereby expressly agreed that upon the occurrence and during the continuance of an Event of Default, the Lender may exercise any of the rights and remedies provided in this Agreement, the Loan Agreement or any of the other Loan Documents. To the extent permitted by applicable law, the Pledgor agrees that any notification of intended disposition of any of the Trademarks, the Patents or the Licenses required by law shall be deemed reasonably and properly given if given at least ten (10) days, if such notice is given by facsimile or twelve (12) days, if such notice is given by mail, before such disposition; provided, however, that the Lender may give any shorter notice that is commercially reasonable under the circumstances.

19. Successors and Assigns. This Agreement shall be binding upon the Pledgor and its successors and assigns, and shall inure to the benefit of the Lender and its nominees, successors and assigns. The Pledgor's successors and assigns shall include, without limitation, a receiver or a trustee of the Pledgor; provided, however, that the Pledgor shall not voluntarily assign or transfer its rights or obligations hereunder without the Lender's prior written consent.

20. Governing Law. This Agreement shall be construed and enforced and the rights and duties of the parties shall be governed by in all respects in accordance with the laws and decisions of the State of Georgia without reference to the conflicts or choice of law principles thereof.

21. Notices. All notices or other communications hereunder shall be given in the manner and to the addresses set forth in the Loan Agreement.

22. Paragraph Titles. The paragraph titles herein are for convenience of reference only, and shall not affect in any way the interpretation of any of the provisions hereof.

23. Execution in Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Delivery of a counterpart hereof via facsimile transmission shall be effective as delivery of a manually executed counterpart of this Agreement hereof.

24. Merger. This Agreement, together with the other Loan Documents, represents the final agreement of the Pledgor and the Lender with respect to the matters contained herein and may not be contradicted by evidence of prior or contemporaneous agreements, or subsequent oral agreements, between the Pledgor and the Lender.

25. Effectiveness. This Agreement shall become effective on the Closing Date.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

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

Sworn to and subscribed  
before me this 25<sup>th</sup> day  
of August, 1999

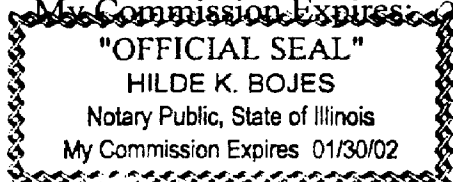
CUMBERLAND SWAN HOLDINGS, INC.

By: J. L. H. Bojcs  
Name: John H. Bojcs, Jr.  
Title: Exec V-P

Hilde K. Bojcs

NOTARY PUBLIC

My Commission Expires: 01/30/02



Sworn to and subscribed  
before me this 25<sup>th</sup> day  
of August, 1999

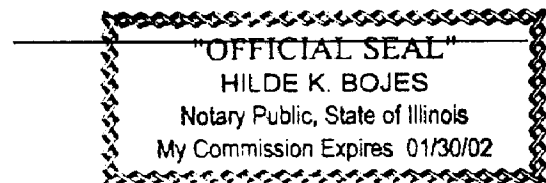
FOOTHILL CAPITAL CORPORATION

By: J. W. Willis  
Name: John W. Willis  
Title: Vice President

Hilde K. Bojcs

NOTARY PUBLIC

My Commission Expires: 01/30/02



**SCHEDULE 1****TRADEMARKS****Current Trademarks and Trademark Applications**

COUNTRY	MARK	SERIAL NO. OR REGISTRATION NO.	APP/REG DATE	CLASS(ES)
USA	Bottle & Cap	RN 1,997,803		3
USA	Everyday Protection	75/588,175		3
USA	Kiss the Burn Goodbye	RN 2,185,147		3
USA	Oil of Beauty	RN 1,661,372		3
USA	Soft'n Silky	RN 1,254,221		3
USA	Soft-n Silky	RN 1,257,289		3
MEXICO	Oil of Beauty	SN180,449/ RN477,814		3
USA	Alpha Renewal	RN 2,166,068		3
USA	Aquadent	RN 1,841,128		3
USA	Big Kids	RN 1,858,103		3
USA	Bottle Design	RN 7415 (MO State)		3
USA	Citroma	RN 1,704,520		5
USA	Coolfresh	75/688,242		5
USA	Duranail	RN 1,865,137		3
USA	Econo Sun	RN 2,016,523		3
USA	Fish & Co.	75/681,353		3
USA	Hydroxy Renewal	RN 2,200,014		3

USA	Hydroxy Renewal	RN 2,178,741		3
USA	Iceberg Blue	75/590,098		3
USA	ISO-50	RN 1,179,778		5
USA	Just Kidding	75/681,743		3
USA	Kid's Catch	75,681,746		3
USA	Misc. Design - Tear Drop	RN 2,042,927		3
USA	Nature's Mountain	RN 1,262,792		3
USA	New Wave	75/681,384		3
USA	Night of Beauty		Filed 06/22/99	3
USA	No Kidding	75/698,341		3
USA	Spring Mint	RN 2,006,918		3
USA	Sunspray	75/688,241		3
USA	Swan (stylized)	RN 438,253		3
USA	Swan	RN 1,522,360		5
USA	Swan	RN 1,567,808		3
USA	Tan Without The Sun	RN 2,098,543		3
USA	Thermaheat	75/590,397		3
USA	Therma Heat (stacked)		Filed 06/01/99	3
USA	UVC	75/687,671		3
USA	UVC Ultimate Vitamin Complex	75,687,659		3
USA	X-Protect	75/590,396		3

USA	X-Protect and Design		Filed 06/01/99	3
USA	Swan	75/175,614		3
USA	Swan	RN 2,140,304		5
USA	Swan Next to Design	75/175,615		3
USA	Swan Next to Design	75/175,744		5
USA	Swan Below Design	75/175,746		3
USA	Swan Below Design	75/175,745		5
COSTA RICA	Citroma	RN97718		5
PANAMA	Citroma	RN83930		5
CTM	Swan	SN162768		3 & 5
COSTA RICA	Swan	RN87556		5
EL SALVADOR	Swan	SN3046-97		5
HONDURAS	Swan	SN3592/94		5
INDONESIA	Swan	SND98-21041		3
INDONESIA	Swan	SND98-21042		5
PANAMA	Swan	SN075136/ RN75136		3
PANAMA	Swan	SN075135/ RN75135		5
SINGAPORE	Swan	SNS/5695/94/ RNB5695/94		3

ATL/637928.3

**Trade Names**

Cumberland-Swan, Inc.

Cumberland Freight Line, Inc.

## SCHEDULE 2

### PATENTS

#### Patents

TITLE	PATENT NO.
Paste Dispenser	4,767,032
Container and Cap	D 367,010
Bottle Design	29/105,678

#### Patent Applications

None.

## **SCHEDULE 3**

### **LICENSES**

None

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