

06-09-2000

SHEET  
Y

To the Honorable Commissioner of Paten

documents or copy thereof.



101377031

1. Name of conveying party(ies):

The MacGregor Group, Inc.

- Individual       Association
- General Partnership     Limited Partnership

Corporation - State: Delaware

Other: \_\_\_\_\_

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

3. Nature of conveyance:

- Assignment       Merger
- Security Agreement     Change of Name

Other: \_\_\_\_\_

Execution Date: May 6, 1999

..... address of receiving party(ies):

Name: BCM Capital Partners, L.P.

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

Street Address: Two Copley Place

City: Boston State: MA Zip: 02116

Individual(s) citizenship

Association

General Partnership

Limited Partnership

Corporation - State: \_\_\_\_\_

Other: \_\_\_\_\_

If assignee is not domiciled in the United States, a domestic representative designation is attached:  Yes  No

(Designations must be a separate document from assignment)

Additional name(s) & address(es) attached  Yes  No

4. Application number(s) or registration number(s)

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

75518448

2260988

1864445

Additional numbers attached?  yes  no

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

Name: Catherine R. Howell, Paralegal

Internal Address: Ropes & Gray

Street Address: 1301 K St., N. W. Suite 800 East

City: Washington, D.C. State:     Zip: 20005

6. Total number of applications and registration involved:

..... [3]

7. Total Fee (37 CFR 3.41) ..... \$ 90

Enclosed

Authorized to be charged to deposit account  
(including any additional necessary fees)

8. Deposit account number:

18-1945

DO NOT USE THIS SPACE

9. Statement and signature.

*To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.*

Catherine R. Howell  
Name of Person Signing

Catherine R. Howell  
Signature

May 10, 2000  
Date

Total number of pages including cover sheet, attachments and document: [23]

MHODMA.Active;8244682;1

06/07/2000 DNGUYEN 00000343 181945 75518448

01 FC:481  
02 FC:482

40.00 CH  
50.00 CH

TRADEMARK  
REEL: 002089 FRAME: 0285

ATTACHMENT TO TRADEMARK RECORDATION FORM COVER SHEET

2. Names and addresses of additional receiving parties:

Bain Capital V Mezzanine Fund, L.P.  
Two Copley Place  
Boston, MA 02116

BCIP Associates II  
Two Copley Place  
Boston, MA 02116

BCIP Trust Associates II  
Two Copley Place  
Boston, MA 02116

BCIP Trust Associates II-B  
Two Copley Place  
Boston, MA 02116

Commonwealth Capital Ventures II L.P.  
20 Williams Street  
Wellesley, MA 02841

CCV II Associates L.P.  
20 Williams Street  
Wellesley, MA 02841

Sankaty High Yield Asset Partners, L.P.  
Two Copley Place  
Boston, MA 02116

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**THE MACGREGOR GROUP, INC.**

**and**

**THE NOTEHOLDERS IDENTIFIED HEREIN**

**SECURITY AGREEMENT**

Dated as of May 6, 1999

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Company means the Company.

"Pledged Indebtedness" is defined in Section 2.1.6.

"Pledged Rights" is defined in Section 2.1.5.

"Pledged Securities" means the Pledged Stock, the Pledged Rights and the Pledged Indebtedness, collectively.

"Pledged Stock" is defined in Section 2.1.4.

"UCC" means the Uniform Commercial Code as in effect in Massachusetts on the date hereof; provided, however, that with respect to the perfection of the Noteholders' Lien on the Note Security and the effect of nonperfection thereof, the term "UCC" means the Uniform Commercial Code as in effect in any jurisdiction the laws of which are made applicable by section 9-103 of the Uniform Commercial Code as in effect in Massachusetts.

## 2 Security.

2.1 Note Security. As security for the payment and performance of the Notes, the Obligor hereto mortgages, pledges and collaterally grants and assigns to the Noteholders, ratably in accordance with their ownership of the Notes, and creates a security interest in favor of the Noteholders, all of the Obligor's right, title and interest in and to (but none of its obligations or liabilities with respect to) the items and types of present and future property described in Sections 2.1.1 through 2.1.14 (subject, however, to Section 2.1.15), whether now owned or hereafter acquired, all of which shall be included in the term "Note Security"; provided that the Noteholders acknowledge that the Company may have certain obligations to Fidelity Capital Markets under section 10.2 of the Soft Dollar Exclusivity Agreement between Fidelity Capital Markets and the Obligor dated September 24, 1996 (the "Soft Dollar Agreement") and hereby agree that if the Obligor is required to grant a security interest or take other such like action on a portion of the Note Security pursuant to such section 10.2 of the Soft Dollar Agreement, the Noteholders shall subordinate their interest in such portion of the Note Security as may be so required:

2.1.1 Tangible Personal Property. All goods, machinery, equipment, inventory and all other tangible personal property of any nature whatsoever, wherever located, including raw materials, work in process, finished parts and products, supplies, spare parts, replacement parts, merchandise for resale, computers, tapes, disks and computer equipment.

2.1.2 Rights to Payment of Money. All rights to receive the payment of money, including accounts and receivables, rights to receive the payment of money under contracts, franchises, licenses, permits, subscriptions or other agreements (whether or not earned by performance), and rights to receive payments from any other source (all such rights, other than Financing Debt, being referred to herein as "Accounts").

2.1.3 Intangibles. All of the following (to the extent not included in Section 2.1.2):

(a) contracts, franchises, licenses, permits, subscriptions and other agreements and all rights thereunder; (b) rights granted by others which permit the Obligor to sell or market items of personal property; (c) United States and foreign common law and statutory copyrights and rights in literary property and rights and licenses thereunder; (d) trade names, United States and foreign trademarks, service marks, internet domain names, registrations of any of the foregoing and related good will; (e) United States and foreign patents and patent applications; (f) computer software, designs, models, know-how, trade secrets, rights in proprietary information, formulas, customer lists, backlog, orders, subscriptions, royalties, catalogues, sales material, documents, good will, inventions and processes; (g) judgments, causes in action and claims, whether or not inchoate, and (h) all other general intangibles and intangible property and all rights thereunder.

- 2.1.4 Pledged Stock. (a) All shares of capital stock or other evidence of beneficial interest in any corporation, business trust or limited liability company, (b) all limited partnership interests in any limited partnership, (c) all general partnership interests in any general or limited partnership, (d) all joint venture interests in any joint venture and (e) all options, warrants and similar rights to acquire such capital stock or such interests. All such capital stock, interests, options, warrants and other rights are collectively referred to as the "Pledged Stock".
- 2.1.5 Pledged Rights. All rights to receive profits or surplus of, or other Distributions (including income, return of capital and liquidating distributions) from, any partnership, joint venture or limited liability company, including any distributions by any such Person to partners, joint venturers or members. All such rights are collectively referred to as the "Pledged Rights".
- 2.1.6 Pledged Indebtedness. All Financing Debt from time to time owing to the Obligor from any Person (all such Financing Debt being referred to as the "Pledged Indebtedness").
- 2.1.7 Chattel Paper, Instruments, etc. All chattel paper, non-negotiable instruments, negotiable instruments, documents and investment property.
- 2.1.8 Leases. All leases of personal property, whether the Obligor is the lessor or the lessee thereunder.
- 2.1.9 Deposit Accounts. All general or special deposit accounts, including any demand, time, savings, passbook or similar account maintained by the Obligor with any bank, trust company, savings and loan association, credit union or similar organization, and all money, cash and cash equivalents of the Obligor,

whether or not deposited in any such deposit account.

- 2.1.10 Collateral. All collateral granted by third parties to, or held by, the Obligor with respect to the Accounts, Pledged Securities, chattel paper, instruments, leases and other items of Note Security.
- 2.1.11 Books and Records. All books and records, including books of account and ledgers of every kind and nature, all electronically recorded data (including all computer programs, disks, tapes, electronic data processing media and software used in connection with maintaining the Obligor's books and records), all files, correspondence and all containers for the foregoing.
- 2.1.12 Insurance. All insurance policies which insure against any loss or damage to any other Note Security or which are otherwise owned by the Obligor.
- 2.1.13 All Other Property. All other property, assets and items of value of every kind and nature, tangible or intangible, absolute or contingent, legal or equitable.
- 2.1.14 Proceeds and Products. All proceeds, including insurance proceeds, and products of the items of Note Security described or referred to in Sections 2.1.1 through 2.1.13 and, to the extent not included in the foregoing, all Distributions with respect to the Pledged Securities.
- 2.1.15 Excluded Property. Notwithstanding Sections 2.1.1 through 2.1.14, the payment and performance of the Notes shall not be secured by:

(a) any contract, license, permit or franchise that validly prohibits the creation by the Obligor of a security interest in such contract, license, permit or franchise (or in any rights or property obtained by the Obligor under such contract, license, permit or franchise); provided, however, that the provisions of this Section 2.1.15 shall not prohibit the security interests created by this Agreement from extending to the proceeds of such contract, license, permit or franchise (or such rights or property) or to the monetary value of the good will and other general intangibles of the Obligor relating thereto;

(b) any rights or property to the extent that any valid and enforceable law or regulation applicable to such rights or property prohibits the creation of a security interest therein; provided, however, that the provisions of this Section 2.1.15 shall not prohibit the security interests created by this Agreement from extending to the proceeds of such rights or property or to the monetary value of the good will and other general intangibles of the Obligor relating thereto; or



(c) the items described in Section 2.2 (but only in the event and to the extent the Required Noteholders have not specified that such items be included in the Note Security pursuant thereto).

In addition, in the event the Obligor disposes of assets to third parties in a transaction not forbidden under the Securities Purchase Agreement, such assets, but not the proceeds or products thereof, shall be released from the Lien of the Note Security.

2.2 Additional Note Security. As additional Note Security, the Obligor covenants that it will mortgage, pledge and collaterally grant and assign the Noteholders, and will create a security interest in favor of the Noteholders in, all of its right, title and interest in and to (but none of its obligations with respect to) such of the following present or future items as the Required Noteholders may from time to time specify by notice to the Obligor, whether now owned or hereafter acquired, and the proceeds and products thereof, except to the extent consisting of rights or property of the types referred to in Section 2.1.15(a) through (c), subject only to Liens permitted by Section 2.3.3, all of which shall thereupon be included in the term "Note Security":

2.2.1 Real Property. All real property and immovable property and fixtures, leasehold interests and easements wherever located, together with all estates and interests of the Obligor therein, including lands, buildings, stores, manufacturing facilities and other structures erected on such property, fixed plant, fixed equipment and all permits, rights, licenses, benefits and other interests of any kind or nature whatsoever in respect of such real and immovable property.

2.2.2 Motor Vehicles and Aircraft. All motor vehicles and aircraft.

2.3 Certain Covenants with Respect to Note Security. The Obligor covenants that:

2.3.1 Pledged Stock. All shares of capital stock, limited partnership interests, membership interests and similar securities included in the Pledged Stock shall be at all times duly authorized, validly issued, fully paid and (in the case of capital stock and limited partnership interests) nonassessable. The Obligor will deliver to the Noteholders certificates representing the Pledged Stock, registered, if the Required Noteholders so request, in the name of the Noteholders or their nominee or accompanied by a stock transfer power executed in blank and, if the Required Noteholders so requests, with the signature guaranteed, all in form and manner reasonably satisfactory to the Required Noteholders. Pledged Stock that is not evidenced by a certificate will be registered in the name of the Noteholders or their nominee on the issuer's records or an appropriate control statement with respect thereto shall be

provided to the Noteholders, all in form and substance reasonably satisfactory to the Required Noteholders. In the event the Pledged Stock includes any Margin Stock, the Obligor will furnish to the Noteholders Federal Reserve Form U-1 and take such other action as the Required Noteholders may reasonably request to ensure compliance with applicable laws.

- 2.3.2 Accounts and Pledged Indebtedness. The Obligor will, immediately upon the receipt thereof, deliver to the Noteholders any promissory note or similar instrument representing any Account or Pledged Indebtedness, after having endorsed such promissory note or instrument in blank.
- 2.3.3 No Liens or Restrictions on Transfer or Change of Control. All Note Security shall be free and clear of any Liens and restrictions on the transfer thereof, including contractual provisions which prohibit the assignment of rights under contracts, except for Liens permitted by section 7.9 of the Securities Purchase Agreement and related restrictions on transfer or by this Section 2.3.3. Without limiting the generality of the foregoing, the Obligor will in good faith attempt to exclude from agreements, instruments, deeds or leases to which it becomes a party after the date hereof provisions that would prevent the Obligor from creating a security interest in such agreement, instrument, deed or lease or any rights or property acquired thereunder as contemplated hereby. None of the Pledged Stock shall be subject to any option to purchase or similar rights of any Person. Except with the written consent of the Required Noteholders, which consent will not be unreasonably withheld, the Obligor will in good faith attempt to exclude from any agreement, instrument, deed or lease provisions that would restrict the change of control or ownership of the Company or any of its Subsidiaries, or the creation of a security interest in the ownership of the Company or any of its Subsidiaries.
- 2.3.4 Location of Note Security. The Obligor shall at all times keep its records concerning the Accounts at its chief executive office and principal place of business or, so long as the Obligor shall have first taken all steps reasonably necessary to perfect the Noteholders' security interest in the Note Security with respect to such new address, at such other address as the Obligor may specify by notice actually received by the Noteholders not less than 10 business days prior to such change of address. The Obligor shall not at any time keep tangible personal property of the type referred to in Section 2.1.1 in any jurisdiction other than the jurisdiction of the Obligor's chief executive office and principal place of business or, so long as the Obligor shall have taken all steps reasonably requested by Required Noteholders to perfect the Noteholders' security interest in the Note Security with respect to such other jurisdiction, other jurisdictions as the Obligor may specify by notice actually received by the Required Noteholders not less than 10 days prior to moving such tangible personal

property into such other jurisdiction.

- 2.3.5 Trade Names. The Obligor will not adopt or do business under any name other than its name or names listed on Schedule 2.3.5 hereto or any other name specified by notice actually received by the Required Noteholders not less than 10 business days prior to the conduct of business under such additional name. Since its inception, the Obligor has not changed its name or adopted or conducted business under any trade name other than a name specified in Schedule 2.3.5.
- 2.3.6 Delivery of Documents. Upon the request of the Required Noteholders, the Obligor shall deliver to the Noteholders, promptly upon the Obligor's receipt thereof, copies of any agreements, instruments, documents or invoices comprising or relating to the Note Security. Pending such request, the Obligor shall keep such items at its chief executive office and principal place of business (as specified pursuant to Section 2.3.4), or at the Obligor's office located at 1740 Broadway, New York, New York 10019; provided that such items may be kept at such other address as the Obligor may specify by notice actually received by the Noteholders not less than 10 business days prior to the relocation of any such items.
- 2.3.7 Perfection of Note Security. This Agreement shall create in favor of the Noteholders, a legal, valid and enforceable first priority security interest in the Note Security described herein, subject only (in the case of Note Security other than Pledged Stock) to Liens permitted by section 7.9 of the Securities Purchase Agreement. In the case of the Pledged Stock, when stock certificates representing such Pledged Stock and stock powers related thereto duly executed in blank by the relevant pledgor are delivered to the Noteholders, and in the case of the other Note Security described in this Agreement, when financing statements in appropriate form are filed in the jurisdictions specified on Schedule 2.3.7 hereto, this Agreement shall provide a fully perfected, first priority Lien on, and security interest in, all right, title and interest of the Obligor in such Note Security, as security for the Notes, in each case prior and superior in right to any other Person (except Liens permitted by section 7.9 of the Securities Purchase Agreement). Upon the Required Noteholders' reasonable request from time to time, the Obligor will execute and deliver, and file and record in the proper filing and recording places, all such instruments, including financing statements, collateral assignments of copyrights, trademarks and patents, mortgages or deeds of trust and notations on certificates of title, and will take all such other action, as the Required Noteholders deem reasonably necessary for confirming to it the Note Security or to carry out any other purpose of this Agreement.

2.4 Administration of Note Security. The Note Security shall be administered as follows, and if an Event of Default shall have occurred and be continuing, Section 2.5 shall also apply.

2.4.1 Use of Note Security. Until the Required Noteholders provide written notice to the contrary, the Obligor may use, commingle and dispose of any part of the Note Security in the ordinary course of its business, all subject to the Securities Purchase Agreement.

2.4.2 Accounts. To the extent specified by prior written notice from the Required Noteholders after the occurrence and during the continuance of an Event of Default, all sums collected or received and all property recovered or possessed by the Obligor in connection with any Note Security shall (subject to the rights of any holder of a prior Lien permitted under section 7.8 of the Securities Purchase Agreement) be received and held by the Obligor in trust for and on the Noteholders' behalf, shall be segregated from the assets and funds of the Obligor, and shall be delivered to the Noteholders.

2.4.3 Distributions on Pledged Securities.

(a) Until an Event of Default shall occur and be continuing, the Obligor shall be entitled, to the extent permitted by the Securities Purchase Agreement, to receive all Distributions on or with respect to the Pledged Securities (other than Distributions constituting additional Pledged Securities). All Distributions constituting additional Pledged Securities will be retained by the Noteholders (or if received by the Obligor shall be held by such Person in trust and shall be immediately delivered by such Person to the Noteholders in the original form received, endorsed in blank) and held by the Noteholders as part of the Note Security.

(b) If an Event of Default shall have occurred and be continuing, all Distributions on or with respect to the Pledged Securities shall be retained by the Noteholders (or if received by the Obligor shall be held by such Person in trust and shall be immediately delivered by it to the Noteholders in the original form received, endorsed in blank) and held by the Noteholders as part of the Note Security or applied by the Noteholders to the payment of the Notes in accordance with Section 2.5.6.

2.4.4 Voting Pledged Securities.

(a) Until an Event of Default shall occur and be continuing, the

Obligor shall be entitled to vote or consent with respect to the Pledged Securities in any manner not inconsistent with the terms of any Document, and the Noteholders will, if so requested, execute appropriate revocable proxies therefor.

(b) If an Event of Default shall have occurred and be continuing, if and to the extent that the Required Noteholders shall so notify in writing the Obligor pledging the Pledged Securities in question, only the Noteholders shall be entitled to vote or consent or take any other action with respect to the Pledged Securities (and the Obligor will, if so requested, execute appropriate proxies therefor).

2.5 Right to Realize upon Note Security. Except to the extent prohibited by applicable law that cannot be waived, this Section 2.5 shall govern the Noteholders' rights to realize upon the Note Security if any Event of Default shall have occurred and be continuing. The provisions of this Section 2.5 are in addition to any rights and remedies available at law or in equity and in addition to the provisions of any other Document. In the case of a conflict between this Section 2.5 and any other Document, this Section 2.5 shall govern.

2.5.1 Assembly of Note Security; Receiver. The Obligor shall, upon the Required Noteholders' request, assemble the Note Security and otherwise make it available to the Noteholders. The Noteholders may have a receiver appointed for all or any portion of the Obligor's assets or business which constitutes the Note Security in order to manage, protect, preserve, sell and otherwise dispose of all or any portion of the Note Security in accordance with the terms of the Securities Purchase Agreement, to continue the operations of the Obligor and to collect all revenues and profits therefrom to be applied to the payment of the Notes, including the compensation and expenses of such receiver.

2.5.2 General Authority. To the extent specified in written notice from the Required Noteholders to the Obligor, the Obligor grants the Required Noteholders full and exclusive power and authority (subject to rights of any holder of a prior or senior lien permitted under section 7.8 of the Securities Purchase Agreement), subject to the other terms hereof and applicable law, to take any of the following actions following and during the continuance of an Event of Default (for the sole benefit of the Noteholders, but at the Obligor's expense):

(a) To ask for, demand, take, collect, sue for and receive all payments in respect of any Accounts, general intangibles, Pledged Securities or leases which the Obligor could otherwise ask for, demand, take, collect, sue for and receive for its own use.

(b) To extend the time of payment of any Accounts, general intangibles, Pledged Securities or leases and to make any allowance or other adjustment with respect thereto.

(c) To settle, compromise, prosecute or defend any action or proceeding with respect to any Accounts, general intangibles, Pledged Securities or leases and to enforce all rights and remedies thereunder which the Obligor could otherwise enforce.

(d) To enforce the payment of any Accounts, general intangibles, Pledged Securities or leases, either in the name of the Obligor or in its own name, and to endorse the name of the Obligor on all checks, drafts, money orders and other instruments tendered to or received in payment of any Note Security.

(e) To notify the third party payor with respect to any Accounts, general intangibles, Pledged Securities or leases of the existence of the security interest created hereby and to cause all payments in respect thereof thereafter to be made directly to the Noteholders; provided, however, that whether or not the Noteholders shall have so notified such payor, the Obligor will at its expense render all reasonable assistance to the Noteholders in collecting such items and in enforcing claims thereon.

(f) To sell, transfer, assign or otherwise deal in or with any Note Security or the proceeds thereof, as fully as the Obligor otherwise could do.

2.5.3 Marshaling, etc. The Noteholders shall not be required to make any demand upon, or pursue or exhaust any of their rights or remedies against, the Obligor or any other guarantor, pledgor or any other Person with respect to the payment of the Notes or to pursue or exhaust any of their rights or remedies with respect to any collateral therefor or any direct or indirect guarantee thereof. The Noteholders shall not be required to marshal the Note Security or any guarantee of the Notes or to resort to the Note Security or any such guarantee in any particular order, and all of its and their rights hereunder or under any other Document shall be cumulative. To the extent it may lawfully do so, the Obligor absolutely and irrevocably waives and relinquishes the benefit and advantage of, and covenants not to assert against the Noteholders, any valuation, stay, appraisement, extension, redemption or similar laws now or hereafter existing which, but for this provision, might be applicable to the sale of any Note Security made under the judgment, order or decree of any court, or privately under the power of sale conferred by this Agreement, or otherwise. Without limiting the generality of the foregoing, the Obligor (a) agrees that it will not

invoke or utilize any law which might prevent, cause a delay in or otherwise impede the enforcement of the rights of any Noteholder in the Note Security, (b) waives all such laws, and (c) agrees that it will not invoke or raise as a defense to any enforcement by any Noteholder of any rights and remedies relating to the Note Security or the Notes any legal or contractual requirement with which any Noteholder may have in good faith failed to comply. In addition, the Obligor waives any right to prior notice (except to the extent expressly required by this Agreement) or judicial hearing in connection with foreclosure on or disposition of any Note Security, including any such right which the Obligor would otherwise have under the Constitution of the United States of America, any state or territory thereof or any other jurisdiction.

2.5.4 Sales of Note Security. All or any part of the Note Security may be sold for cash or other value in any number of lots at public or private sale, without demand, advertisement or notice; provided, however, that unless the Note Security to be sold threatens to decline speedily in value or is of a type customarily sold on a recognized market, the Required Noteholders shall give the Obligor granting the security interest in such Note Security 10 days' prior written notice of the time and place of any public sale, or the time after which a private sale may be made, which notice each of the Obligor and each of the Noteholders agrees to be reasonable. At any sale or sales of Note Security, any Noteholder or any of its respective officers acting on its behalf, or such Noteholder's assigns, may bid for and purchase all or any part of the property and rights so sold, may use all or any portion of the Notes owed to such Noteholder as payment for the property or rights so purchased, and upon compliance with the terms of such sale may hold and dispose of such property and rights without further accountability to the Obligor, except for the proceeds of such sale or sales pursuant to Section 2.5.6. The Obligor acknowledge that any such sale will be made by the Noteholders on an "as is" basis with disclaimers of all warranties, whether express or implied. The Obligor will execute and deliver or cause to be executed and delivered such instruments, documents, assignments, waivers, certificates and affidavits, will supply or cause to be supplied such further information and will take such further action, as the Required Noteholders shall reasonably request in connection with any such sale.

2.5.5 Sale without Registration. If, at any time when the Required Noteholders shall determine to exercise the Noteholders' rights hereunder to sell all or part of the securities included in the Note Security, the securities in question shall not be effectively registered under the Securities Act (or other applicable law), the Required Noteholders may, in their sole discretion, sell such securities by private or other sale not requiring such registration in such manner and in such circumstances as the Required Noteholders may deem necessary or advisable in

order that such sale may be effected in accordance with applicable securities laws without such registration and the related delays, uncertainty and expense. Without limiting the generality of the foregoing, in any event the Required Noteholder may, in their sole discretion, (a) approach and negotiate with a single purchaser or one or more possible purchasers to effect such sale, (b) restrict such sale to one or more purchasers each of whom will represent and agree that such purchaser is purchasing for its own account, for investment and not with a view to the distribution or sale of such securities and (c) cause to be placed on certificates representing the securities in question a legend to the effect that such securities have not been registered under the Securities Act (or other applicable law) and may not be disposed of in violation of the provisions thereof. The Obligor agrees that such manner of disposition is commercially reasonable, that it will upon the request of the Required Noteholders give any such purchaser access to such information regarding the issuer of the securities in question as the Required Noteholders may reasonably request and that the Noteholders shall not incur any responsibility for selling all or part of the securities included in the Note Security at any private or other sale not requiring such registration, notwithstanding the possibility that a substantially higher price might be realized if the sale were deferred until after registration under the Securities Act (or other applicable law) or until made in compliance with certain other rules or exemptions from the registration provisions under the Securities Act (or other applicable law). The Obligor acknowledges that no adequate remedy at law exists for breach by it of this Section 2.5.5 and that such breach would not be adequately compensable in damages and therefore agrees that this Section 2.5.5 may be specifically enforced.

2.5.6 Application of Proceeds. The proceeds of all sales and collections in respect of any Note Security or other assets of the Obligor, all funds collected from the Obligor and any cash contained in the Note Security, the application of which is not otherwise specifically provided for herein, shall be applied as follows:

(a) First, to the payment of the costs and expenses of such sales and collections, the reasonable expenses of the Noteholders and the reasonable fees and expenses of its special counsel;

(b) Second, any surplus then remaining to the payment of the Notes, pro rata, in accordance with the provisions for mandatory prepayments (other than on receipts of indemnification proceeds) in the Securities Purchase Agreement; and

(c) Third, any surplus then remaining shall be paid to the Obligor, subject, however, to the rights of the holder of any then existing Lien of which the Noteholders have actual notice.



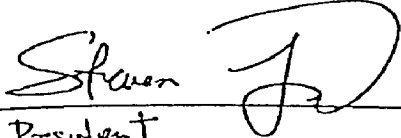
2.6 Custody of Note Security. Except as provided by applicable law that cannot be waived, the Noteholders will have no duty as to the custody and protection of the Note Security, the collection of any part thereof or of any income thereon or the preservation or exercise of any rights pertaining thereto, including rights against prior parties, except for the use of reasonable care in the custody and physical preservation of any Note Security in its possession. The Noteholders will not be liable or responsible for any loss or damage to any Note Security, or for any diminution in the value thereof, by reason of the act or omission of any agent selected by the Noteholders acting in good faith.

3 General. Addresses for notices, consent to jurisdiction, jury trial waiver, defeasance and numerous other provisions applicable to this Agreement are contained in the Securities Purchase Agreement. The invalidity or unenforceability of any provision hereof shall not affect the validity or enforceability of any other provision hereof, and any invalid or unenforceable provision shall be modified so as to be enforceable to the maximum extent of its validity or enforceability. The headings in this Agreement are for convenience of reference only and shall not limit, alter or otherwise affect the meaning hereof. This Agreement and the Securities Purchase Agreement constitute the entire understanding of the parties with respect to the subject matter hereof and thereof and supersede all prior and current understandings and agreements, whether written or oral. This Agreement may be executed in any number of counterparts, which together shall constitute one instrument. This Agreement shall be governed by and construed in accordance with the laws (other than the conflict of laws rules) of the Commonwealth of Massachusetts, except as may be required by the UCC of other jurisdictions with respect to matters involving the perfection of the Noteholders' Lien on the Note Security located in such other jurisdictions.

Each of the undersigned has caused this Agreement to be executed and delivered by its duly authorized officer as an agreement under seal as of the date first written above.

**GRANTOR:**

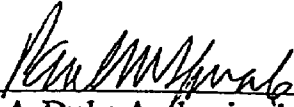
**THE MACGREGOR GROUP, INC.**

By   
Title: President

**SECURED PARTIES:**


**BCM CAPITAL PARTNERS, L.P.**  
**BAIN CAPITAL V MEZZANINE FUND, L.P.**

By: Bain Capital V Mezzanine Partners, L.P.  
their general partner  
By: Bain Capital Investors V, Inc.  
its general partner

By:   
A Duly Authorized Signatory

**BCIP ASSOCIATES II**  
**BCIP TRUST ASSOCIATES II**  
**BCIP TRUST ASSOCIATES II-B**

By: Bain Capital, Inc.,  
their Managing Partner

By:   
A Duly Authorized Signatory

**COMMONWEALTH CAPITAL VENTURES II L.P.**

By: Commonwealth Venture Partners II L.P.  
its General Partner

By   
Title: General Partner

**SCHEDULE 1**

**NOTEHOLDERS**

BCM Capital Partners, L.P.  
Bain Capital V Mezzanine Fund, L.P.  
BCIP Associates II  
BCIP Trust Associates II  
BCIP Trust Associates II-B  
Commonwealth Capital Ventures II L.P.  
CCV II Associates L.P.  
Sankaty High Yield Asset Partners, L.P.

**TRADE NAMES**

The MacGregor Group, Inc.

MHODMA.Active;3389962;6