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

12-14-00

RECORDATION FORM COVER SHEET
TRADEMARKS ONLY

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

Submission Type

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

Conveyance Type

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

Conveying Party

☐ Mark if additional names of conveying parties attachedExecution Date
Month Day YearName Formerly

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

☐ Other ☒ Citizenship/State of Incorporation/Organization

Receiving Party

☐ Mark if additional names of receiving parties attachedName 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 Assignment.)

FOR OFFICE USE ONLY

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: 002204 FRAME: 0294

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)

| | | |
|----------------------|----------------------|----------------------|
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Registration Number(s)

| | | |
|--|----------------------|----------------------|
| <input type="text" value="2,232,657"/> | <input type="text"/> | <input type="text"/> |
| <input type="text" value="2,063,529"/> | <input type="text"/> | <input type="text"/> |
| <input type="text"/> | <input type="text"/> | <input type="text"/> |

Number of Properties

Enter the total number of properties involved.

#

Fee Amount

Fee Amount for Properties Listed (37 CFR 3.41):

\$

Method of Payment:

Enclosed ☒

Deposit Account ☐

Deposit Account

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

Deposit Account Number:

#

Authorization to charge additional fees:

Yes ☐

No ☐

Statement and Signature

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

Tara J. Hart-Nova

Name of Person Signing



Signature

December 8, 2000

Date Signed

SECURITY AGREEMENT AND ASSIGNMENT
OF TRADEMARKS AND SERVICE MARKS

FOR VALUE RECEIVED, DOWLING'S FLEET SERVICE CO., INC., a New York corporation, with an office at 389 East 3rd Street, Mt. Vernon, New York 10550 ("Company") and **HSBC BANK USA**, a New York banking corporation with an office at One HSBC Center, Buffalo, New York ("HSBC Bank") agree as follows:

1. **Security Interest.** Company hereby transfers and assigns to HSBC Bank and grants to HSBC Bank a security interest ("Security Interest") in all its rights, title and interest, whether now owned or hereafter owned or acquired by Company, in and to: (i) all marks used by Company in Company's business, including, without limitation, all marks listed on Schedule A hereto (collectively, "Marks" whether trademarks or service marks); (ii) all licenses of the use of the Marks, including, without limitation, all licenses described on Schedule A (collectively, "Licenses"); (iii) all good will associated with the Marks or with the use of each Mark licensed; (iv) all registrations, certificates of registration (and similar documents), and applications for registration of the Marks, whether issued or pending before the United States Patent and Trademark Office, the Secretary of State of the State of New York, a governmental body of any other state, commonwealth, district or territory of the United States or a governmental body of any other country, whether issued to or filed by Company or to or by another and subsequently assigned to Company, including, without limitation, all registration, certificates of registration and applications for registration described on Schedule A, together with any renewals thereof (collectively, Registrations) and (v) all proceeds of all of the foregoing in any form, including, without limitation, any claim by Company against third parties for past, present or future infringement or dilution of any of the Marks, and of any Marks licensed under any License, or for injury to the goodwill associated with the Marks, Registration or Marks licensed under any License (collectively, "Collateral").

2. **Indebtedness Secured.** The Security Interest secures payment of any and all indebtedness (as hereinafter defined) of Company to HSBC Bank. As used in this Security Agreement, "Indebtedness" shall mean any and all Indebtedness and other liabilities of Company to HSBC Bank, whether now existing or hereafter incurred, of every kind and character, (i) arising under a Line of Credit and Term Credit Agreement of even date herewith between Company and HSBC Bank, as amended from time to time ("Credit Agreement"), or any Collateral Documents (as defined in the Credit Agreement) executed in connection with the Credit Agreement; (ii) arising under an Unlimited Continuing Guaranty of even date herewith from Company to HSBC Bank ("Guaranty"); and (iii) arising under any Hedge Agreement (as defined in the Credit Agreement) between Company and HSBC Bank.

3. **Representations and Warranties.** Company represents and warrants and, so long as this Security Agreement is in effect, shall be deemed continuously to represent and warrant that: (a) the Marks are subsisting; (b) Company has genuine, valid, subsisting interests in the Collateral and knows of no defect in its title thereto; (c) Company has not

heretofore alienated, assigned, encumbered, or otherwise disposed of the Collateral except as disclosed on Schedule 6.2 of the Credit Agreement; (d) there are no suits or actions commenced or threatened against Company with reference to the Collateral; and (e) Company is authorized to enter into this Security Agreement.

4. **Covenants of Company.** So long as this Security Agreement is in effect, Company: (a) will defend the Collateral against the claims and demands of all other parties and, at its own expense, bring suit in the name of Company at the request of HSBC Bank for infringement; provided, however, if HSBC Bank finds it necessary or desirable, HSBC Bank may prosecute others for infringement and may join Company as party-plaintiffs; will keep the Collateral free from all security interests or other encumbrances, except the Security Interest; and will not sell, transfer, assign, license, deliver, renounce or otherwise dispose of any Collateral or any interest therein without the prior written consent of HSBC Bank; (b) will promptly notify HSBC Bank of any suit for infringement brought against Company and shall promptly furnish HSBC Bank copies of the litigation papers; (c) will notify HSBC Bank promptly in writing of any change in Company's business address or chief executive office, specified above; (d) in connection herewith, will execute and deliver to HSBC Bank such financing statements, assignments and other documents, and do such other things relating to the Collateral and the Security Interest as HSBC Bank may request, pay all costs of title searches and filing financing statements, assignments, this Security Agreement and other documents in all public offices requested by HSBC Bank; and (e) if the Marks are registered, will give notice of such fact in the manner prescribed by Section 1111 of Title 15, United States Code, or by state or foreign law, if applicable.

5. **Events of Default.**

(a) Any of the following events or conditions shall constitute an event of default hereunder ("Event of Default"): (i) nonpayment when due and after any applicable grace or cure period, whether by acceleration or otherwise, of principal of or interest on any Indebtedness, or default by Company in the performance of any obligation, term or condition of this Security Agreement (ii) an Event of Default under the Credit Agreement; (iii) an Event of Default under the Guaranty; or (iv) an Event of Default under any Hedge Agreement.

(b) Secured Party, at its sole election, may declare all or any part of any Indebtedness not payable on demand to be immediately due and payable without demand or notice of any kind upon the happening of any Event of Default not cured within 10 days of notice (other than an event of default under either Section 7.1(d) or 7.1(e) of the Credit Agreement). All or any part of any Indebtedness not payable on demand shall be immediately due and payable without demand or notice of any kind upon the happening of one or more events of default under Section 7.1(d) or 7.1(e) of the Credit Agreement. The provisions of this paragraph are not intended in any way to affect any rights of HSBC Bank with respect to any Indebtedness which may now or hereafter be payable on demand.

(c) HSBC Bank's rights and remedies with respect to the Collateral shall be those of a Secured Party under the Uniform Commercial Code and under any other applicable law, as the same may from time to time be in effect, in addition to those rights granted herein and in any other agreement now or hereafter in effect between Company and HSBC Bank. Upon the existence or occurrence of an Event of Default, HSBC Bank may use or license others to use the Marks, and may further assign the marks and their registrations and certificates of registration (or similar documents) together with the good will associated therewith.

(d) Without in any way requiring notice to be given in the following time and manner, Company agrees that any notice by HSBC Bank of sale, disposition or other intended action hereunder or in connection herewith, whether required by the Uniform Commercial Code or otherwise, shall constitute reasonable notice to Company if such notice is mailed by regular or certified mail, postage prepaid, at least five (5) business days prior to such action, to Company's address specified above or to any other address which Company has specified in writing to HSBC Bank as the address to which notices hereunder shall be given to Company.

(e) Company agrees to pay on demand all reasonable costs and expenses incurred by HSBC Bank in enforcing this Security Agreement, in realizing upon or protecting any Collateral and in enforcing and collecting any Indebtedness or any guaranty thereof, including, without limitation, if HSBC Bank retains counsel for advice, suit, appeal, insolvency or other proceedings under the federal HSBC Bankruptcy Code or otherwise, or for any of the above purposes, the reasonable attorneys' fees incurred by HSBC Bank. Payment of all sums hereunder is secured by the Collateral.

6. **Miscellaneous.**

(a) Company hereby authorizes HSBC Bank, at Company's expense, to file such financing statement or statements relating to the Collateral without Company's signature thereon as HSBC Bank at its option may deem appropriate, and appoints HSBC Bank as Company's attorney-in-fact (without requiring HSBC Bank) to execute any such financing statement or statements in Company's name and to perform all other acts which HSBC Bank reasonably deems appropriate to perfect and continue the Security Interest and to protect, preserve and realize upon the Collateral.

(b) (i) As further security for payment of the Indebtedness, Company hereby grants to HSBC Bank a Security Interest in and lien on any and all personal property of Company which is or may hereafter be in the possession or control of HSBC Bank in any capacity or of any third party acting on its behalf, including, without limitation, all deposit and other accounts and all moneys owed or to be owed by HSBC Bank to Company; and with respect to all of such property, HSBC Bank shall have the same rights hereunder as it has with respect to the Collateral.

(ii) Without limiting any other right of HSBC Bank, whenever HSBC Bank has the right to declare any Indebtedness to be immediately due and payable (whether or not it has so declared), HSBC Bank at its sole election may setoff against the Indebtedness any and all moneys then or thereafter owed to Company by HSBC Bank, in any capacity, whether or not the Indebtedness or the obligation to pay such moneys owed by HSBC Bank is then due, and HSBC Bank shall be deemed to have exercised such right of setoff immediately at the time of such election even though any charge therefor is made or entered on HSBC Bank's records subsequent thereto.

(c) Upon Company's failure to perform any of its duties hereunder and the continuation of such failure for 10 days after receipt by Company of written notice thereof from HSBC Bank, HSBC Bank may, but shall not be obligated to perform any or all such duties, including, without limitation, payment of taxes, assessments, insurance and other charges and expenses as herein provided, and Company shall pay an amount equal to the cost thereof to HSBC Bank on demand by HSBC Bank. Payment of all moneys hereunder shall be secured by the Collateral.

(d) Unless any instrument, documents, or agreement evidencing any Indebtedness expressly provides a rate for the accrual of interest after such Indebtedness becomes due, the rate at which interest on such Indebtedness shall accrue after such Indebtedness becomes due, whether by reason of default or otherwise until such Indebtedness is paid in full, shall be at the rate provided in such instrument, document, or agreement which is in effect immediately prior to such Indebtedness becoming due.

(e) No course of dealing between Company and HSBC Bank, and no delay or omission by HSBC Bank in exercising any right or remedy hereunder or with respect to any Indebtedness shall operate as a waiver thereof or of any other right or remedy, and no single or partial exercise thereof shall preclude any other or further exercise thereof or the exercise of any other right or remedy. HSBC Bank may remedy any default by Company hereunder or with respect to any Indebtedness in any reasonable manner without waiving the default remedied and without waiving any other prior or subsequent default by Company. All rights and remedies of HSBC Bank hereunder are cumulative.

(f) Company authorizes HSBC Bank, without notice or demand and without affecting Company's obligations hereunder, from time to time: (i) to exchange, enforce or release any collateral or any part thereof (other than the Collateral) taken from any party for payment of the Indebtedness or any part thereof; (ii) to release, substitute or modify any obligation of any indorser, guarantor or other party in any way obligated to pay the Indebtedness or any part thereof, or any party who has given any security, mortgage or other interest in any other collateral as security for the payment of the Indebtedness or any part thereof; (iii) upon the occurrence and continuation of any Event of Default as hereinabove provided, to direct the order or manner of disposition of the Collateral and any and all other collateral and the enforcement of

any and all indorsements, guaranties and other obligations relating to the Indebtedness or any part thereof, as HSBC Bank, in its sole discretion, may determine; and (iv) to determine how, when and what application of payments and credits, if any, shall be made on the Indebtedness or any part thereof.

(g) The rights and benefits of HSBC Bank hereunder shall, if HSBC Bank so directs, inure to any party acquiring any interest in the Indebtedness or any part thereof.

(h) HSBC Bank and Company as used herein shall include the successors or assigns of those parties.

(i) No modification, rescission, waiver, release or amendment of any provision of this Security Agreement shall be made, except by a written agreement subscribed by Company and by a duly authorized officer of HSBC Bank.

(j) This Security Agreement and the transaction evidenced hereby shall be construed under the laws of New York State, as the same may from time to time be in effect.

(k) All terms, unless otherwise defined in this Security Agreement, shall have the definitions set forth in the Uniform Commercial Code adopted in New York State, as the same may from time to time be in effect.

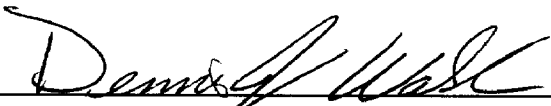
(l) Company hereby irrevocably appoints HSBC Bank the Company's agent with full power, in the same manner, to the same extent and with the same effect as if Company were to do the same while any Event of Default is continuing to receive and collect all mail addressed to Company; to direct the place of delivery thereof to any location designated by HSBC Bank; to open such mail; to remove all contents therefrom; to retain all contents thereof constituting or relating to the Collateral; and to perform all other acts which HSBC Bank deems appropriate to protect, preserve and realize upon the Collateral. The agency hereby created is unconditional and shall not terminate until all of the Indebtedness is paid in full and until all commitments by HSBC Bank to lend funds to Company have expired or been terminated.

(m) This Security Agreement is and is intended to be a continuing Security Agreement and shall remain in full force and effect until the officer in charge of the Department of HSBC Bank located at the address specified above shall actually receive from Company written notice of its discontinuance; provided, however, this Security Agreement shall remain in full force and effect thereafter until all of the Indebtedness outstanding, or contracted or committed for (whether or not outstanding), before the receipt of such notice by HSBC Bank, and any extensions or renewals thereof (whether made before or after receipt of such notice), together with interest accruing thereon after such notice, shall be finally and irrevocably paid in full. If, after receipt of any payment of all or any part of the Indebtedness, HSBC Bank is for any

reason compelled to surrender such payment to any person or entity, because such payment is determined to be void or voidable as a preference, impermissible setoff, or a diversion of trust funds, or for any other reason, this Security Agreement shall continue in full force notwithstanding any contrary action which may have been taken by HSBC Bank in reliance upon such payment, and any such contrary action so taken shall be without prejudice to HSBC Bank's rights under this Security Agreement and shall be deemed to have been conditioned upon such payment having become final and irrevocable.

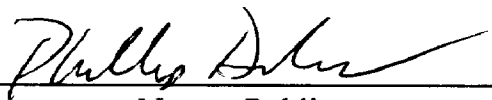
Dated: As of November 29, 2000

DOWLING'S FLEET SERVICE CO., INC.

By: 
Name: **Dennis J. Walsh**
Title: **President**

STATE OF NEW YORK)
COUNTY OF ERIE) SS.:

On the ____ day of November in the year 2000, before me, the undersigned, a notary public in and for said state, personally appeared Dennis J. Walsh, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public

SPAg
BFLO Doc # 1048582.2

PHILLIP A. DELMONT
Notary Public, State of New York
Qualified in Erie County
Commission Expires Aug. 10, 2002

SCHEDULE A
TO TRADEMARK SECURITY AGREEMENT

| <u>TRADEMARK</u> | <u>APPLICATION NUMBER</u> | <u>REGISTRATION NUMBER</u> | <u>FILING/REGISTRATION DATE</u> |
|--|-------------------------------|--------------------------------|-------------------------------------|
| Global Radiator | 75/178437 | 2232657 | March 16, 1999 |
| Dowling's | | 2,063,529 | May 20, 1997 |
| Trademark application for "National Radiator" | Pending | | |

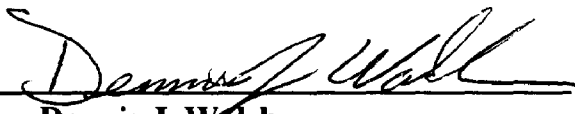
SPAg
BFLO Doc # 1048582.2

NOTICE OF SECURITY INTEREST

Notice is hereby given that **DOWLING'S FLEET SERVICE CO., INC.**, a New York corporation, with its principal place of business located at 389 East 3rd Street, Mt. Vernon, New York 10550 ("Company") has granted a security interest to **HSBC BANK USA** with its principal place of business located at One HSBC Center, Buffalo, New York 14203 ("HSBC Bank"), in and to all of the trademarks listed on Schedule A and the applications, registrations and goodwill associated therewith, pursuant to an agreement between Company and HSBC Bank dated of even date herewith and as the same may be amended or supplemented from time to time.

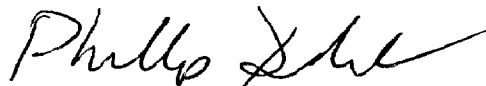
Dated: November 29, 2000

DOWLING'S FLEET SERVICE CO., INC.

By: 
Name: **Dennis J. Walsh**
Title: **President**

STATE OF NEW YORK)
COUNTY OF ERIE) SS.:

On the 29th day of November in the year 2000, before me, the undersigned, a notary public in and for said state, personally appeared Dennis J. Walsh, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

PHILLIP A. DELMONT
Notary Public, State of New York
Qualified in Erie County
Commission Expires Aug. 10, 20 02

TRADEMARK
REEL: 002204 FRAME: 0303

SCHEDULE A**TO NOTICE OF SECURITY INTEREST IN TRADEMARKS**

| <u>TRADEMARK</u> | <u>APPLICATION NUMBER</u> | <u>REGISTRATION NUMBER</u> | <u>FILING/REGISTRATION DATE</u> |
|--|--------------------------------------|---------------------------------------|--|
| Global Radiator | 75/178437 | 2232657 | March 16, 1999 |
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| Trademark application for "National Radiator" | Pending | | |

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BFLO Doc # 1048582.2