

08-15-2001



C 101812232 .ION OF  
TRADEMARK PURSUANT TO 37 C.F.R. §3.31

Submission Type: New  
Conveyance Type: Security Interest Agreement  
Conveying Party: Nivel Parts & Manufacturing Co., a Delaware Corporation  
Execution Date: August 1, 2001

Receiving Parties: Marlborough Capital Investment Fund III, L.P.  
a Delaware Limited Liability Partnership  
c/o Marlborough Capital Advisors  
9 Newbury Street, 6<sup>th</sup> Floor  
Boston, Massachusetts 02117

AUG - 6

Marlborough Capital Investment Fund IIIB, L.P.  
a Delaware Limited Liability Partnership  
c/o Marlborough Capital Advisors  
9 Newbury Street, 6<sup>th</sup> Floor  
Boston, Massachusetts 02117

08/06/01

Correspondent Name and Address: Stephen B. Rodner, Esq.  
Pryor Cashman Sherman & Flynn LLP  
410 Park Avenue, 10<sup>th</sup> Floor  
New York, New York 10022  
(212) 326 - 0150

Document Pages Recorded: 7  
Trademark Reg. No.: 2,097,574  
Number of Properties: 1  
Fee Amount (check enclosed) \$40.00

**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.

Stephen B. Rodner, Esq.  
Name of Signatory

Signature

Date

8/6/01

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## TRADEMARK SECURITY AGREEMENT

**THIS TRADEMARK SECURITY AGREEMENT** (as it may be amended, restated, supplemented or otherwise modified from time to time, this "Agreement") dated as of August 1, 2001 is made by NIVEL PARTS & MANUFACTURING CO., a Delaware corporation (the "Grantor"), in favor of MARLBOROUGH CAPITAL INVESTMENT FUND III, L.P. and MARLBOROUGH CAPITAL INVESTMENT FUND IIIB, L.P. (collectively, the "Secured Parties").

### W I T N E S S E T H:

**WHEREAS**, the Grantor and the Secured Parties have entered into a Securities Purchase Agreement dated as of the date hereof (as it may be amended, restated, supplemented or otherwise modified from time to time, the "Purchase Agreement"), pursuant to which Purchase Agreement the Grantor has agreed to sell and each Secured Party has agreed to purchase certain Securities of the Grantor;

**WHEREAS**, as a condition precedent to the sale of the Securities by the Grantor to the Secured Parties pursuant to the Purchase Agreement, the Secured Parties have required the Grantor to grant, and the Grantor has agreed to grant, to the Secured Parties a security interest in and to the Intellectual Property Collateral (as hereinafter defined) of the Grantor to secure all of its obligations to the Secured Parties under the Purchase Agreement and the other Transaction Documents upon the terms and conditions set forth herein; and

**WHEREAS**, such security interest in the Intellectual Property Collateral shall be prior to all other Liens except for the first priority Lien of the Senior Lender under the Senior Loan Documents;

**NOW, THEREFORE**, in consideration of the premises and covenants hereinafter contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledge, the parties hereto agree as follows:

1. DEFINED TERMS. All capitalized terms used but not otherwise defined herein have the meanings given to them in the Purchase Agreement.

2. GRANT OF SECURITY INTEREST IN INTELLECTUAL PROPERTY COLLATERAL. To secure the complete and timely payment of all the Obligations of the Grantor to the Secured Parties now or hereafter existing from time to time, the Grantor hereby pledges and grants to each Secured Party, a second priority security interest (such security interest being prior to all other Liens except for the first priority Lien of the Senior Lender under the Senior Loan Documents) in all of the Grantor's right, title and interest in, to and under the following, whether presently existing or hereafter created or acquired (collectively, the "Intellectual Property Collateral"):

(a) all of its Trademarks to which it is a party including those referred to on Schedule I hereto;

- (b) all reissues, continuations or extensions of the foregoing;
- (c) all goodwill of the business connected with the use of, and symbolized by, each Trademark; and
- (d) all products and proceeds of the foregoing, including, without limitation, any claim by the Grantor against third parties for past, present or future (i) infringement or dilution of any and all rights in Trademarks, and (ii) injury to the goodwill associated with any Trademark.

3. **REPRESENTATIONS AND WARRANTIES.** The Grantor represents and warrants that the Grantor does not have any interest in, or title to, any registered trademarks except as set forth in Schedule I hereto. This Agreement is effective to create a valid and continuing Lien on the Grantor's Intellectual Property Collateral and, upon the filing hereof with the United States Patent and Trademark Office, and the filing of appropriate financing statements pursuant to the Security Agreement, (i) all action necessary or desirable to protect and perfect the Secured Parties' Lien on the Grantor's Intellectual Property Collateral shall have been duly taken, and (ii) the security interests in favor of the Secured Parties in all of the Grantor's Intellectual Property Collateral shall have been perfected and such perfected security interests shall be enforceable as such as against any and all creditors of, and purchasers from, the Grantor.

4. **COVENANTS.** The Grantor covenants and agrees with each Secured Party that from and after the date of this Agreement and until the Termination Date:

(a) The Grantor shall promptly notify the Secured Parties if it knows or has reason to know that any application or registration relating to any Trademark (now or hereafter existing) may be or become abandoned, canceled, opposed, expired or invalidated, or of any adverse proceeding, action or determination (including the institution of, or any such proceeding, action or determination in the United States Patent and Trademark Office or any court) regarding the Grantor's ownership of any Trademark, its right to register the same, or to keep and maintain the same.

(b) Immediately upon filing, the Grantor shall provide the Secured Parties with written notice of any application for the registration of any Trademark with the United States Patent and Trademark Office or any similar office or agency, and, upon request of any Secured Party, the Grantor shall execute and deliver a supplement hereto (in form and substance satisfactory to such Secured Party) to evidence the Secured Parties' Lien on such Trademark and the general intangibles of the Grantor relating thereto or represented thereby.

(c) The Grantor shall take all actions reasonably deemed appropriate by the Secured Parties to prosecute each application, to obtain the relevant registration and to maintain the registration of each of the material Trademarks (now or hereafter existing), including the filing of applications for renewal, affidavits of use, affidavits of incontestability and opposition, interference and cancellation proceedings.

(d) In the event that any of the Intellectual Property Collateral is infringed upon, or misappropriated or diluted by a third party, the Grantor shall promptly

notify the Secured Parties after the Grantor learns thereof. The Grantor shall, unless it shall reasonably determine that such Intellectual Property Collateral is not material to the conduct of its business or operations, promptly sue (i) for infringement, misappropriation or dilution, and (ii) to recover any and all damages for such infringement, misappropriation or dilution, and shall take such other actions as commercially reasonable under the circumstances to protect such Intellectual Property Collateral and to actually recover any and all damages for such infringement, misappropriation or dilution.

5. **SECURITY AGREEMENT.** The security interests granted pursuant to this Agreement are granted in conjunction with the security interests granted by the Grantor to the Secured Parties pursuant to the Security Agreement. The Grantor hereby acknowledges and affirms that the rights and remedies of the Secured Parties with respect to the security interest in the Intellectual Property Collateral made and granted hereby are more fully set forth in the Security Agreement, the terms and provisions of which are incorporated by reference herein as if fully set forth herein.

6. **REINSTATEMENT.** This Agreement shall remain in full force and effect and continue to be effective should any petition be filed by or against the Grantor for liquidation or reorganization, should the Grantor become insolvent or make an assignment for the benefit of any creditor or creditors or should a receiver or trustee be appointed for all or any significant part of the Grantor's assets, and shall continue to be effective or be reinstated, as the case may be, if at any time payment and performance of the Obligations, or any part thereof, is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee of the Obligations, whether as a "voidable preference," "fraudulent conveyance," or otherwise, all as though such payment or performance had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned, the Obligations shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

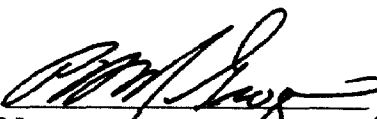
7. **NOTICES.** Whenever it is provided herein that any notice, demand, request, consent, approval, declaration or other communication shall or may be given to or served upon any of the parties by any other party, or whenever any of the parties desires to give and serve upon any other party any communication with respect to this Agreement, each such notice, demand, request, consent, approval, declaration or other communication shall be in writing and shall be given in the manner, and deemed received, as provided for in the Purchase Agreement.

8. **TERMINATION OF THIS SECURITY AGREEMENT.** Subject to Section 6 hereof, this Agreement shall terminate upon the Termination Date.

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

**NIVEL PARTS & MANUFACTURING CO.**

By:   
Name: Patrick A. McGrogan  
Title: President

**ACCEPTED and ACKNOWLEDGED by:**

**MARLBOROUGH CAPITAL  
INVESTMENT FUND III, L.P.**

By: Marlborough Capital Partners III, LLC,  
its General Partner

By: \_\_\_\_\_  
Name:  
Title:

**MARLBOROUGH CAPITAL  
INVESTMENT FUND IIIB, L.P.**

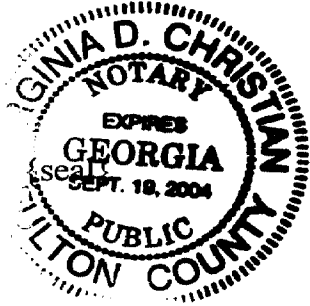
By: Marlborough Capital Partners III, LLC,  
its General Partner

By: \_\_\_\_\_  
Name:  
Title:

**ACKNOWLEDGMENT OF DEBTOR**

STATE OF GEORGIA  
) ss.  
COUNTY OF FULTON

On this 15 day of August, 2001 before me personally appeared PATRICK A. McGRADY, proved to me on the basis of satisfactory evidence to be the person who executed the foregoing instrument on behalf of NIVEL PARTS & MANUFACTURING CO., who being by me duly sworn did depose and say that he is an authorized officer of said corporation, that the said instrument was signed on behalf of said corporation as authorized by its Board of Directors and that he acknowledged said instrument to be the free act and deed of said corporation.



Virginia D. Christian  
Notary Public

My Commission Expires:  
\_\_\_\_\_

[Trademark Security Agreement Notary Page]

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

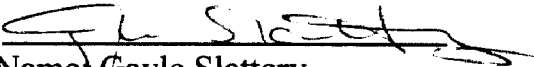
**NIVEL PARTS & MANUFACTURING CO.**

By: \_\_\_\_\_  
Name:  
Title:

**ACCEPTED and ACKNOWLEDGED by:**

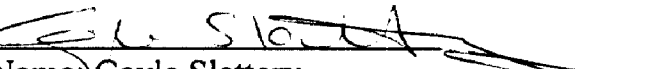
**MARLBOROUGH CAPITAL  
INVESTMENT FUND III, L.P.**

By: Marlborough Capital Partners III, LLC,  
its General Partner

By:   
Name: Gayle Slattery  
Title: Member

**MARLBOROUGH CAPITAL  
INVESTMENT FUND IIIB, L.P.**

By: Marlborough Capital Partners III, LLC,  
its General Partner

By:   
Name: Gayle Slattery  
Title: Member

**SCHEDULE I**

**TRADEMARK SECURITY AGREEMENT**

**I. TRADEMARK REGISTRATIONS:**

<u>Mark:</u>	<u>Reg. No.:</u>	<u>Date:</u>
Letters "TC" in stylized form	2097574	9/17/97 by TEK Cart; assigned to Borrower on 1/13/00

**II. TRADEMARK APPLICATIONS:**

None

**III. TRADEMARK LICENSES:**

None