

04-24-2001



101684654

ORDINATION FORM COVER SHEET  
TRADEMARKS ONLY

U.S. Department of Commerce  
Patent and Trademark Office

and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies): EMPIRE RESOURCES, INC.

- Individual(s)
- General Partnership
- Other
- Association
- Limited Partnership

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

3. Nature of conveyance:

- Assignment
- Merger
- Security Agreement
- Change of Name
- Other

Execution Date: December 21, 2000

2. Name and address of receiving party(ies):

Name: THE CHASE MANHATTAN BANK, as administrative agent

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

Street Address: 1166 Avenue of the Americas

15<sup>th</sup> Floor

City: New York State: NY ZIP: 10006

Country: \_\_\_\_\_

- Individual(s) citizenship
- Association
- General Partnership
- Limited Partnership
- Corporation
- \* Other bank, financial institution

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 trademark number(s): 76/108,846 8/14/2000

76/024,230 4/12/2000

If this document is being filed together with a new application, the execution date of the application is \_\_\_\_\_

A. Trademark Application No.(s) SEE SCHEDULE I

B. Trademark No.(s) SEE SCHEDULE I

Additional numbers attached \* Yes  No

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

Name: Robert E. Rude II

Internal Address: Mayer Brown & Platt

Street Address: 1909 K Street, NW

City: Washington State: DC ZIP: 20006

6. Total number of applications and trademarks involved: 2

7. Total fee: (37 CFR 3.41): \$ 65.00

\* Enclosed (Check No. 18954)

Authorized to be charged to deposit account

8. Deposit account number: \_\_\_\_\_

(Attach duplicate copy of this page if paying by deposit account)

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.

Robert E. Rude II  
Name of Person Signing

*RSK II*  
Signature

April 9, 2001  
Date

Total number of pages comprising cover sheet and document attachments: 24

SECURITY AGREEMENT

THIS SECURITY AGREEMENT (this "Security Agreement"), dated as of December 21, 2000, made by EMPIRE RESOURCES, INC., a corporation duly organized and validly existing under the laws of the State of Delaware (the "Grantor"), in favor of THE CHASE MANHATTAN BANK, a New York State bank, as agent (together with any successor(s) thereto in such capacity, the "Agent") for each of the Lender Parties (as defined below).

W I T N E S S E T H :

WHEREAS, pursuant to a Credit Agreement, dated as of December 21, 2000 (together with all amendments and other modifications, if any, from time to time thereafter made thereto, the "Credit Agreement"), among the Grantor, the various financial institutions parties thereto (collectively, the "Lenders"), and the Agent, the Lenders have extended Commitments to make Loans to, issue Letters of Credit for the account of and create Acceptances to the Grantor;

WHEREAS, as a condition precedent to the making of the initial extensions of credit under the Credit Agreement, the Grantor is required to execute and deliver this Security Agreement;

WHEREAS, the Grantor has duly authorized the execution, delivery and performance of this Security Agreement;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to induce the Lenders to make extensions of credit (including the initial extensions of credit) to the Grantor pursuant to the Credit Agreement, the Grantor agrees, for the benefit of each Lender Party, as follows:

ARTICLE I  
DEFINITIONS

SECTION 1.1. Certain Terms. The following terms (whether or not underscored or italicized) when used in this Security Agreement, including its preamble and recitals, shall have the following meanings (such definitions to be equally applicable to the singular and plural forms thereof):

"Agent" is defined in the preamble.

"Basic Documents" is defined in the Credit Agreement.

“Collateral” is defined in Section 2.1.

“Collateral Account” is defined in Section 4.3(b).

“Computer Hardware and Software Collateral” means:

(a) all computer and other electronic data processing hardware, integrated computer systems, central processing units, memory units, display terminals, printers, features, computer elements, card readers, tape drives, hard and soft disk drives, cables, electrical supply hardware, generators, power equalizers, accessories and all peripheral devices and other related computer hardware;

(b) all software programs (including both source code, object code and all related applications and data files), whether now owned, licensed or leased or hereafter acquired by the Grantor, designed for use on the computers and electronic data processing hardware described in clause (a) above;

(c) all firmware associated therewith;

(d) all documentation (including flow charts, logic diagrams, manuals, guides and specifications) with respect to such hardware, software and firmware described in the preceding clauses (a) through (c); and

(e) all rights with respect to all of the foregoing, including, without limitation, any and all copyrights, licenses, options, warranties, service contracts, program services, test rights, maintenance rights, support rights, improvement rights, renewal rights and indemnifications and any substitutions, replacements, additions or model conversions of any of the foregoing.

“Copyright Collateral” means all copyrights and all semi-conductor chip product mask works of the Grantor, whether statutory or common law, registered or unregistered, now or hereafter in force, throughout the world including, without limitation, all of the Grantor’s right, title and interest in and to all copyrights and mask works registered in the United States Copyright Office or anywhere else in the world and also including, without limitation, the copyrights and mask works referred to in Item A of Schedule IV attached hereto, the right to sue for past, present and future infringements of any thereof, all rights corresponding thereto throughout the world, all extensions and renewals of any thereof and all proceeds of the foregoing, including, without limitation, licenses, royalties, income, payments, claims, damages and proceeds of suit.

“Credit Agreement” is defined in the first recital.

“Equipment” is defined in clause (a) of Section 2.1.

“Grantor” is defined in the preamble.

“Hedging Agreement” shall mean, for any Person, a swap, cap or collar agreement, or any agreement for foreign exchange transactions, or any arrangement similar to any of the foregoing, between such Person and any Lender or any affiliate of any Lender, each as providing for the transfer or mitigation of commodity price or currency risks either generally or under specific contingencies.

“Intellectual Property Collateral” means, collectively, the Computer Hardware and Software Collateral, the Copyright Collateral, the Patent Collateral, the Trademark Collateral and the Trade Secrets Collateral.

“Inventory” means all tangible personal property of the Grantor, whether now existing or hereafter created or acquired and wherever located, or held by the Grantor for sale or for lease or to be furnished under contracts of sale or service, and all components, accessories, supplies, packing and shipping materials, tools, work in process and materials used, produced or consumed in the Grantor’s business as now or hereafter conducted. Inventory includes all finished merchandise and all other tangible personal property owned by the Grantor (x) held by others for sale on consignment from the Grantor or sold by the Grantor on a sale-or-return or on-approval basis, (y) returned to the Grantor by a purchaser following a sale by the Grantor, or (z) represented by a document of title. The value of Inventory shall be determined in accordance with GAAP.

“Inventory Collateral” is defined in clause (b) of Section 2.1.

“Lender” is defined in the first recital.

“Lender Party” means, as the context may require, any Lender (and, in the case of Obligations under Interest Rate Protection Agreements or Hedging Agreements to which any affiliate of a Lender is a party, such affiliate) or the Agent and each of its respective successors, transferees and assigns.

“Lenders” is defined in the first recital.

“Obligations” means principal and interest on the Loans, Reimbursement Obligations and Acceptance Liabilities, all obligations of the Grantor under any Interest Rate Protection Agreement entered into with any Lender or any affiliate of any Lender, or under any Hedging Agreement between the Grantor and any Lender or any affiliate of any Lender, and all other amounts payable by the Grantor under the Credit Agreement and the other Basic Documents.

“Patent Collateral” means:

(a) all letters patent and applications for letters patent throughout the world, including all patent applications in preparation for filing anywhere in the world and including each patent and patent application referred to in Item A of Schedule II attached hereto;

(b) all patent licenses, including each patent license referred to in Item B of Schedule II attached hereto;

(c) all reissues, divisions, continuations, continuations-in-part, extensions, renewals and reexaminations of any of the items described in clauses (a) and (b); and

(d) all proceeds of, and rights associated with, the foregoing (including license royalties and proceeds of infringement suits), the right to sue third parties for past, present or future infringements of any patent or patent application, including any patent or patent application referred to in Item A of Schedule II attached hereto, and for breach or enforcement of any patent license, including any patent license referred to in Item B of Schedule II attached hereto, and all rights corresponding thereto throughout the world.

“Receivables” is defined in clause (c) of Section 2.1.

“Related Contracts” is defined in clause (c) of Section 2.1.

“Security Agreement” is defined in the preamble.

“Trademark Collateral” means:

(a) all trademarks, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, certification marks, collective marks, logos, other source of business identifiers, prints and labels on which any of the foregoing have appeared or appear, designs and general intangibles of a like nature (all of the foregoing items in this clause (a) being collectively called a “Trademark”), now existing anywhere in the world or hereafter adopted or acquired, whether currently in use or not, all registrations and recordings thereof and all applications in connection therewith, whether pending or in preparation for filing, including registrations, recordings and applications in the United States Patent and Trademark Office or in any office or agency of the United States of America or any State thereof or any foreign country, including those referred to in Item A of Schedule III attached hereto;

(b) all Trademark licenses, including each trademark license referred to in Item B of Schedule III attached hereto;

(c) all reissues, extensions or renewals of any of the items described in clauses (a) and (b);

(d) all of the goodwill of the business connected with the use of, and symbolized by the items described in, clauses (a) and (b); and

(e) all proceeds of, and rights associated with, the foregoing, including any claim by the Grantor against third parties for past, present or future infringement or

dilution of any Trademark, Trademark registration or Trademark license, including any Trademark, Trademark registration or Trademark license referred to in Item A and Item B of Schedule III attached hereto, or for any injury to the goodwill associated with the use of any such Trademark or for breach or enforcement of any Trademark license.

“Trade Secrets Collateral” means common law and statutory trade secrets and all other confidential or proprietary or useful information and all know-how obtained by or used in or contemplated at any time for use in the business of the Grantor (all of the foregoing being collectively called a “Trade Secret”), whether or not such Trade Secret has been reduced to a writing or other tangible form, including all documents and things embodying, incorporating or referring in any way to such Trade Secret, all Trade Secret licenses, including each Trade Secret license referred to in Schedule V attached hereto, and including the right to sue for and to enjoin and to collect damages for the actual or threatened misappropriation of any Trade Secret and for the breach or enforcement of any such Trade Secret license.

“U.C.C.” means the Uniform Commercial Code, as in effect from time to time in the State of New York.

SECTION 1.2. Credit Agreement Definitions. Unless otherwise defined herein or the context otherwise requires, terms used in this Security Agreement, including its preamble and recitals, have the meanings provided in the Credit Agreement.

SECTION 1.3. U.C.C. Definitions. Unless otherwise defined herein or the context otherwise requires, terms for which meanings are provided in the U.C.C. are used in this Security Agreement, including its preamble and recitals, with such meanings.

## ARTICLE II SECURITY INTEREST

SECTION 2.1. Grant of Security. The Grantor hereby assigns, hypothecates, charges, mortgages, delivers, and transfers to the Agent for its benefit and the ratable benefit of each of the Lender Parties, and hereby grants to the Agent for its benefit and the ratable benefit of each of the Lender Parties a continuing security interest in, all of the Grantor’s right, title and interest in the following, whether now or hereafter existing or acquired (the “Collateral”):

- (a) all equipment in all of its forms of the Grantor, wherever located, including all parts thereof and all accessions, additions, attachments, improvements, substitutions and replacements thereto and therefor (any and all of the foregoing being the “Equipment”);
- (b) all inventory in all of its forms of the Grantor, wherever located, including
  - (i) all Inventory, including all goods in which the Grantor has an interest in mass or a joint or other interest or right of any kind (including goods in

which the Grantor has an interest or right as consignee); all raw materials and work in progress therefor, finished goods thereof, and materials used or consumed in the manufacture or production thereof; and all goods which are returned to or repossessed by the Grantor,

(ii) all investment property in which the Grantor has an interest, in each case together with Dividends and Distributions payable in respect of the Collateral described in the foregoing clauses,

and all accessions thereto, products thereof and documents therefor (any and all such inventory, materials, goods, accessions, products and documents being the "Inventory Collateral");

(c) all accounts, contracts, contract rights, chattel paper, documents, instruments, and general intangibles of the Grantor, whether or not arising out of or in connection with the sale or lease of goods or the rendering of services, and all rights of the Grantor now or hereafter existing in and to all security agreements, guaranties, leases and other contracts securing or otherwise relating to any such accounts, contracts, contract rights, chattel paper, documents, instruments, and general intangibles (any and all such accounts, contracts, contract rights, chattel paper, documents, instruments, and general intangibles being the "Receivables", and any and all such security agreements, guaranties, leases and other contracts being the "Related Contracts");

(d) all Intellectual Property Collateral of the Grantor;

(e) all books, records, writings, data bases, information and other property relating to, used or useful in connection with, evidencing, embodying, incorporating or referring to, any of the foregoing in this Section 2.1;

(f) all of the Grantor's other property and rights of every kind and description and interests therein; and

(g) all products, offspring, rents, issues, profits, returns, income and proceeds of and from any and all of the foregoing Collateral (including proceeds which constitute property of the types described in clauses (a), (b), (c), (d), (e) and (f), proceeds deposited from time to time in the Collateral Account and, to the extent not otherwise included, all payments under insurance (whether or not the Agent is the loss payee thereof), or any indemnity, warranty or guaranty, payable by reason of loss or damage to or otherwise with respect to any of the foregoing Collateral).

Notwithstanding the foregoing, "Collateral" shall not include general intangibles or other rights arising under contracts (other than any account (as that term is defined in the U.C.C.) and other than any general intangible (as so defined in the U.C.C.) for money due or to become due) as to which the grant of a security interest would constitute a breach, default or violation under such contract.

SECTION 2.2. Security for Obligations. This Security Agreement secures the payment of all Obligations now or hereafter existing.

SECTION 2.3. Continuing Security Interest; Transfer of Notes. This Security Agreement shall create a continuing security interest in the Collateral and shall

- (a) remain in full force and effect until payment in full of all Obligations and the termination of all Commitments,
- (b) be binding upon the Grantor, its successors, transferees and assigns, and
- (c) inure, together with the rights and remedies of the Agent hereunder, to the benefit of the Agent and each other Lender Party.

Without limiting the generality of the foregoing clause (c), any Lender may assign or otherwise transfer (in whole or in part) any Note or Loan held by it to any other Person or entity, and such other Person or entity shall thereupon become vested with all the rights and benefits in respect thereof granted to such Lender under any Loan Document (including this Security Agreement) or otherwise, subject, however, to any contrary provisions in such assignment or transfer, and to the provisions of Section 11.06 of the Credit Agreement. Upon the payment in full of all Obligations and the termination of all Commitments, the security interest granted herein shall terminate and all rights to the Collateral shall revert to the Grantor. Upon any such termination, the Agent will, at the Grantor's sole expense, execute and deliver to the Grantor such documents as the Grantor shall reasonably request to evidence such termination.

SECTION 2.4. Grantor Remains Liable. Anything herein to the contrary notwithstanding

- (a) the Grantor shall remain liable under the contracts and agreements included in the Collateral to the extent set forth therein, and shall perform all of its duties and obligations under such contracts and agreements to the same extent as if this Security Agreement had not been executed,
- (b) the exercise by the Agent of any of its rights hereunder shall not release the Grantor from any of its duties or obligations under any such contracts or agreements included in the Collateral, and
- (c) neither the Agent nor any other Lender Party shall have any obligation or liability under any such contracts or agreements included in the Collateral by reason of this Security Agreement, nor shall the Agent or any other Lender Party be obligated to perform any of the obligations or duties of the Grantor thereunder or to take any action to collect or enforce any claim for payment assigned hereunder.



ARTICLE III  
REPRESENTATIONS AND WARRANTIES

SECTION 3.1. Representations and Warranties. The Grantor represents and warrants unto the Agent and each Lender Party as set forth in this Article.

SECTION 3.1.1. Location of Collateral, etc. As of the date hereof, all of the Equipment and Inventory of the Grantor are located at the places specified in Item A and Item B, respectively, of Schedule I hereto. None of the Equipment and Inventory has, within the four months preceding the date of this Security Agreement, been located at any place other than the places specified in Item A and Item B, respectively, of Schedule I hereto. The place(s) of business and chief executive office of the Grantor and the office(s) where the Grantor keeps its records concerning the Receivables, and all originals of all chattel paper which evidence Receivables, are located at the address(es) set forth below the name of the Grantor on the signature page hereof. The Grantor has no trade names other than those set forth in Item E of Schedule I attached hereto as of the date hereof. The Grantor has not been known by any legal name different from the one set forth on the signature page hereto, nor has the Grantor been the subject of any merger or other corporate reorganization except as set forth in Item F of Schedule I attached hereto. None of the Receivables is evidenced by a promissory note or other instrument. The Grantor is not a party to any Federal, state or local government contract except as set forth in Item C of Schedule I hereto.

SECTION 3.1.2. Ownership, No Liens, etc. The Grantor owns the Collateral free and clear of any Lien, security interest, charge or encumbrance except for the security interest created by this Security Agreement, minor defects in title that do not interfere with its ability to conduct its business as currently conducted or to utilize such Collateral for its intended purposes, and except as permitted by the Credit Agreement. No effective financing statement or other instrument similar in effect covering all or any part of the Collateral is on file in any recording office, except such as may have been filed in favor of the Agent relating to this Security Agreement.

SECTION 3.1.3. Possession and Control. The Grantor has and will maintain exclusive possession and control of the Equipment and Inventory, other than Inventory in transit in the ordinary course of business and Inventory which is in the possession or control of a warehouseman, bailee agent or other Person (other than a Person controlled by or under common control with the Grantor) that has been notified of the security interest created in favor of the Lender Parties pursuant to this Security Agreement, and has agreed to hold such Inventory subject to the Lender Parties' security interest and waive any security interest held by it against such.

SECTION 3.1.4. Negotiable Documents, Instruments and Chattel Paper. The Grantor has, contemporaneously herewith, delivered to the Agent possession of all originals of all negotiable documents, instruments and chattel paper currently owned or held by the Grantor (duly endorsed in blank, if requested by the Agent).

SECTION 3.1.5. Intellectual Property Collateral. With respect to any Intellectual Property Collateral the loss, impairment or infringement of which is reasonably likely to have a materially adverse effect on the financial condition, operation, assets, business or properties of the Grantor:

- (a) such Intellectual Property Collateral is subsisting and has not been adjudged invalid or unenforceable, in whole or in part;
- (b) such Intellectual Property Collateral is valid and enforceable;
- (c) the Grantor has made all necessary filings and recordations to protect its interest in such Intellectual Property Collateral, including, without limitation, recordations of all of its interests in the Patent Collateral and Trademark Collateral in the United States Patent and Trademark Office and, where reasonably required or necessary to the business of the Grantor, in corresponding offices throughout the world and its claims to the Copyright Collateral in the United States Copyright Office and, where reasonably required or necessary to the business of the Grantor, in corresponding offices throughout the world;
- (d) the Grantor is the exclusive owner of the entire and unencumbered right, title and interest in and to such Intellectual Property Collateral and no claim has been made that the use of such Intellectual Property Collateral does or may violate the asserted rights of any third party; and
- (e) the Grantor has performed and will continue to perform all acts and has paid and will continue to pay all required fees and taxes that are reasonably necessary to maintain each and every item of such Intellectual Property Collateral in full force and effect throughout the world, as applicable.

The Grantor owns directly or is entitled to use by license or otherwise, all patents, Trademarks, Trade Secrets, copyrights, mask works, licenses, technology, know-how, processes and rights with respect to any of the foregoing used in, necessary for or of importance to the conduct of the Grantor's business.

SECTION 3.1.6. Validity, etc. Upon the filing of Financing Statements in appropriate governmental offices, this Security Agreement will create a valid first priority security interest in the Collateral, securing the payment of the Obligations, and all filings and other actions necessary or desirable to perfect and protect such security interest have been duly taken (or otherwise arranged with the Agent).

SECTION 3.1.7. Authorization, Approval, etc. Except as has been obtained or made and is in full force and effect, no authorization, approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required either

(a) for the grant by the Grantor of the security interest granted hereby or for the execution, delivery and performance of this Security Agreement by the Grantor, or

(b) for the perfection of or the exercise by the Agent of its rights and remedies hereunder.

SECTION 3.1.8. Compliance with Laws. The Grantor is in compliance with the requirements of all applicable laws (including, without limitation, the provisions of the Fair Labor Standards Act), rules, regulations and orders of every governmental authority, the non-compliance with which might materially adversely affect the business, properties, assets, operations or financial condition of the Grantor or the value of the Collateral or the worth of the Collateral as collateral security.

#### ARTICLE IV COVENANTS

SECTION 4.1. Certain Covenants. The Grantor covenants and agrees that, at all times prior to the Revolving Credit Commitment Termination Date so long as any portion of the Obligations shall remain unpaid or any Lender shall have any outstanding Commitment, the Grantor will, unless the Required Lenders shall otherwise consent in writing, perform, comply with and be bound by, the obligations set forth in this Section.

SECTION 4.2. As to Equipment and Inventory. The Grantor hereby agrees that it shall

(a) keep all the Equipment and Inventory (other than Inventory sold in the ordinary course of business) at the places therefor specified in Section 3.1.1 or, upon 30 days' prior written notice to the Agent, at such other places in a jurisdiction where all representations and warranties set forth in Article III (including Section 3.1.6) shall be true and correct, and all action required pursuant to the first sentence of Section 4.9 shall have been taken with respect to the Equipment and Inventory;

(b) cause the Equipment to be maintained and preserved in the same condition, repair and working order as exists at the date of this Agreement, ordinary wear and tear excepted, and in accordance with any manufacturer's manual; and forthwith, or in the case of any loss or damage to any of the Equipment, as quickly as practicable after the occurrence thereof, make or cause to be made all repairs, replacements, and other improvements in connection therewith which are reasonably necessary or desirable to such end; and promptly furnish to the Agent a statement respecting any loss or damage to any of the Equipment; and

(c) pay promptly when due all property and other taxes, assessments and governmental charges or levies imposed upon, and all claims (including claims for labor, materials and supplies) against, the Equipment and Inventory, except to the extent the

validity thereof is being contested in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP have been set aside.

**SECTION 4.3. As to Receivables.**

(a) The Grantor shall keep its place(s) of business and chief executive office and the office(s) where it keeps its records concerning the Receivables, and all originals of all chattel paper which evidenced Receivables, located at the address set forth below its name on the signature page hereof, and shall keep its other place of business at the addresses set forth in Item D of Schedule I, or, upon 30 days' prior written notice to the Agent, at such other locations in a jurisdiction where all actions required by the first sentence of Section 4.9 shall have been taken with respect to the Receivables; not change its name or federal taxpayer identification number except upon 30 days' prior written notice to the Agent; hold and preserve such records and chattel paper; and permit representatives of the Agent at any time during normal business hours to inspect and make abstracts from such records and chattel paper. In addition, the Grantor shall give the Agent all information which the Compliance Certificate requires on each date a Compliance Certificate is required to be delivered to the Agent under the Credit Agreement, including any changes set forth therein.

(b) Upon written notice by the Agent to the Grantor pursuant to this Section 4.3(b), all proceeds of Collateral received by the Grantor shall be delivered in kind to the Agent for deposit to a deposit account (the "Collateral Account") of the Grantor maintained with the Agent, and the Grantor shall not commingle any such proceeds, and shall hold separate and apart from all other property, all such proceeds in express trust for the benefit of the Agent until delivery thereof is made to the Agent. The Agent will not give the notice referred to in the preceding sentence unless there shall have occurred and be continuing a Default. No funds, other than proceeds of Collateral, will be deposited in the Collateral Account.

(c) The Agent shall have the right to apply any amount in the Collateral Account to the payment of any Obligations which are due and payable or payable upon demand, or to the payment of any Obligations at any time that an Event of Default shall exist. Subject to the rights of the Agent, the Grantor shall have the right on each business day of the Agent, with respect to and to the extent of collected funds in the Collateral Account, (i) to require the Agent to transfer to the Grantor's general demand deposit account at the Agent amounts required to cover checks drawn against that account which shall have been presented for payment at the Agent as of the preceding business day and all wire transfers which the Grantor has directed to be made on the current business day, to the extent such checks and wire transfers are for any purpose which does not violate any provision of any Loan Document and (ii) to require the Agent to purchase any Permitted Investment, provided that, in the case of certificated securities, the Agent will retain possession thereof as Collateral and, in the case of uncertificated securities, the Agent will take such actions, including registration of such securities in its name, as it

shall determine is necessary to perfect its security interest therein. The Agent may at any time transfer to the Grantor's general demand deposit account at the Agent any or all of the collected funds in the Collateral Account; provided, however, that any such transfer shall not be deemed to be a waiver or modification of any of the Agent's rights under this Section 4.3(c).

SECTION 4.4. As to Collateral.

(a) Until such time as the Agent shall notify the Grantor of the revocation of such power and authority the Grantor (i) may in the ordinary course of its business, at its own expense, sell, lease or furnish under the contracts of service any of the Inventory normally held by the Grantor 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 Grantor for such purpose, (ii) will, at its own expense, endeavor to collect, as and when due, all amounts due with respect to any of the 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 Grantor may deem advisable, and (iii) may grant, in the ordinary course of business, to any party obligated on any of the 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 Collateral. The Agent, however, may, at any time, whether before or after any revocation of such power and authority or the maturity of any of the Obligations, notify any parties obligated on any of the Collateral to make payment to the Agent of any amounts due or to become due thereunder and enforce collection of any of the Collateral by suit or otherwise and surrender, release, or exchange all or any part thereof, or compromise or extend or renew for any period (whether or not longer than the original period) any indebtedness thereunder or evidenced thereby. Upon request of the Agent, the Grantor will, at its own expense, notify any parties obligated on any of the Collateral to make payment to the Agent of any amounts due or to become due thereunder.

(b) At the time that an Event of Default shall exist, the Agent is authorized to endorse, in the name of the Grantor, any item, howsoever received by the Agent, representing any payment on or other proceeds of any of the Collateral.

SECTION 4.5. As to Intellectual Property Collateral. With respect to any Intellectual Property Collateral, the loss, impairment or infringement of which is reasonably likely to have a Material Adverse Effect on the financial condition, operations, assets, business or properties of the Grantor:

(a) The Grantor shall not, unless the Grantor shall either (i) reasonably and in good faith determine (and notice of such determination shall have been delivered to the Agent) that any of such Patent Collateral is of immaterial economic value to the Grantor, or (ii) have a valid business purpose to do otherwise, do any act, or omit to do any act,

whereby any of such Patent Collateral may lapse or become abandoned or dedicated to the public or unenforceable.

(b) The Grantor shall not, and the Grantor shall not permit any of its licensees to, unless the Grantor shall either (i) reasonably and in good faith determine (and notice of such determination shall have been delivered to the Agent) that any of such Trademark Collateral is of immaterial economic value to the Grantor, or (ii) have a valid business purpose to do otherwise,

(i) fail to continue to use any of such Trademark Collateral in order to maintain all of such Trademark Collateral in full force free from any claim of abandonment for non-use,

(ii) fail to maintain as in the past the quality of products and services offered under all of such Trademark Collateral,

(iii) fail to employ all of such Trademark Collateral registered with any Federal or state or foreign authority with an appropriate notice of such registration,

(iv) adopt or use any other Trademark which is confusingly similar or a colorable imitation of any of the Trademark Collateral (except in connection with the development by the Grantor of a family of related trademarks),

(v) use any of such Trademark Collateral registered with any Federal or state or foreign authority except for the uses for which registration or application for registration of all of such Trademark Collateral has been made, and

(vi) do or permit any act or knowingly omit to do any act whereby any of such Trademark Collateral may lapse or become invalid or unenforceable.

(c) The Grantor shall not, unless the Grantor shall either

(i) reasonably and in good faith determine (and notice of such determination shall have been delivered to the Agent) that any of such Copyright Collateral or any of such Trade Secrets Collateral is of immaterial economic value to the Grantor, or

(ii) have a valid business purpose to do otherwise,

do or permit any act or knowingly omit to do any act whereby any of such Copyright Collateral or any of such Trade Secrets Collateral may lapse or become invalid or unenforceable or placed in the public domain except upon expiration of the end of an unrenewable term of a registration thereof.

(d) The Grantor shall notify the Agent immediately if it knows that any application or registration relating to any material item of the Intellectual Property Collateral may become abandoned or dedicated to the public or placed in the public domain or invalid or unenforceable, or of any adverse determination or development (including the institution of, or any such determination or development in, any proceeding in the United States Patent and Trademark Office, the United States Copyright Office or any foreign counterpart thereof or any court) regarding the Grantor's ownership of any of the Intellectual Property Collateral, its right to register the same or to keep and maintain and enforce the same.

(e) In no event shall the Grantor or any of its agents, employees, designees or licensees file an application for the registration of any Intellectual Property Collateral with the United States Patent and Trademark Office, the United States Copyright Office or any similar office or agency in any other country or any political subdivision thereof, unless it promptly informs the Agent, and upon request of the Agent, executes and delivers any and all agreements, instruments, documents and papers as the Agent may reasonably request to evidence the Agent's security interest in such Intellectual Property Collateral and the goodwill and general intangibles of the Grantor relating thereto or represented thereby.

(f) The Grantor shall take all necessary steps, including in any proceeding before the United States Patent and Trademark Office, the United States Copyright Office or any similar office or agency in any other country or any political subdivision thereof, to maintain and pursue any application (and to obtain the relevant registration) filed with respect to, and to maintain any registration of, the Intellectual Property Collateral, including the filing of applications for renewal, affidavits of use, affidavits of incontestability and opposition, interference and cancellation proceedings and the payment of fees and taxes (except to the extent that dedication, abandonment or invalidation is permitted under the foregoing clauses (a), (b) and (c)).

(g) The Grantor shall execute and deliver to the Agent any document required to acknowledge or register or perfect the Agent's interest in any part of the Intellectual Property Collateral.

SECTION 4.6. As to Investment Property (Other than Certificated Securities). With respect to any investment securities (other than certificated securities) owned by the Grantor, the Grantor will cause an agreement giving the Agent "control" (as that term is defined in the U.C.C.) of such investment property to be executed and delivered by the Grantor and the applicable financial intermediary in favor of the Agent.

SECTION 4.7. Insurance. The Grantor will maintain or cause to be maintained with responsible insurance companies insurance with respect to the Equipment and Inventory against such casualties and contingencies and of such types and in such amounts as is customary in the case of similar businesses and will, upon the request of the Agent, furnish a certificate of a

reputable insurance broker setting forth the nature and extent of all insurance maintained by the Grantor in accordance with this Section. Without limiting the foregoing, the Grantor further agrees as follows:

- (a) Each policy for property insurance shall show the Agent as loss payee.
- (b) Each policy for liability insurance shall show the Agent as an additional insured.
- (c) With respect to key-man insurance on the life of Nathan Kahn in an amount of up to \$2,000,000, the Grantor shall execute and deliver to the Agent a collateral assignment, notice of which has been acknowledged in writing by the insurer.
- (d) Each insurance policy shall provide that at least 30 days' prior written notice of cancellation or of lapse shall be given to the Agent by the insured.
- (e) The Grantor shall, if so requested by the Agent, deliver to the Agent a copy of each insurance policy.
- (f) All payments in respect of property insurance and key-man insurance on the life of Nathan Kahn in an amount of up to \$2,000,000 shall be deposited to the Collateral Account and if there shall be no Collateral Account shall be paid to the Grantor.

SECTION 4.8. Transfers and Other Liens. The Grantor shall not:

- (a) sell, assign (by operation of law or otherwise) or otherwise dispose of any of the Collateral, except Inventory in the ordinary course of business or as permitted by the Credit Agreement; or
- (b) create or suffer to exist any Lien or other charge or encumbrance upon or with respect to any of the Collateral to secure Indebtedness of any Person or entity, except for the security interest created by this Security Agreement and except as permitted by the Credit Agreement.

SECTION 4.9. Further Assurances, etc. The Grantor agrees that, from time to time at its own expense, the Grantor will promptly execute and deliver all further instruments and documents, and take all further action, that may be reasonably necessary or desirable, or that the Agent may reasonably request, in order to perfect, preserve and protect any security interest granted or purported to be granted hereby or to enable the Agent to exercise and enforce its rights and remedies hereunder with respect to any Collateral. Without limiting the generality of the foregoing, the Grantor will

- (a) mark conspicuously each document included in the Inventory, each chattel paper included in the Receivables and each Related Contract and, at the request of the



Agent, each of its records pertaining to the Collateral with a legend, in form and substance reasonably satisfactory to the Agent, indicating that such document, chattel paper, Related Contract or Collateral is subject to the security interest granted hereby;

(b) if any Receivable shall be evidenced by a promissory note or other instrument, negotiable document or chattel paper, deliver and pledge to the Agent hereunder such promissory note, instrument, negotiable document or chattel paper duly endorsed and accompanied by duly executed instruments of transfer or assignment, all in form and substance reasonably satisfactory to the Agent;

(c) execute and file such financing or continuation statements, or amendments thereto, and such other instruments or notices (including, without limitation, any assignment of claim form under or pursuant to the federal assignment of claims statute, 31 U.S.C. § 3726, any successor or amended version thereof or any regulation promulgated under or pursuant to any version thereof), as may be necessary or desirable, or as the Agent may reasonably request, in order to perfect and preserve the security interests and other rights granted or purported to be granted to the Agent hereby; and

(d) furnish to the Agent, from time to time at the Agent's request, statements and schedules further identifying and describing the Collateral and such other reports in connection with the Collateral as the Agent may reasonably request, all in reasonable detail.

With respect to the foregoing and the grant of the security interest hereunder, the Grantor hereby authorizes the Agent to file one or more financing or continuation statements, and amendments thereto, relative to all or any part of the Collateral without the signature of the Grantor where permitted by law. A carbon, photographic or other reproduction of this Security Agreement or any financing statement covering the Collateral or any part thereof shall be sufficient as a financing statement where permitted by law.

## ARTICLE V THE AGENT

SECTION 5.1. Agent Appointed Attorney-in-Fact. The Grantor hereby irrevocably appoints the Agent the Grantor's attorney-in-fact, with full authority in the place and stead of the Grantor and in the name of the Grantor or otherwise, from time to time in the Agent's discretion, to take any action and to execute any instrument which the Agent may deem necessary or advisable to accomplish the purposes of this Security Agreement, including, without limitation:

(a) to ask, demand, collect, sue for, recover, compromise, receive and give acquittance and receipts for moneys due and to become due under or in respect of any of the Collateral;

(b) to receive, endorse, and collect any drafts or other instruments, documents and chattel paper, in connection with clause (a) above;

(c) to file any claims or take any action or institute any proceedings which the Agent may deem necessary or desirable for the collection of any of the Collateral or otherwise to enforce the rights of the Agent with respect to any of the Collateral; and

(d) to perform the affirmative obligations of the Grantor hereunder (including all obligations of the Grantor pursuant to Section 4.9).

The Grantor hereby acknowledges, consents and agrees that the power of attorney granted pursuant to this Section is irrevocable and coupled with an interest.

SECTION 5.2. Agent May Perform. If the Grantor fails to perform any agreement or affirmative obligations, covenants, etc. contained herein, the Agent may itself perform, or cause performance of, such agreement or affirmative obligation, covenants, etc. and the expenses of the Agent reasonably incurred in connection therewith shall be payable by the Grantor pursuant to Section 6.2.

SECTION 5.3. Agent Has No Duty. In addition to, and not in limitation of, Section 2.4, the powers conferred on the Agent hereunder are solely to protect its interest (on behalf of the Lender Parties) in the Collateral and shall not impose any duty on it to exercise any such powers. Except for reasonable care of any Collateral in its possession and the accounting for moneys actually received by it hereunder, the Agent shall have no duty as to any Collateral or as to the taking of any responsibility for

(a) ascertaining or taking action with respect to calls, conversions, exchanges, maturities, tenders or other matters relative to any investment property, whether or not the Agent has or is deemed to have knowledge of such matters, or

(b) taking any necessary steps to preserve rights against prior parties or any other rights pertaining to any Collateral.

SECTION 5.4. Reasonable Care. The Agent is required to exercise reasonable care in the custody and preservation of any of the Collateral in its possession; provided, however, that the Agent shall be deemed to have exercised reasonable care in the custody and preservation of any of the Collateral if it takes such action for that purpose as the Grantor reasonably requests in writing at times other than upon the occurrence and during the continuance of any Event of Default, but failure of the Agent to comply with any such request at any time shall not in itself be deemed a failure to exercise reasonable care.

ARTICLE VI  
REMEDIES

SECTION 6.1. Certain Remedies. If any Event of Default shall have occurred and be continuing:

(a) The Agent may exercise in respect of the Collateral, in addition to other rights and remedies provided for herein or otherwise available to it, all the rights and remedies of a secured party on default under the U.C.C. (whether or not the U.C.C. applies to the affected Collateral) and also may

(i) require the Grantor to, and the Grantor hereby agrees that it will, at its expense and upon request of the Agent forthwith, assemble all or part of the Collateral as directed by the Agent and make it available to the Agent at a place to be designated by the Agent which is reasonably convenient to both parties and

(ii) without notice except as specified below, sell the Collateral or any part thereof in one or more parcels at public or private sale, at any of the Agent's offices or elsewhere, for cash, on credit or for future delivery, and upon such other terms as the Agent may deem commercially reasonable. The Grantor agrees that, to the extent notice of sale shall be required by law, at least ten days' prior notice to the Grantor of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification. The Agent shall not be obligated to make any sale of Collateral regardless of notice of sale having been given. The Agent may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned.

(b) All cash proceeds received by the Agent in respect of any sale of, collection from, or other realization upon all or any part of the Collateral shall be applied by the Agent as follows:

First, to the payment of any amounts payable to the Agent pursuant to Section 6.2;

Next, to the payment in full of the Obligations (other than Obligations in respect of Interest Rate Protection Agreements and Hedging Agreements), in each case equally and ratably in accordance with the respective amounts thereof then due and owing or as the Lenders holding the same may otherwise agree;

Next, to the payment in full of the Obligations in respect of Interest Rate Protection Agreements and Hedging Agreements, in each case equally and ratably in accordance with the respective amounts thereof then due and owing or as the Lender Parties holding the same may otherwise agree;

Finally, after the payment in full of the Obligations, to the payment to the Grantor, or its successors or assigns, or as a court of competent jurisdiction may direct, of any surplus then remaining.

(c) The Agent may

(i) transfer all or any part of the Collateral into the name of the Agent or its nominee, with or without disclosing that such Collateral is subject to the Lien hereunder,

(ii) notify the parties obligated on any of the Collateral to make payment to the Agent of any amount due or to become due thereunder,

(iii) enforce collection of any of the Collateral by suit or otherwise, and surrender, release or exchange all or any part thereof, or compromise or extend or renew for any period (whether or not longer than the original period) any obligations of any nature of any party with respect thereto,

(iv) endorse any checks, drafts, or other writings in the Grantor's name to allow collection of the Collateral,

(v) take control of any proceeds of the Collateral, and

(vi) execute (in the name, place and stead of the Grantor) endorsements, assignments, stock powers and other instruments of conveyance or transfer with respect to all or any of the Collateral.

## SECTION 6.2. Indemnity and Expenses.

(a) The Grantor agrees to indemnify the Lender Parties from and against any and all claims, losses and liabilities arising out of or resulting from this Security Agreement (including, without limitation, enforcement of this Security Agreement), except claims, losses or liabilities resulting from the Lender Parties' gross negligence or wilful misconduct.

(b) The Grantor will upon demand pay to the Agent the amount of any and all reasonable expenses, including the reasonable fees and disbursements of its counsel and of any experts and agents, which the Agent may incur in connection with

(i) the administration of this Security Agreement,

(ii) the custody, preservation, use or operation of, or the sale of, collection from, or other realization upon, any of the Collateral,

(iii) the exercise or enforcement of any of the rights of the Agent or the Lender Parties hereunder, or

(iv) the failure by the Grantor to perform or observe any of the provisions hereof.

SECTION 6.3. Protection of Collateral. The Agent may from time to time, at its option, perform any act which the Grantor fails to perform after being requested in writing so to perform (it being understood that no such request need be given after the occurrence and during the continuance of an Event of Default) and the Agent may from time to time take any other action which the Agent deems necessary for the maintenance, preservation or protection of any of the Collateral or of its security interest therein.

## ARTICLE VII MISCELLANEOUS PROVISIONS

SECTION 7.1. Loan Document. This Security Agreement is a Basic Document executed pursuant to the Credit Agreement and shall (unless otherwise expressly indicated herein) be construed, administered and applied in accordance with the terms and provisions thereof.

SECTION 7.2. Amendments; etc. No amendment to or waiver of any provision of this Security Agreement nor consent to any departure by the Grantor herefrom, shall in any event be effective unless the same shall be in writing and signed by the Agent and the Grantor, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

SECTION 7.3. Binding on Successors, Transferees and Assigns; Assignment. This Security Agreement shall remain in full force and effect until the Revolving Credit Commitment Termination Date has occurred, shall be binding upon the Grantor and its successors, transferees and assigns and shall inure to the benefit of and be enforceable by the Agent and each Lender Party and their successors, transferees and assigns; provided, however, that the Grantor may not (unless otherwise permitted under the terms of the Credit Agreement) assign any of its obligations hereunder without the prior written consent of all Lenders.

SECTION 7.4. Addresses for Notices. All notices and other communications provided for hereunder shall be in writing (including by facsimile) and addressed, delivered or transmitted to the applicable party at its address or facsimile number specified in the Credit Agreement, or at such other address or facsimile number as shall be designated by such party in a written notice to the other party complying as to delivery with the terms of Section 11.02 of the Credit Agreement. All such notices and other communications shall be effective as specified in Section 11.02 of the Credit Agreement.

SECTION 7.5. Headings; Section Captions. The various headings and section captions of this Security Agreement are inserted for convenience only and shall not affect the meaning or interpretation of this Security Agreement or any provisions hereof.

SECTION 7.6. Severability. Wherever possible each provision of this Security Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Security Agreement shall be prohibited by or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Security Agreement.

SECTION 7.7. Release of Liens. Upon (i) the disposition of Collateral in accordance with the Credit Agreement or (ii) the occurrence of the Revolving Credit Commitment Termination Date, the security interests granted herein shall automatically terminate with respect to (A) such Collateral (in the case of clause (i)) or (B) all Collateral (in the case of clause (ii)). Upon any such disposition or termination, the Agent will, at the Grantor's sole expense, deliver to the Grantor, without any representations, warranties or recourse of any kind whatsoever, all Collateral held by the Agent hereunder, and execute and deliver to the Grantor such documents as the Grantor shall reasonably request to evidence such termination.

SECTION 7.8. Counterparts. This Security Agreement may be executed by the parties hereto in several counterparts, each of which shall be deemed to be an original and all of which shall constitute together but one and the same agreement.

SECTION 7.9. Governing Law, Entire Agreement, etc. **THIS SECURITY AGREEMENT SHALL BE DEEMED TO BE A CONTRACT MADE UNDER AND GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW YORK (INCLUDING FOR SUCH PURPOSE SECTIONS 5-1401 AND 5-1402 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK), EXCEPT TO THE EXTENT THAT THE VALIDITY OR PERFECTION OF THE SECURITY INTEREST HEREUNDER, OR REMEDIES HEREUNDER, IN RESPECT OF ANY PARTICULAR COLLATERAL ARE GOVERNED BY THE LAWS OF A JURISDICTION OTHER THAN THE STATE OF NEW YORK. THIS SECURITY AGREEMENT AND THE OTHER BASIC DOCUMENTS CONSTITUTE THE ENTIRE UNDERSTANDING AMONG THE PARTIES HERETO WITH RESPECT TO THE SUBJECT MATTER HEREOF AND SUPERSEDE ANY PRIOR AGREEMENTS, WRITTEN OR ORAL, WITH RESPECT THERETO.**

IN WITNESS WHEREOF, the Grantor has caused this Security Agreement to be duly executed and delivered by its officer thereunto duly authorized as of the date first above written.

EMPIRE RESOURCES, INC.

By: Sandra Kahn  
Name: SANDRA KAHN  
Title: VP

Address for Notices:  
Empire Resources, Inc.  
One Parker Plaza  
Fort Lee, New Jersey 07024  
Attention: Ms. Sandra R. Kahn

Telecopier No.: (201) 944 2226  
Telephone No.: (201) 944 2200

ACCEPTED:

THE CHASE MANHATTAN BANK,  
as Agent

By: Thomas S. Drake  
Name: Thomas S. Drake  
Title: Vice President

Schedule II  
to Security Agreement

Item A. Patents

(a) Issued Patents

	<u>*Country</u>	<u>Patent No.</u>	<u>Issue Date</u>	<u>Inventor(s) Title</u>
1.	US	5375165	Nov 17, 1998	Alan Haber, Simon Kahn DATA NETWORK TELEPHONING ADAPTOR DEVICE
2.	US	5553122	June 30, 1998	Alan Haber, Simon Kahn CORDLESS PRINTER CONTROL DEVICE
3.	US	5838665	Sept 3, 1996	Alan Haber, Simon Kahn UNIVERSAL WEDGE TYPE TELEPHONE ADAPTOR FOR COMPUTER SYSTEM
4.	US	5774637	Dec 20, 1994	Alan Haber, Roy Saslow, COMPUTER KEYBOARD HAVING BOTH A STANDARD KEYBOARD MODE AND A TELEPHONIC CONTROL MODE

(b) Pending Patent Applications

<u>*Country</u>	<u>Serial No.</u>	<u>Filing Date</u>	<u>Inventor(s) Title</u>
NONE			

\* List items related to the United States first for ease of recordation. List items related to other countries next, grouped by country and in alphabetical order by country name.



(c) Patent Applications in  
Preparation

	<u>*Country</u>	<u>Docket No.</u>	<u>Expected Filing Date</u>	<u>Inventor(s) Title</u>
1.	NONE			
2.				
3.				

Item B. Patent Licences

	<u>*Country or Territory</u>	<u>Licensor</u>	<u>Licensee</u>	<u>Effective Date</u>	<u>Expiration Date</u>	<u>Subject Matter</u>
1.	NONE					
2.						
3.						

Item A. Trademarks

(a) Registered Trademarks

	<u>*Country</u>	<u>Trademark</u>	<u>Registration No.</u>	<u>Registration Date</u>
1.	NONE			
2.				
3.				

(b) Pending Trademark Applications

	<u>*Country</u>	<u>Trademark</u>	<u>Serial No.</u>	<u>Filing Date</u>
1.	US	"4METALS"	76/108,846	August 14, 2000
2.	US	"4Metals.com"	76/024,230	April 12, 2000
3.				

(c) Trademark Applications in Preparation

	<u>*Country</u>	<u>Trademark</u>	<u>Docket No.</u>	<u>Expected Filing Date</u>	<u>Products/ Services</u>
1.	NONE				
2.					
3.					

Item B. Trademark Licences

	<u>*Country</u> <u>or Territory</u>	<u>Trademark</u>	<u>Licensor</u>	<u>Licensee</u>	<u>Effective Date</u>	<u>Expiration Date</u>
1.	NONE					
2.						
3.						

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\* List items related to the United States first for ease of recordation. List items related to other countries next, grouped by country and in alphabetical order by country name.