

11-18-1999



101204124

RECORDATION FORM COVER SHEET
TRADEMARKS ONLY

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

MFD
11-10-99

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 Effective Date
Month Day Year
- Change of Name
- Other

Conveying Party

Mark if additional names of conveying parties attached

Execution Date
Month Day Year
10/27/99

Name Koch Meat Co., Inc.

Formerly Koch Poultry Company, Inc.

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

Receiving Party

Mark if additional names of receiving parties attached

Name American National Bank and Trust Company of Chicago, as Agent

DBA/AKATA

Composed of

Address (line 1) 120 South LaSalle Street

Address (line 2) Second Floor, Attn: James Cygan

Address (line 3) Chicago

Illinois

60603

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

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.)

FOR OFFICE USE ONLY

11/17/1999 DC04TES 00000187 2071639

01 FC:481
02 EC:482

40.00 DP
75.00 DP

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.

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

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REEL: 001989 FRAME: 0769

HARR

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="2071639"/>	<input type="text" value="2218919"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="1862648"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="2019040"/>	<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:
Deposit Account

Enclosed 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.

Geoffrey C. Cockrell

Name of Person Signing



Signature

10/27/99

Date Signed

SECURITY AGREEMENT

THIS SECURITY AGREEMENT, dated as of October 27, 1999, is entered into by and between AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, a national banking association (the "**Agent**"), acting in its own name and as agent on behalf of the Lenders (as defined in the Credit Agreement, hereinafter defined), and KOCH MEAT CO., INC. d/b/a KOCH POULTRY CO., an Illinois corporation, (the "**Debtor**").

RECITALS:

WHEREAS, pursuant to a credit agreement dated on or about the date hereof (as amended, varied, novated or supplemented from time to time, the "**Credit Agreement**"), made between the Debtor, the Agent, the Borrowers (as defined therein) and the Lenders (as defined therein), the Lenders have agreed to extend certain loans to the Debtor in aggregate amounts equal to the U.S. Dollar amounts specified therein (together, the "**Loans**") on the terms and conditions set out in the Credit Agreement; and

WHEREAS, in order to induce the Agent and the Lenders to enter into the Credit Agreement, the Debtor has agreed to enter into this Security Agreement.

NOW THEREFORE, for and in consideration of the Loans under the Credit Agreement and any other loan or advance (including any other loan or advance by renewal or extension) or other financial accommodation hereafter made or granted to the Debtor by the Agent or the Lenders, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Definitions and Interpretation of Agreement.** In addition to the terms defined elsewhere in this Agreement, the following terms shall have the meanings indicated for purposes of this Agreement (such meanings to be equally applicable to both the singular and plural forms of the terms defined). Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Credit Agreement:

"**Agreement**" shall mean this Security Agreement, as it may be amended, modified or supplemented from time to time.

"**Assignee Deposit Account**" shall have the meaning given to such term in Section 6(c).

"**Collateral**" shall mean all property or rights in which a security interest is granted hereunder.

"**Contract Right**" shall mean any right of the Debtor to payment under a contract for the sale or lease of goods or the rendering of services, which right is at the time not yet earned by performance.

"**Default**" shall mean the occurrence of any of the following events: (i) a "Default" under Article VII of the Credit Agreement; (ii) failure to perform any agreement of the Debtor contained herein for more than 10 days after written notice thereof; or (iii) any warranty of the Debtor herein is untrue in any material respect.

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"Equipment" shall mean all equipment of the Debtor of every description; all accessories, parts, accessions and other property at any time installed thereon or affixed thereto or used in connection therewith; and all substitutions for or replacements of any of the foregoing.

"Farm Products" shall mean all farm products of the Debtor of every description; all other property at any time used in connection therewith; and all substitutions for or replacements of any of the foregoing.

"Fixtures" shall mean all fixtures of the Debtor of every description; all accessories, parts, accessions and other property at any time installed thereon or affixed thereto or used in connection therewith; and all substitutions for or replacements of any of the foregoing.

"General Intangibles" shall mean all personal property of the Debtor (including things in action) other than Equipment, Inventory and other goods, Accounts, Contract Rights, chattel paper, documents, instruments and money. General Intangibles shall include, without limitation, inventions, designs, patents, patent applications, design patents, design patent applications, trademarks, trademark applications, trade names, trade secrets, goodwill, copyrights, registrations, licenses, franchises, customer lists, tax refund claims, rights to indemnification, rights under warranties, partnership interests and limited liability company interests.

"Inventory" shall mean all goods held by the Debtor for sale or lease, or leased by the Debtor, or furnished or to be furnished by the Debtor under any contract of service, or held by the Debtor as livestock, raw materials, work in process or materials used or consumed in a business; and all goods or livestock, the sale or lease of which has given rise to an Account, Contract Right, instrument or chattel paper, which are returned to the Debtor, repossessed by the Debtor, stopped in transit by the Debtor or which otherwise come into the possession of the Debtor.

"Liabilities" shall mean all obligations of the Debtor under any note, letter of credit, any other agreement, document or instrument with or in favor of the Agent or any of the Lenders in connection with the Credit Agreement, all obligations of the Debtor hereunder; all obligations of the Debtor under the Credit Agreement, howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, or now or hereafter existing, or due or to become due; and all other obligations of the Debtor to the Agent or any of the Lenders, its successors and assigns, in connection with the Credit Agreement, howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, or now or hereafter existing, or due or to become due.

"Non-Goods Collateral" shall mean all Collateral other than Inventory, Fixtures, Equipment and other goods.

A Section or a Schedule is, unless otherwise stated, a reference to a section hereof or a schedule hereto, as the case may be. Section captions used in this Agreement are for convenience only, and shall not affect the construction of this Agreement. The words "hereof," "herein," "hereto" and "hereunder" and words of similar purport when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. Unless otherwise defined therein, all terms defined in this Agreement shall have the defined meanings when used in any certificate or other documents made or delivered pursuant hereto.

2. **Grant of Security Interest.** As security for the payment of all Liabilities and as security for any Rate Management Transactions, the Debtor hereby collaterally assigns to the Agent, and grants to the Agent a continuing security interest in, the following, whether now or hereafter existing or acquired:

- (a) all Inventory, Farm Products, Accounts, Contract Rights and documents of title of the Debtor;
- (b) all chattel paper and instruments evidencing any obligation to the Debtor for payment for goods sold or leased or for services rendered;
- (c) all General Intangibles of the Debtor;
- (d) all interest of the Debtor in any goods, the sale or lease of which shall have given or shall give rise to, and in all guaranties and other property securing the payment of or performance under, any Accounts, Contract Rights, General Intangibles or any such chattel paper or instruments;
- (e) all Fixtures and Equipment of the Debtor;
- (f) any and all balances, credits, deposits (general or special, time or demand, provisional or final), accounts or moneys of or in the name of the Debtor now or hereafter with the Agent and any and all property of every kind or description of or in the name of the Debtor now or hereafter, for any reason or purpose whatsoever, in the possession or control of, or in transit to, the Agent or any agent or bailee for the Agent;
- (g) all trucks, trailers and vehicles (collectively with other property normally maintained in more than one location and rolling stock "**Mobile Goods**");
- (h) to the extent related to the property described in clauses (a) through (g) above, all books, correspondence, credit files, records, invoices and other papers and documents, including, without limitation, to the extent so related, all tapes, cards, computer runs, computer programs and other papers and documents in the possession or control of the Debtor or any computer bureau from time to time acting for the Debtor; and, to the extent so related, all rights in, to and under all policies of insurance, including claims of rights to payments thereunder and proceeds therefrom, including any credit insurance; and
- (i) all proceeds and products of any of the foregoing.

Notwithstanding the foregoing, the Debtor does not grant Agent a collateral assignment in any right, title or interest it has in any design, patent, patent application, design patent, design patent application; trade name, trademark, service mark, state or federal trademark or service mark application or registration, trade dress, or the goodwill symbolized thereby; trade secrets; or copyrights ("**Intellectual Property**"). The Debtor hereby conditionally assigns to the Agent, and grants to the Agent a continuing security interest in, the Intellectual Property whether now or hereafter existing or acquired.

3. **Warranties.** The Debtor warrants that:

- (a) except as otherwise provided in the Credit Agreement, no financing statement (other than any which may have been filed on behalf of the Agent) covering any of the Collateral is on file in any public office;
- (b) except in the case of certain General Intangibles, none of the Collateral is of a type where a security interest or lien may be filed under, or notice thereof given under, any federal statute;
- (c) as of the date hereof the addresses of all property on which Fixtures are located are listed on Schedule A, together with the names of the record owners thereof;
- (d) as of the date hereof all Equipment, except Mobile Goods, is located at one of the locations indicated on the Schedule B;
- (e) as of the date hereof the Debtor's chief executive office is located at the address indicated on the signature page hereof, and the Debtor keeps its records concerning Non-Goods Collateral at such address;
- (f) as of the date hereof the Debtor has no trade names, styles or doing business forms except as listed on Schedule C;
- (g) the Debtor is and will be the lawful owner of all Collateral, free of all liens and claims whatsoever, other than the security interest hereunder (except Liens permitted under the Credit Agreement), with full power and authority to execute this Agreement and perform the Debtor's obligations hereunder, and to subject the Collateral to the security interest hereunder; and
- (h) all information with respect to Collateral and Account Debtors set forth in any schedule, certificate or other writing at any time heretofore or hereafter furnished by the Debtor to the Agent, and all other written information heretofore or hereafter furnished by the Debtor to the Agent, is and will be true and correct in all material respects as of the date furnished.

4. **Use of Equipment.** Until the occurrence and during the continuance of a Default and then unless otherwise directed by the Agent, the Debtor may have possession of all Equipment and Fixtures and use the same in any lawful manner not inconsistent with this Agreement or with any policy of insurance on any of the Equipment or Fixtures.

5. **Processing and Sale.** Until the occurrence and during the continuance of a Default and then unless the Agent shall notify the Debtor of the revocation of such power and authority, the Debtor:

- (a) may, in the ordinary course of its business, at its own expense, sell, lease or furnish under contracts of service any of the Inventory normally held by the Debtor for such purpose, and use and consume, in the ordinary course of its business, any raw materials, work in process or materials normally held by the Debtor for such purpose;
- (b) will, at its own expense, endeavor to collect, as and when due, all amounts due with respect to any of the Non-Goods Collateral, including the taking of such action with

respect to such collection as the Agent may reasonably request or, in the absence of such request, as the Debtor may deem advisable; and

- (c) may grant, in the ordinary course of business, to any party obligated on or with respect to any of the Non-Goods Collateral, any rebate, refund or allowance to which such party may be lawfully entitled, and may accept, in connection therewith, the return of goods, the sale or lease of which shall have given rise to such Non-Goods Collateral.

6. **Appointment of the Agent as Attorney-in-Fact and Collections.**

- (a) The Debtor hereby irrevocably designates, makes, constitutes and appoints the Agent (and all Persons designated by the Agent), after the occurrence and during the continuance of a Default, as its true and lawful attorney-in-fact, and authorizes the Agent, in the Debtor's or the Agent's name, to: (i) demand payment of Accounts; (ii) enforce payment of Accounts by legal proceedings or otherwise; (iii) exercise all of the Debtor's rights and remedies with respect to proceedings brought to collect an Account; (iv) sell or assign any Account upon such terms, for such amount and at such time or times as the Agent deems advisable; (v) settle, adjust, compromise, extend or renew an Account; (vi) discharge and release any Account; (vii) take control in any manner of any item of payment or proceeds thereof; (viii) prepare, file and sign the Debtor's name on any proof of claim in bankruptcy or other similar document against an Account Debtor; (ix) endorse the Debtor's name upon any items of payment or proceeds thereof and deposit the same in the Agent's account on account of the Liabilities; (x) endorse the Debtor's name upon any chattel paper, document, instrument, invoice, or similar document or agreement relating to any Account or any goods pertaining thereto; (xi) sign the Debtor's name on any verification of Accounts and notices thereof to Account Debtors; (xii) notify the post office authorities to change the address for delivery of the Debtor's mail to an address designated by Agent, have access to any lock box or postal box into which any of the Debtor's mail is deposited, and open and dispose of all mail addressed to the Debtor and (xiii) do all acts and things which are necessary, in the Agent's reasonable discretion, to fulfill the Debtor's obligations under this Agreement.
- (b) Upon request of the Agent, during the existence of a Default, the Debtor will forthwith, upon receipt, transmit and deliver to the Agent, in the form received, all cash, checks, drafts, chattel paper and other instruments or writings for the payment of money (properly endorsed, where required, so that such items may be collected by the Agent) which may be received by the Debtor at any time in full or partial payment or otherwise as proceeds of any of the Collateral. Any such items which may be held by the Debtor at the time of such request by the Agent or received by the Debtor thereafter will not be commingled with any other of its funds or property, but will be held separate and apart from its own funds or property and upon express trust for the Agent until delivery is made to the Agent.
- (c) All items or amounts which are received by the Agent from the Debtor or any other party on account of partial or full payment or otherwise as proceeds of any of the Collateral shall be deposited to the credit of a deposit account (the "**Assignee Deposit Account**") of the Debtor with the Agent, as security for payment of the Liabilities. During the existence of a Default, the Debtor shall have no right to withdraw any funds deposited in the Assignee Deposit Account. The Agent may,

from time to time, in its discretion, and shall upon request of the Debtor made not more than once in any week, apply all or any of the then balance, representing collected funds, in the Assignee Deposit Account toward payment of the Liabilities, whether or not then due, in such order of application as the Agent may determine, and the Agent may, from time to time, in its discretion, release all or any of such balance to the Debtor.

The Agent is authorized to endorse, in the name of the Debtor, any item, howsoever received by the Agent, representing any payment on or other proceeds of any of the Collateral.

7. **Application of Proceeds.** The proceeds of sale of Collateral sold pursuant to the terms of Section 6 hereof, whether or not deposited in the Assignee Deposit Account, shall be applied by the Agent as follows:

First: to payment of all of the reasonable costs and expenses of the Agent or the Lenders, including (i) the expenses of such sale, (ii) the out-of-pocket costs and expenses of the Agent and the reasonable fees and out-of-pocket costs and expenses of counsel employed by the Agent following a Default, (iii) the payment of all advances made by the Agent hereunder for the account of the Debtor, and (iv) the payment of all costs and expenses incurred by the Agent in connection with the administration and enforcement of this Agreement, to the extent that such advances, costs and expenses shall not have been reimbursed to the Agent and then to the Liabilities of all other obligations of the Debtor hereunder;

Second: the balance, if any, of such proceeds shall be held by the Agent until this Agreement shall terminate pursuant to Section 18, and if any proceeds shall then remain, such proceeds shall be paid to the Debtor, its successors and assigns, or as a court of competent jurisdiction in any pending proceeding may direct.

8. **Certificates, Schedules and Reports.** The Debtor will furnish to the Agent:

- (a) from time to time, as the Agent may request, a schedule identifying each Account (not previously so identified) subject to the security interest hereunder, accompanied (if the Agent so requests) by a true and correct copy of the invoice evidencing such Account and by evidence of shipment or performance;
- (b) immediately upon learning of the occurrence of any event causing material loss or depreciation in value of Inventory or Equipment, written notice thereof, describing the same, and specifying the amount of such loss or depreciation; and
- (c) from time to time, as the Agent may request, such additional schedules and such certificates and reports respecting all or any of the Collateral at the time subject to the security interest hereunder and the items or amounts received by the Debtor in full or partial payment or otherwise as proceeds of any of the Collateral, all to such extent as the Agent may request.

Each of the foregoing schedules, certificates, reports and notices shall be executed by a duly authorized officer of the Debtor and shall be in such form and detail as the Agent may reasonably specify.

9. Agreements of the Debtor. The Debtor:

- (a) will, upon request of the Agent, execute such financing statements and other documents (and pay the cost of filing or recording the same in all public offices deemed necessary by the Agent) and do such other acts and things, all as the Agent may from time to time request, to establish and maintain a valid security interest in the Collateral (free of all other liens, claims and rights of third parties whatsoever, except as otherwise disclosed in the Credit Agreement) to secure the payment of the Liabilities, including, without limitation, depositing with the Agent any certificate of title issuable with respect to any of the Equipment and noting thereon the security interest hereunder. The Debtor agrees that any carbon, photographic or other reproduction of this Agreement or of any such financing statement shall be sufficient for filing as a financing statement;
- (b) will keep its records concerning Non-Goods Collateral at its address shown on the signature page hereof unless the Agent shall be given prompt prior notice in writing, which records will be of such character as will enable the Agent or its designees to determine at any time the status thereof;
- (c) will keep all Equipment, except Mobile Goods, at one of the locations indicated on Schedule B, unless the Agent shall be given prompt prior notice in writing; and will not use any Mobile Goods outside the territorial limits of the United States, unless the Agent shall otherwise consent in writing;
- (d) will keep all Fixtures at the respective addresses shown on Schedule A, unless the Agent shall be given 30-days prior notice in writing;
- (e) will not, unless the Agent shall be given 30-days prior notice in writing, change the location of its chief executive office or its chief place of business;
- (f) will furnish the Agent not less than 30 days written notice prior to changing its name or adopting or changing any trade name, style or doing business form;
- (g) will furnish the Agent such information concerning the Debtor, the Collateral and the Account Debtors as the Agent may from time to time reasonably request;
- (h) will permit the Agent and its agents or its designees, from time to time on reasonable notice, to inspect and evaluate the Collateral or any thereof, and to inspect, audit and make copies of and extracts from all records and all other papers in the possession of the Debtor, and will, upon request of the Agent, following Default, deliver to the Agent all of such records and papers which pertain to the Collateral and Account Debtors;
- (i) will, upon request of the Agent, stamp on its records concerning the Collateral a notation, in form satisfactory to the Agent, of the security interest of the Agent hereunder;
- (j) except as otherwise provided in the Credit Agreement and except for the sale or lease of Inventory in the ordinary course of its business (which does not include a transfer in partial or total satisfaction of Indebtedness), will not, unless the Agent shall otherwise consent in writing, sell, lease, transfer, assign or otherwise dispose

of, or create or permit to exist any lien on or security interest in, any Collateral other than obsolete Equipment to or in favor of anyone other than the Agent;

- (k) will at all times keep all Inventory, Equipment and Fixtures insured against loss, damage, theft and other risks, in such amounts and with such companies and under such policies and in such form, all as shall be reasonably satisfactory to the Agent, which policies shall provide that loss thereunder shall be payable to the Agent as its interest may appear (and the Agent may apply any proceeds of such insurance which may be received by it toward payment of Liabilities, whether or not due, in such order of application as the Agent may determine), and such policies thereof shall, if the Agent so requests, be deposited with the Agent;
- (l) will at all times keep all Equipment and Fixtures in good order and repair, excepting any loss or damage or destruction which is covered by proceeds of insurance required hereunder and excepting ordinary wear and tear;
- (m) will reimburse the Agent and the Lenders upon demand for all reasonable costs and expenses, including reasonable fees of attorneys (who may be employees of the Agent or the Lenders) and legal expenses, incurred by the Agent and the Lenders in seeking to collect or enforce any rights under the Collateral and, in case of Default, in seeking to collect the Liabilities and to enforce rights hereunder, including expenses of any repairs to any realty or other property to which any of the Equipment or Fixtures may be affixed or be a part;
- (n) will reimburse the Agent upon demand for all reasonable costs and expenses incurred by the Agent, its agents or its designees in the course of the evaluations, audits, extractions and other activities referred to in clause (j) of this Section 9;
- (o) will pay, when due, all taxes, assessments, governmental charges and other similar charges levied against any of the Collateral, except and so long as the Debtor is contesting such taxes, assessments or charges in good faith and by appropriate proceedings and the Debtor has set aside on its books such reserves or other appropriate provisions therefor as may be required by generally accepted accounting principles;
- (p) will, if at any time prior to the occurrence of a Default, any Account Debtor returns any Inventory to the Debtor with a value in excess of Five Hundred Thousand Dollars (\$500,000), promptly determine the reason for such return and, if the Debtor accepts such return, issue a credit memorandum (with a copy to be sent to the Agent if the Agent has so requested) in the appropriate amount to such Account Debtor. After the occurrence of a Default, the Debtor shall hold all returned Inventory in trust for the Agent, shall segregate all returned Inventory from all other property of the Debtor or in its possession and shall conspicuously, if possible, label said returned Inventory as the property of the Agent. The Debtor shall, in all cases, immediately notify the Agent of the return of any Inventory with a value in excess of Five Hundred Thousand Dollars (\$500,000), specifying the reason for such return and the location and condition of the returned Inventory; and
- (q) will not during any Default, without the Agent's prior written consent, grant any extension of the time for payment of any of the Accounts, compromise, compound or settle the same for less than the full amount thereof, release, wholly

or partly, any Person liable for the payment thereof, or allow any credit or discount whatsoever thereon other than in each case, in the ordinary course of business of the Debtor.

- (r) The Debtor will regularly update, and provide Agent with such updated, schedules and exhibits hereto, so that the Schedules and Exhibits shall reflect the current status at all times.

The Agent may from time to time, at its option, perform any agreement of the Debtor hereunder which the Debtor shall fail to perform and take any other action which the Agent deems necessary for the maintenance or preservation of any of the Collateral or its interest therein, and the Debtor agrees to forthwith reimburse the Agent for all expenses of the Agent in connection with the foregoing, together with interest thereon from the date incurred until reimbursed by the Debtor at the applicable rate set forth in Section 2.11 of the Credit Agreement.

10. **Safekeeping of Inventory; Inventory Covenants.** Neither the Agent nor any Lender shall be responsible for (a) the safekeeping of the Inventory; (b) any loss or damage thereto or destruction thereof occurring or arising in any manner or fashion from any cause, (c) any diminution in the value of Inventory or (d) any act or default of any carrier, warehouseman, bailee or forwarding agency or any other Person in any way dealing with or handling the Inventory, except to the extent that the Debtor incurs any loss, cost, claim or damage from any of the foregoing as a result of the gross negligence or willful misconduct of the Agent or such Lender. All risk of loss, damage, distribution or diminution in value of the Inventory shall, except as noted in the previous sentence, be borne by the Debtor.
11. **Default and Remedies.** Whenever a Default shall be existing, and in accordance with the Credit Agreement, (a) all Liabilities may (notwithstanding any provisions thereof), at the option of the Agent, and without demand or notice of any kind, be declared, and thereupon immediately shall become, due and payable; (b) the Agent may, from time to time, without demand or notice of any kind, appropriate and apply toward the payment of such of the Liabilities, and in such order of application, as the Agent may from time to time elect, any and all balances, credits, deposits (general or special, time or demand, provisional or final), accounts or moneys of or in the name of the Debtor then or thereafter with the Agent; and (c) the Agent may exercise from time to time any rights and remedies available to it under applicable law. The Debtor agrees, in case of Default, to assemble, at its expense, all Inventory, Equipment and Fixtures at a convenient place acceptable to the Agent.

Without limiting the foregoing, upon Default the Agent may, to the fullest extent permitted by applicable law, without notice, hearing or process of law of any kind:

- (a) enter upon any premises where any of the Collateral may be located and take possession of and remove such Collateral;
- (b) use, license or, to the extent permitted by any applicable license, sublicense, whether general, special or otherwise, and whether on an exclusive or non-exclusive basis, any General Intangibles throughout the world for such term or terms, on such conditions, and in such manner, as the Agent shall in its sole discretion determine, without compensation to the Debtor;

- (c) sell any or all of the Collateral, free of all rights and claims of the Debtor therein and thereto, at any public or private sale; and
- (d) bid for and purchase any or all of such Collateral at any such sale.

The Debtor hereby expressly waives, except for notice of a Uniform Commercial Code sale or other sale of Collateral, to the fullest extent permitted by applicable law, any and all notices, advertisements, hearings or process of law in connection with the exercise by the Agent of any of its rights and remedies upon Default. Any notification of intended disposition of any of the Collateral required by law shall be deemed reasonable and properly given if given at least 10 days before such disposition. Any proceeds of any disposition by the Agent of any of the Collateral may be applied by the Agent to the payment of expenses in connection with the Collateral, including reasonable fees of attorneys (who may be employees of the Agent) and legal expenses, and any balance of such proceeds may be applied by the Agent toward the payment of such of the Liabilities, and in such order of application, as the Agent may from time to time elect.

In the event of the occurrence and during the continuation of a Default, the Debtor hereby authorizes and empowers the Agent to make, constitute and appoint any officer or agent of the Agent as the Agent in its sole discretion may select as the Debtor's true and lawful attorney-in-fact, with the power to endorse the Debtor's name on all applications, documents, papers and instruments necessary for the Agent to use any General Intangibles or to grant or issue any exclusive or nonexclusive general, special or other license or sublicense to any party or necessary for the Agent to assign, convey or otherwise transfer title in or dispose of any of the Collateral to any party. The Debtor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof. This power of attorney is irrevocable and is coupled with an interest.

12. Nature of Liabilities.

- (a) The Debtor acknowledges and agrees that the Borrowers shall be jointly and severally liable for the Liabilities. The Debtor represents and warrants to the Lenders at all times that the extension of credit under the Credit Agreement to each of the other Borrowers directly or indirectly confers a material benefit on the Debtor.
- (b) Notwithstanding any provision herein contained to the contrary, the Debtor's liability under the Credit Agreement shall be limited to the amount which could be claimed due by the Agent and the Lenders from the Debtor under the Credit Agreement without rendering such claim voidable or avoidable under Section 548 of Chapter 11 of the United States Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law after taking into account, among other things, the Debtor's Liabilities under the Credit Agreement; provided, that this clause (b) shall not be deemed to limit, at any time, the liability of the Debtor to pay all of the Liabilities. Notwithstanding any other terms of this Agreement or the Credit Agreement, if it is ever determined that any amounts owed by the Debtor to the Lenders under the Credit Agreement would render the Debtor insolvent, the Lenders hereby acknowledge and agree that the Liabilities owed by the Debtor under the Credit Agreement shall not exceed as to the Debtor an amount which would render the Debtor insolvent at any relevant time.

13. **No Marshalling.** To the extent the Agent holds a security interest in other assets of the Borrowers, nothing contained herein shall require the Agent to proceed against any security interest against any of the assets of the Borrowers prior to enforcing its rights in the Collateral.
14. **Custody and Preservation of Collateral.** The Agent shall be deemed to have exercised reasonable care in the custody and preservation of any of the Collateral in its possession if it takes such action for that purpose as the Debtor requests in writing, but failure of the Agent to comply with any such request shall not of itself be deemed a failure to exercise reasonable care, and no failure of the Agent to preserve or protect any rights with respect to such Collateral against prior parties, or to do any act with respect to the preservation of such Collateral not so requested by the Debtor, shall be deemed a failure to exercise reasonable care in the custody or preservation of such Collateral.
15. **Indemnity.** The Debtor shall indemnify, defend and hold harmless the Agent, the Lenders, their agents, officers and employees, and every attorney appointed pursuant to this Agreement (a) in respect of all liabilities and expenses incurred by them in good faith in the execution of purported execution of any rights, powers or discretions vested in them pursuant to this Agreement, and (b) for any losses arising in connection with the exercise or purported exercise of any of their rights, powers and discretions hereunder except that the Agent and the Lenders, their agents, officers and employees and each attorney will be liable for any liabilities, expenses and losses which arise as a result of their own willful misconduct or gross negligence.
16. **Notices.**
- (a) Except as otherwise permitted in the Credit Agreement with respect to borrowing notices, all notices, requests and other communications to any party hereunder shall be in writing (including electronic transmission, facsimile transmission or similar writing) and shall be given to such party: (a) in the case of the Debtor or the Agent, at its address or facsimile number set forth in the signature page hereof, (b) in the case of any Lender, at its address or facsimile number set forth in the Credit Agreement or (c) in the case of any party, at such other address or facsimile number as such party may hereafter specify for the purpose by notice to the Agent and the Debtor in accordance with the provisions of this Section 16(a). Each such notice, request or other communication shall be effective (i) if given by facsimile transmission, when transmitted to the facsimile number specified in this Section and confirmation of receipt is received, (ii) if given by mail, 72 hours after such communication is deposited in the mails with first class postage prepaid, addressed as aforesaid, or (iii) if given by any other means, when delivered (or, in the case of electronic transmission, received) at the address specified in this Section.
- (b) The Debtor, the Agent and any Lender may each change the address for service of notice upon it by a notice in writing to the other parties hereto;
17. **Waiver and Amendments.** No failure or delay on the part of the Agent in the exercise of any power, right or remedy, and no course of dealing between the Debtor and the Agent, shall operate as a waiver of such power, right or remedy, nor shall any single or partial exercise of any power, right or remedy preclude other or further exercise thereof or the exercise of any other power, right or remedy. The remedies provided for herein are cumulative and not exclusive of any remedies which may be available to the Agent at law

or in equity. No notice to or demand on the Debtor not required hereunder shall in any event entitle the Debtor to any other or further notice or demand in similar or other circumstances or constitute a waiver of the right of the Agent to any other or further action in any circumstances without notice or demand. No amendment, modification or waiver of, or consent with respect to, any provision of this Agreement shall in any event be effective unless the same shall be in writing and signed and delivered by the Agent and the Debtor. Any waiver of any provision of this Agreement, and any consent to any departure by the Debtor from the terms of any provision of this Agreement, shall be effective only in the specific instance and for the specific purpose for which given.

18. **Termination of Agreement.** The Debtor agrees that its security hereunder shall, unless sooner terminated by Agent (notwithstanding, without limitation, that at any time or from time to time all Liabilities may have been paid in full) terminate only when (a) the Liabilities (including, without limitation, any and all extensions or renewals of any thereof, any and all interest on any thereof, and any and all expenses incurred by the Agent in seeking to collect any of the Liabilities and to collect or enforce any rights under the Collateral) have been satisfied in full and all other obligations of the Debtor hereunder and thereunder have been fully performed, or (b) such Collateral is sold or otherwise transferred by the Debtor in accordance with the express terms hereof or of the Credit Agreement, at which time the Agent shall reassign and redeliver (or cause to be reassigned and redelivered) to the Debtor, or to such Person or Persons as such Debtor shall designate, such of the Collateral (if any) secured hereunder by the Debtor as shall not have been sold or otherwise applied by the Agent pursuant to the terms hereof and shall still be held by it hereunder, together with appropriate instruments of reassignment and release. Any such reassignment pursuant to the foregoing provisions shall be without recourse upon, or representation or warranty by, the Agent.
19. **Severability.** Any provision in this Agreement that is held to be inoperative, unenforceable, or invalid in any jurisdiction shall, as to that jurisdiction, be inoperative, unenforceable, or invalid without affecting the remaining provisions in that jurisdiction or the operation, enforceability, or validity of that provision in any other jurisdiction, and to this end the provisions of this Agreement are declared to be severable.
20. **Successors and Assigns.** The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the Debtor and the Agent and their respective successors and assigns, except that (a) the Debtor shall not have the right to assign its rights or obligations under this Agreement and (b) any assignment by the Agent must be made in compliance of the Credit Agreement.
21. **CHOICE OF LAW. THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS (INCLUDING, WITHOUT LIMITATION, 735 ILCS SECTION 105/5-1 ET SEQ, BUT OTHERWISE WITHOUT REGARD TO THE CONFLICT OF LAWS PROVISIONS) OF THE STATE OF ILLINOIS, BUT GIVING EFFECT TO FEDERAL LAWS APPLICABLE TO NATIONAL BANKS.**
22. **WAIVER OF JURY TRIAL. THE DEBTOR, THE AGENT AND EACH LENDER HEREBY WAIVE TRIAL BY JURY IN ANY JUDICIAL PROCEEDING INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER (WHETHER SOUNDING IN TORT, CONTRACT OR OTHERWISE) IN ANY WAY ARISING OUT OF, RELATED TO, OR CONNECTED WITH THIS AGREEMENT OR THE RELATIONSHIP ESTABLISHED HEREUNDER.**

23. **CONSENT TO JURISDICTION.** THE DEBTOR HEREBY IRREVOCABLY SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF ANY UNITED STATES FEDERAL OR ILLINOIS STATE COURT SITTING IN CHICAGO, ILLINOIS IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT AND THE DEBTOR HEREBY IRREVOCABLY AGREES THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN ANY SUCH COURT AND IRREVOCABLY WAIVES ANY OBJECTION IT MAY NOW OR HEREAFTER HAVE AS TO THE VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN SUCH A COURT OR THAT SUCH COURT IS AN INCONVENIENT FORUM. NOTHING HEREIN SHALL LIMIT THE RIGHT OF THE AGENT OR ANY LENDER TO BRING PROCEEDINGS AGAINST THE DEBTOR IN THE COURTS OF ANY OTHER JURISDICTION. ANY JUDICIAL PROCEEDING BY THE DEBTOR AGAINST THE AGENT OR ANY LENDER OR ANY AFFILIATE OF THE AGENT OR ANY LENDER INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER IN ANY WAY ARISING OUT OF, RELATED TO, OR CONNECTED WITH THIS AGREEMENT SHALL BE BROUGHT ONLY IN A COURT IN CHICAGO, ILLINOIS.
24. **No Immunity.** The Debtor agrees that should the Agent bring any judicial proceedings in relation to any matter arising under this Agreement, no immunity from such judicial proceedings, from the attachment of its properties or from execution of any judgment shall be claimed by or on behalf of the Debtor or with respect to its properties, any such immunity hereby being irrevocably waived by the Debtor.
25. **Counterparts.** This Agreement may be executed in any numbers of counterparts, all of which taken together shall constitute one agreement, and any of the parties hereto may execute this Agreement by signing any such counterpart. This Agreement shall be effective when it has been executed by the Debtor and the Agent.

IN WITNESS WHEREOF, this Agreement has been duly executed as of the day and year first above written.

KOCH MEAT CO., INC. d/b/a KOCH POULTRY CO.

By: Joseph C. Hendry
Title: President
1300 West Higgins Road, Suite 100
Park Ridge, Illinois 60068

Attention: Mark J. Kaminsky
Telephone: (847) 384-5940
Fax: (847) 384-5962

AMERICAN NATIONAL BANK AND TRUST
COMPANY OF CHICAGO, as Agent

By: James G. Cygan
Title: Vice President
120 South LaSalle Street, Second Floor
Chicago, Illinois 60603-3400

Attention: James G. Cygan
Telephone: (312) 661-5370
Fax: (312) 661-3566

Schedule A

TO
SECURITY AGREEMENT
BETWEEN
AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO
AND
KOCH MEAT CO., INC. d/b/a KOCH POULTRY CO.

PROPERTY WITH FIXTURES

Owner of Record

Address of Property

Koch Meat Co., Inc.

2155 Rose Street
Franklin Park, Illinois

Koch Poultry Company

1001 Birmingham Highway
Chattanooga, Tennessee

Koch Meat Co., Inc.

4100 Port Union Road
Fairfield, Ohio

Schedule B

**TO
SECURITY AGREEMENT
BETWEEN
AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO
AND
KOCH MEAT CO., INC. d/b/a KOCH POULTRY CO.**

LOCATION OF EQUIPMENT

Address of Property

2155 Rose Street
Franklin Park, Illinois

11115 West Fulton Market
Chicago, Illinois

2868 North Lincoln
Chicago, Illinois

4100 Port Union Road
Fairfield, Ohio

4404 West Berteau
Chicago, Illinois

Schedule C

TO
SECURITY AGREEMENT
BETWEEN
AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO
AND
KOCH MEAT CO., INC. d/b/a KOCH POULTRY CO.

TRADE NAMES, STYLES OR DOING BUSINESS FORMS

<u>Debtor</u>	<u>Trade name</u>	<u>Doing Business</u>
Koch Meat Co., Inc.	Koch Poultry Co. Aspen Foods (IL & OH) Koch Trading Co. (MO only)	Ohio, Missouri Georgia, Washington