

11-13-2001



Form PTO-1594
(Rev. 03/01)
OMB No. 0651-0027 (exp. 5/31/2002)
Tab settings

U.S. DEPARTMENT OF COMMERCE
U.S. Patent and Trademark Office

101895911

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

11-13-01

1. Name of conveying party(ies):
Carlyle & Co. Jewelers
4615 Dundas Drive
Greensboro, NC 27407

 Individual(s) Association
 General Partnership Limited Partnership
 Corporation-State
 Other _____

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

11-13-01

2. Name and address of receiving party(ies)
Name: Bank of America, N.A.
Internal
Address: GA1-006-05-14

Street Address: 600 Peachtree St., 5th Floor
City: Atlanta State: GA Zip: 30308

 Individual(s) citizenship _____
 Association _____
 General Partnership _____
 Limited Partnership _____
 Corporation-State _____
 Other _____

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No
(Designations must be a separate document from assignment)
Additional name(s) & address(es) attached? Yes No

3. Nature of conveyance:
 Assignment Merger
 Security Agreement Change of Name
 Other _____

Execution Date: October 31, 2001

4. Application number(s) or registration number(s):
A. Trademark Application No. (s)

B. Trademark Registration No. (s)

*See attached Exhibit A.

Additional number(s) attached Yes No

5. Name and address of party to whom correspondence concerning document should be mailed:
Name: Wade M. Kennedy, Esq.

Internal Address: Smith Helms Mulliss & Moore, LLP

Street Address: 201 North Tryon Street

City: Charlotte State: NC Zip: 28202

6. Total number of applications and registrations involved: 4

7. Total fee (37 CFR 3.41).....\$ 115.00
 Enclosed
 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.

Wade M. Kennedy, Esq.
Name of Person Signing


Signature

11/5/01
Date

Total number of pages including cover sheet, attachments, and document: 28

Mail documents to be recorded with required cover sheet information to:
Commissioner of Patent & Trademarks, Box Assignments
Washington, D.C. 20231

11/13/2001 JJALLAH2 00000001 2347308
01 FC:481 40.00 DP
02 FC:482 75.00 DP

TRADEMARK
REEL: 002395 FRAME: 0294

Exhibit A to
Recordation Form Cover Sheet
Trademarks Only

[Application Number(s) or Trademark Number(s)]

LIST OF TRADEMARKS

	Trademark Name	Registration Number
1	T.M. "FOR LOVE FOR LIFE FOR NOW FOR EVER"	2,347,308, Class 35, 5/2/00
2	T.M. "FOR LOVE FOR LIFE FOR NOW FOR EVER"	2,307,099, Class 14, 1/11/00
3	S.M. "J.E. Caldwell Co."	1,779,304, 6/29/93
4	"Perfect Love"	Serial Number 76/014541, 3/31/00, pending registration

SECURITY AGREEMENT

THIS SECURITY AGREEMENT (this "Security Agreement"), dated as of October 31, 2001, between **CARLYLE & CO. JEWELERS**, a Delaware corporation (the "Borrower" and a "Grantor"), and **EACH OF THE UNDERSIGNED SUBSIDIARIES OF THE BORROWER** (each a "Guarantor" and a "Grantor", and collectively with the Borrower, the "Grantors"), and **BANK OF AMERICA, N.A.**, as Lender (the "Lender").

WITNESSETH:

WHEREAS, pursuant to that certain Third Amended and Restated Credit Agreement dated as of the date hereof by and between the Borrower and Lender (including all annexes, exhibits and schedules thereto, as from time to time amended, restated, supplemented or otherwise modified, the "Credit Agreement"), Lender has agreed to continue to make the Loans and issue Letters of Credit on behalf of Borrower; and

WHEREAS, as collateral security for payment and performance of its Obligations, the Borrower is willing to grant to the Lender a security interest in certain of its personal property and assets pursuant to the terms of this Security Agreement; and

WHEREAS, each Guarantor is, directly or indirectly, a Subsidiary of the Borrower and will materially benefit from the Loans to be made, and the Letters of Credit to be issued, under the Credit Agreement and each Guarantor is a party to a Subsidiary Guaranty pursuant to which each Guarantor guarantees the Obligations of the Borrower; and

WHEREAS, as collateral security for payment and performance by each Guarantor of its Guarantor's Obligations (as defined in the Subsidiary Guaranty to which such Guarantor is a party), and the payment and performance of its obligations and liabilities (whether now existing or hereafter arising) hereunder or under any of the other Loans Documents to which it is now or hereafter becomes a party, each Guarantor is willing to grant to the Lender a security interest in certain of its personal property and assets pursuant to the terms of this Security Agreement; and

WHEREAS, the Lender is unwilling to enter into the Loan Documents unless the Borrower and the Guarantors enters into this Security Agreement;

NOW, THEREFORE, in order to induce the Lender to enter into the Credit Agreement and the other Loan Documents and to make Loans and issue Letters of Credit as provided for in the Credit Agreement, and in further consideration of the premises and the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. DEFINED TERMS. Capitalized terms used in this Security Agreement and not defined under this section shall have the meanings given to such terms in the Credit Agreement. The following terms shall have the following respective meanings:

“Accounts” means all of the Grantors’ now owned or hereafter acquired or arising accounts, as defined in the UCC, other than Purchased Accounts, including any rights to payment for the sale or lease of goods or rendition of services, whether or not they have been earned by performance.

“Affiliate” means, as to any Person, any other Person which, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person or which owns, directly or indirectly, five percent (5%) or more of the outstanding equity interest of such Person. A Person shall be deemed to control another Person if the controlling Person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other Person, whether through the ownership of voting securities, by contract, or otherwise.

“Chattel Paper” means all of the Grantors’ now owned or hereafter acquired chattel paper, as defined in the UCC, including electronic chattel paper.

“Deposit Accounts” means all “deposit accounts” as such term is defined in the UCC, now or hereafter held in the name of a Grantor.

“Documents” means all documents as such term is defined in the UCC, including bills of lading, warehouse receipts or other documents of title, now owned or hereafter acquired by any Grantor.

“Equipment” means all of the Grantors’ now owned and hereafter acquired machinery, equipment, furniture, furnishings, fixtures, and other tangible personal property (except Inventory), including embedded software, motor vehicles with respect to which a certificate of title has been issued, aircraft, dies, tools, jigs, molds and office equipment, as well as all of such types of property leased by a Grantor and all of the Grantors’ rights and interests with respect thereto under such leases (including, without limitation, options to purchase); together with all present and future additions and accessions thereto, replacements therefor, component and auxiliary parts and supplies used or to be used in connection therewith, and all substitutes for any of the foregoing, and all manuals, drawings, instructions, warranties and rights with respect thereto; wherever any of the foregoing is located.

“General Intangibles” means all of the Grantors’ now owned or hereafter acquired general intangibles, choses in action and causes of action and all other intangible personal property of each Grantor of every kind and nature (other than Accounts), including, without limitation, all rights to payments of the purchase price for the Purchased Accounts and other payments under the Receivables Purchase Agreements, including any promotional allowances and volume payments made pursuant to thereto, all other contract rights, payment intangibles, Proprietary Rights, corporate or other business records, inventions, designs, blueprints, plans, specifications, patents, patent applications, trademarks, service marks, trade names, trade secrets, goodwill, copyrights, computer software, customer lists, registrations, licenses, franchises, tax refund claims, any funds which may become due to a Grantor in connection with the termination of any employee benefit plan or any rights thereto and any other amounts payable to a Grantor from any employee benefit plan, rights and claims against carriers and shippers, rights to indemnification, business interruption insurance and proceeds thereof, property, casualty or any

similar type of insurance and any proceeds thereof, proceeds of insurance covering the lives of key employees on which any Grantor is beneficiary, rights to receive dividends, distributions, cash, Instruments and other property in respect of or in exchange for pledged equity interests or Investment Property and any letter of credit, guarantee, claim, security interest or other security held by or granted to a Grantor.

“Goods” means all “goods” as defined in the UCC, now owned or hereafter acquired by each Grantor, wherever located, including embedded software to the extent included in “goods” as defined in the UCC, manufactured homes, standing timber that is cut and removed for sale and unborn young of animals.

“Instruments” means all instruments as such term is defined in the UCC, now owned or hereafter acquired by any Grantor.

“Inventory” means all of the Grantors’ now owned and hereafter acquired inventory, goods and merchandise, wherever located, to be furnished under any contract of service or held for sale or lease, all returned goods, raw materials, work-in-process, finished goods (including embedded software), other materials and supplies of any kind, nature or description which are used or consumed in any Grantor’s business or used in connection with the packing, shipping, advertising, selling or finishing of such goods, merchandise, and all documents of title or other Documents representing them.

“Investment Property” means all of the Grantors’ right title and interest in and to any and all: (a) securities whether certificated or uncertificated; (b) securities entitlements; (c) securities accounts; (d) commodity contracts; or (e) commodity accounts.

“Letter-of-Credit Rights” means “letter-of-credit rights” as such term is defined in the UCC, now owned or hereafter acquired by a Grantor, including rights to payment or performance under a letter of credit, whether or not any Grantor, as beneficiary, has demanded or is entitled to demand payment or performance.

“Payment Account” means each bank account established pursuant to this Security Agreement, to which the proceeds of Accounts and other Collateral are deposited or credited, and which is maintained in the name of the Lender or any Grantor, as the Lender may determine, on terms acceptable to the Lender.

“Proprietary Rights” means all of the Grantors’ now owned and hereafter arising or acquired: licenses, franchises, permits, patents, patent rights, copyrights, works which are the subject matter of copyrights, trademarks, service marks, trade names, trade styles, patent, trademark and service mark applications, and all licenses and rights related to any of the foregoing, and all other rights under any of the foregoing, all extensions, renewals, reissues, divisions, continuations, and continuations-in-part of any of the foregoing, and all rights to sue for past, present and future infringement of any of the foregoing.

“Software” means all “software” as such term is defined in the UCC, now owned or hereafter acquired by any Grantor, other than software embedded in any category of Goods,

including all computer programs and all supporting information provided in connection with a transaction related to any program.

“Supporting Obligations” means all supporting obligations as such term is defined in the UCC.

“UCC” means the Uniform Commercial Code, as in effect from time to time, of the State of North Carolina or of any other state the laws of which are required as a result thereof to be applied in connection with the issue of perfection of security interests.

“Uniform Commercial Code jurisdiction” means any jurisdiction that has adopted “Revised Article 9” of the UCC on or after July 1, 2001.

All other capitalized terms used but not otherwise defined herein have the meanings given to them in the Credit Agreement or in Annex A thereto. All other undefined terms contained in this Security Agreement, unless the context indicates otherwise, have the meanings provided for by the UCC to the extent the same are used or defined therein.

2. GRANT OF LIEN.

(a) As security for all Obligations or Guarantor’s Obligations, as the case may be, each Grantor hereby grants to the Lender a continuing security interest in, lien on, assignment of and right of set-off against, all of the following property and assets of such Grantor, whether now owned or existing or hereafter acquired or arising, regardless of where located:

- (i) all Accounts other than the Purchased Accounts;
- (ii) all Inventory;
- (iii) all contract rights, to the extent not prohibited by the agreement granting such rights;
- (iv) all Chattel Paper;
- (v) all Documents;
- (vi) all Instruments;
- (vii) all Supporting Obligations and Letter-of-Credit Rights;

(viii) all General Intangibles (including payment intangibles and Software) other than interests in the Princeton Trademark License Agreement, DAR License Agreement and the Software Licenses to the extent granting a security interest therein would violate the terms of such agreements;

- (ix) all Goods;
- (x) all Equipment;

(xi) all Investment Property;

(xii) all money, cash, cash equivalents, securities and other property of any kind of such Grantor held directly or indirectly by the Lender;

(xiii) all of such Grantor's Deposit Accounts, credits, and balances with and other claims against the Lender or any of its Affiliates or any other financial institution with which such Grantor maintains deposits, including any Payment Accounts;

(xiv) all books, records and other property related to or referring to any of the foregoing, including books, records, account ledgers, data processing records, computer software and other property and General Intangibles at any time evidencing or relating to any of the foregoing; and

(xv) all accessions to, substitutions for and replacements, products and proceeds of any of the foregoing, including, but not limited to, proceeds of any insurance policies, claims against third parties, and condemnation or requisition payments with respect to all or any of the foregoing.

All of the foregoing, together with the Mortgaged Property, all Subsidiary Securities pledged to the Lender and all other property of the Grantors in which the Lender may at any time be granted a Lien as collateral for the Obligations, is herein collectively referred to as the "Collateral."

(b) All of the Obligations shall be secured by all of the Collateral.

3. PERFECTION AND PROTECTION OF SECURITY INTEREST.

(a) Each Grantor shall, at its expense, perform all steps requested by the Lender at any time to perfect, maintain and protect the Lender's Liens, including: (i) executing, delivering and/or filing and recording of the Mortgage and this Security Agreement, and executing and filing financing or continuation statements, and amendments thereof, in form and substance reasonably satisfactory to the Lender; (ii) delivering to the Lender warehouse receipts covering any portion of the Collateral located in warehouses and for which warehouse receipts are issued and certificates of title covering any portion of the collateral for which certificates of title have been issued; (iii) when an Event of Default has occurred and is continuing, transferring Inventory to warehouses or other locations designated by the Lender; (iv) placing notations on such Grantor's books of account to disclose the Lender's security interest; and (v) taking such other steps as are reasonably deemed necessary or desirable by the Lender to maintain and protect the Lender's Liens. Each Grantor agrees that a carbon, photographic, photostatic, or other reproduction of this Security Agreement or of a financing statement is sufficient as a financing statement.

(b) Unless Lender shall otherwise consent in writing (which consent may be revoked), each Grantor shall deliver to Lender all Collateral consisting of negotiable Documents, certificated securities (accompanied by stock papers executed in blank), Chattel Paper and Instruments promptly after such Grantor receives the same.

(c) If required by the terms of the Credit Agreement and not waived by Lender in writing (which waiver may be revoked), each Grantor shall obtain authenticated control agreements from each issuer of uncertificated securities, securities intermediary, or commodities intermediary issuing or holding any financial assets or commodities to or for such Grantor.

(d) If a Grantor is or becomes the beneficiary of a letter of credit, such Grantor shall promptly notify Lender thereof and enter into a tri-party agreement with Lender and the issuer and/or confirmation bank with respect to Letter-of-Credit Rights assigning such Letter-of-Credit Rights to Lender and directing all payments thereunder to the Payment Account, all in form and substance reasonably satisfactory to Lender.

(e) Each Grantor shall take all steps necessary to grant the Lender control of all electronic chattel paper in accordance with the Code and all "transferable records" as defined in the Uniform Electronic Transactions Act.

(f) Each Grantor hereby irrevocably authorizes the Lender at any time and from time to time to file in any filing office in any Uniform Commercial Code jurisdiction any initial financing statements and amendments thereto that (a) indicate the Collateral (i) as all assets of such Grantor or words of similar effect, regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the UCC of the State of North Carolina or such jurisdiction, or (ii) as being of an equal or lesser scope or with greater detail, and (b) contain any other information required by part 5 of Article 9 of the UCC of the State of North Carolina for the sufficiency or filing office acceptance of any financing statement or amendment, including (i) whether such Grantor is an organization, the type of organization and any organization identification number issued to such Grantor, and (ii) in the case of a financing statement filed as a fixture filing or indicating Collateral as as-extracted collateral or timber to be cut, a sufficient description of real property to which the Collateral relates. Each Grantor agrees to furnish any such information to the Lender promptly upon request. Each Grantor also ratifies its authorization for the Lender to have filed in any Uniform Commercial Code jurisdiction any like initial financing statements or amendments thereto if filed prior to the date hereof. The Lender will provide the Borrower with copies of all such filings.

(g) Each Grantor shall promptly notify Lender of any commercial tort claim (as defined in the UCC) acquired by it and unless otherwise consented by Lender, such Grantor shall enter into a supplement to this Security Agreement, granting to Lender a Lien in such commercial tort claim.

(h) From time to time, each Grantor shall, upon the Lender's reasonable request, execute and deliver confirmatory written instruments pledging to the Lender the Collateral, but a Grantor's failure to do so shall not affect or limit any security interest or any other rights of the Lender in and to the Collateral with respect to such Grantor. So long as the Credit Agreement is in effect and until all Obligations have been fully satisfied, the Lender's Liens shall continue in full force and effect in all Collateral (whether or not deemed eligible for the purpose of calculating the Availability or as the basis for any advance, loan, extension of credit, or other financial accommodation).

(i) Terminations Amendments Not Authorized. Each Grantor acknowledges that it is not authorized to file any financing statement or amendment or termination statement with respect to any financing statement without the prior written consent of Lender and agrees that it will not do so without the prior written consent of Lender, subject to such Grantor's rights under Section 9-509(d)(2) of the Uniform Commercial Code.

(j) No Restriction on Payments to Lender. No Grantor shall enter into any Contract that restricts or prohibits the grant of a security interest in Accounts, Chattel Paper, Instruments or payment intangibles or the proceeds of the foregoing to Lender, other than the Receivables Purchase Agreements and the Credit Card Services Agreement, and any replacement or extension thereof acceptable to the Lender.

4. LOCATION OF COLLATERAL. (a) Each Grantor represents and warrants to the Lender that: (A) Schedule I is a correct and complete list of the location of such Grantor's chief executive office, the location of its books and records, the locations of the Collateral, and the locations of all of its other places of business; and (b) Schedule I correctly identifies any of such facilities and locations that are not owned by such Grantor and sets forth the names of the owners and lessors or sublessors of such facilities and locations. Each Grantor covenants and agrees that it will not (i) maintain any Collateral at any location other than those locations listed for such Grantor on Schedule I, (ii) otherwise change or add to any of such locations, or (iii) change the location of its chief executive office from the location identified in Schedule I, unless it gives the Lender at least thirty (30) days' prior written notice thereof and executes any and all financing statements and other documents that the Lender reasonably requests in connection therewith. Without limiting the foregoing, each Grantor represents that all of its Inventory (other than Inventory in transit) is, and covenants that all of its Inventory will be, located either (a) on premises owned by such Grantor, (b) on premises leased by such Grantor in the ordinary course of business, or (c) in a warehouse or with a bailee in the ordinary course of business.

5. JURISDICTION OF ORGANIZATION. Schedule II hereto identifies each Grantor's name as of the Closing Date as it appears in official filings in the state of its incorporation or other organization, the type of entity of each Grantor (including corporation, partnership, limited partnership or limited liability company), the organizational identification number issued by each Grantor's state of incorporation or organization or a statement that no such number has been issued, and the jurisdiction in which each Grantor is incorporated or organized. Each Grantor has only one state of incorporation or organization.

6. TITLE TO, LIENS ON, AND SALE AND USE OF COLLATERAL. Each Grantor represents and warrants to the Lender and agrees with the Lender that: (a) such Grantor has rights in and the power to transfer all of the Collateral free and clear of all Liens whatsoever, except for Permitted Liens; (b) the Lender's Liens in the Collateral will not be subject to any prior Lien except for Permitted Liens; and (c) such Grantor will use, store, and maintain the Collateral with all reasonable care and will use such Collateral for lawful purposes only.

7. APPRAISALS. Whenever a Default or Event of Default exists, and at such other times not more frequently than twice a year as the Lender requests, each Grantor shall, at its expense and upon the Lender's request, provide the Lender with appraisals or updates thereof of

any or all of the Inventory from an appraiser, and prepared on a basis, satisfactory to the Lender, such appraisals and updates to include, without limitation, information required by applicable law and regulation and by the internal policies of the Lender.

8. ACCESS AND EXAMINATION. The Lender may at all reasonable times during regular business hours have access to, examine, audit, make extracts from or copies of and inspect any or all of a Grantor's records, files, and books of account and the Collateral, and discuss each Grantor's affairs with such Grantor's officers and management. Each Grantor will deliver to the Lender any instrument necessary for the Lender to obtain records from any service bureau maintaining records for such Grantor. The Lender may, at any time when a Default or Event of Default exists, and at each Grantor's expense, make copies of all of such Grantor's books and records, or require such Grantor to deliver such copies to the Lender. The Lender may, without expense to the Lender, use such of any Grantor's respective personnel, supplies, and Real Estate as may be reasonably necessary for maintaining or enforcing the Lender's Liens. The Lender shall have the right, at any time, in the Lender's name or in the name of a nominee of the Lender, to verify the validity, amount or any other matter relating to the Accounts, Inventory, or other Collateral, by mail, telephone, or otherwise.

9. ACCOUNTS.

(a) Each Grantor hereby represents and warrants to the Lender, with respect to such Grantor's Accounts, that: (i) each existing Account represents, and each future Account will represent, a bona fide sale or lease and delivery of goods by such Grantor, or rendition of services by such Grantor, in the ordinary course of such Grantor's business; (ii) each existing Account is, and each future Account will be, for a liquidated amount payable by the Account Debtor thereon on the terms set forth in the invoice therefor or in the schedule thereof delivered to the Lender, without any offset, deduction, defense, or counterclaim known to such Grantor except those disclosed to the Lender pursuant to this Security Agreement; (iii) no credit, discount, or extension, or agreement therefor outside the ordinary course of business of such Grantor will be granted on any Account, except as reported to the Lender; (iv) each copy of an invoice delivered to the Lender by such Grantor will be a genuine copy of the original invoice sent to the Account Debtor named therein; and (v) all goods described in any invoice representing a sale of goods will have been delivered to the Account Debtor and all services of such Grantor described in each invoice will have been performed.

(b) No Grantor shall re-date any invoice or sale or make sales on extended dating beyond that customary in such Grantor's business or extend or modify any Account except in the ordinary course of business. If any Grantor becomes aware of any matter adversely affecting the collectibility of any Account or the Account Debtor therefor involving an amount greater than \$250,000, including information regarding the Account Debtor's creditworthiness, such Grantor will promptly so advise the Lender.

(c) No Grantor shall accept any note or other instrument (except a check or other instrument for the immediate payment of money) with respect to any Account without the Lender's written consent. If the Lender consents to the acceptance of any such instrument, it shall be considered as evidence of the Account and not payment thereof and each Grantor will

promptly deliver such instrument to the Lender, endorsed by such Grantor to the Lender in a manner satisfactory in form and substance to the Lender. Regardless of the form of presentment, demand, notice of protest with respect thereto, such Grantor shall remain liable thereon until such instrument is paid in full.

(d) Each Grantor shall notify the Lender promptly of all disputes and claims in excess of \$250,000 with any Account Debtor, and agrees to settle, contest, or adjust such dispute or claim at no expense to the Lender. No discount, credit or allowance shall be granted to any such Account Debtor without the Lender's prior written consent, except for discounts, credits and allowances made or given in the ordinary course of each Grantor's business. Each Grantor shall send the Lender a copy of each credit memorandum in excess of \$250,000 as soon as issued, and such Grantor shall promptly report that credit on Borrowing Base Certificates submitted by it. The Lender may at all times when an Event of Default exists hereunder, settle or adjust disputes and claims directly with Account Debtors for amounts and upon terms which the Lender shall consider advisable and, in all cases, the Lender will credit the Borrower's Loan Account with the net amounts received by the Lender in payment of any Accounts.

(e) If an Account Debtor returns any Inventory to a Grantor when no Event of Default exists, then such Grantor shall promptly determine the reason for such return and shall issue a credit memorandum to the Account Debtor in the appropriate amount. Each Grantor shall immediately report to the Lender any return involving an amount in excess of \$250,000. Each such report shall indicate the reasons for the returns and the locations and condition of the returned Inventory. In the event any Account Debtor returns Inventory to a Grantor when an Event of Default exists, such Grantor, upon the request of the Lender, shall: (i) hold the returned Inventory in trust for the Lender; (ii) segregate all returned Inventory from all of its other property; (iii) dispose of the returned Inventory solely according to the Lender's written instructions; and (iv) not issue any credits or allowances with respect thereto in an aggregate amount in excess of \$250,000. All returned Inventory shall be subject to the Lender's Liens thereon.

10. INVENTORY; PERPETUAL INVENTORY.

(a) Each Grantor represents and warrants to the Lender and agrees with the Lender that all of the Inventory owned by such Grantor is and will be held for sale or lease, or to be furnished in connection with the rendition of services, in the ordinary course of such Grantor's business, and is and will be fit for such purposes. Each Grantor will keep its Inventory in good and marketable condition, except for damaged or defective goods arising in the ordinary course of such Grantor's business. Each Grantor agrees that all Inventory produced by each Grantor in the United States of America will be produced in accordance with the Federal Fair Labor Standards Act of 1938, as amended, and all rules, regulations, and orders thereunder. Each Grantor will conduct a physical count of the Inventory at least once per Fiscal Year, and after and during the continuation of an Event of Default, at such other times as the Lender requests. Each Grantor will maintain a perpetual inventory reporting system at all times. Each Grantor will not, without the Lender's written consent, sell any Inventory on a bill-and-hold, guaranteed sale, sale

and return, sale on approval, consignment, or other repurchase or return basis except in accordance with its existing policies and practices.

(b) In connection with all Inventory financed by Letters of Credit, each Grantor agrees that it will, at the Lender's request after the occurrence and continuation of an Event of Default, instruct all suppliers, carriers, forwarders, customs brokers, warehouses or others receiving or holding cash, checks, Inventory, Documents or Instruments in which the Lender holds a security interest to deliver them to the Lender and/or subject to the Lender's order, and if they shall come into such Grantor's possession, to deliver them, upon request, to the Lender in their original form. Each Grantor shall also, at the Lender's request, designate the Lender as the consignee on all bills of lading and other negotiable and non-negotiable documents.

11. EQUIPMENT.

(a) Each Grantor represents and warrants to the Lender and agrees with the Lender that all of the Equipment owned by such Grantor is and will be used or held for use in such Grantor's business, and is and will be fit for such purposes. Each Grantor shall keep and maintain its Equipment in good operating condition and repair (ordinary wear and tear and damage by fire or other casualty excepted) and shall make all necessary replacements thereof.

(b) Each Grantor shall promptly inform the Lender of any material additions to or deletions from the Equipment. Except for Equipment at store locations leased by the Grantors, no Grantor shall permit any Equipment to become a fixture with respect to real property or to become an accession with respect to other personal property with respect to which real or personal property the Lender does not have a Lien. Each Grantor will not, without the Lender's prior written consent, alter or remove any identifying symbol or number on any of such Grantor's Equipment constituting Collateral.

(c) Except as set forth in the Credit Agreement, no Grantor shall, without the Lender's prior written consent, sell, license, lease as a lessor, or otherwise dispose of any of such Grantor's Equipment.

12. DOCUMENTS, INSTRUMENTS, AND CHATTEL PAPER. EACH GRANTOR REPRESENTS AND WARRANTS TO THE LENDER THAT (A) ALL DOCUMENTS, INSTRUMENTS, AND CHATTEL PAPER DESCRIBING, EVIDENCING, OR CONSTITUTING COLLATERAL, AND ALL SIGNATURES AND ENDORSEMENTS THEREON, ARE AND WILL BE COMPLETE, VALID, AND GENUINE, AND (B) ALL GOODS EVIDENCED BY SUCH DOCUMENTS, INSTRUMENTS, LETTER OF CREDIT RIGHTS AND CHATTEL PAPER ARE AND WILL BE OWNED BY SUCH GRANTOR, FREE AND CLEAR OF ALL LIENS OTHER THAN PERMITTED LIENS. IF ANY GRANTOR RETAINS POSSESSION OF ANY CHATTEL PAPER OR INSTRUMENTS WITH LENDER'S CONSENT, SUCH CHATTEL PAPER AND INSTRUMENTS SHALL BE MARKED WITH THE FOLLOWING LEGEND: "THIS WRITING AND THE OBLIGATIONS EVIDENCED

OR SERVED HEREBY ARE SUBJECT TO THE SECURITY INTEREST OF BANK OF AMERICA, N.A.”

13. RIGHT TO CURE. The Lender may, in its discretion, pay any amount or do any act required of any Grantor hereunder or under any other Loan Document in order to preserve, protect, maintain or enforce the Obligations, the Collateral or the Lender's Liens therein, and which such Grantor fails to pay or do, including payment of any judgment against such Grantor, any insurance premium, any warehouse charge, any finishing or processing charge, any landlord's or bailee's claim, and any other Lien upon or with respect to the Collateral. All payments that the Lender makes under this Section 13 and all out-of-pocket costs and expenses that the Lender pays or incurs in connection with any action taken by it hereunder shall be charged to the Borrower's Loan Account as a Revolving Loan. Any payment made or other action taken by the Lender under this Section 13 shall be without prejudice to any right to assert an Event of Default hereunder and to proceed thereafter as herein provided.

14. POWER OF ATTORNEY. Each Grantor hereby appoints the Lender and the Lender's designee as such Grantor's attorney, with power: (a) to endorse such Grantor's name on any checks, notes, acceptances, money orders, or other forms of payment or security that come into the Lender's possession; (b) to sign such Grantor's name on any invoice, bill of lading, warehouse receipt or other negotiable or non-negotiable Document constituting Collateral, on drafts against customers, on assignments of Accounts, on notices of assignment, financing statements and other public records and to file any such financing statements by electronic means with or without a signature as authorized or required by applicable law or filing procedure; (c) so long as any Event of Default has occurred and is continuing, to notify the post office authorities to change the address for delivery of such Grantor's mail to an address designated by the Lender and to receive, open and dispose of all mail addressed to such Grantor; (d) to send requests for verification of Accounts to customers or Account Debtors; (e) to complete in such Grantor's name or the Lender's name, any order, sale or transaction, obtain the necessary Documents in connection therewith, and collect the proceeds thereof; (f) to clear Inventory through customs in such Grantor's name, the Lender's name or the name of the Lender's designee, and to sign and deliver to customs officials powers of attorney in such Grantor's name for such purpose; (g) to the extent that such Grantor's authorization given in Section 3(g) of this Security Agreement is not sufficient, to file such financing statements with respect to this Security Agreement, with or without such Grantor's signature, or to file a photocopy of this Security Agreement in substitution for a financing statement, as the Lender may deem appropriate and to execute in such Grantor's name such financing statements and amendments thereto and continuation statements which may require such Grantor's signature; and (h) to do all things reasonably necessary to carry out the Credit Agreement and this Security Agreement. Each Grantor ratifies and approves all acts of such attorney. Neither the Lender nor its attorneys will be liable for any acts or omissions or for any error of judgment or mistake of fact or law except for their gross negligence or willful misconduct. This power, being coupled with an interest, is irrevocable until the Credit Agreement has been terminated and the Obligations have been fully satisfied.

15. THE LENDER'S RIGHTS, DUTIES AND LIABILITIES.

(a) Each Grantor assumes all responsibility and liability arising from or relating to the use, sale, license or other disposition of the Collateral. The Obligations shall not be affected by any failure of the Lender to take any steps to perfect the Lender's Liens or to collect or realize upon the Collateral, nor shall loss of or damage to the Collateral release any Grantor from any of the Obligations. Following the occurrence and during the continuation of an Event of Default, the Lender may (but shall not be required to), without notice to or consent from any Grantor, sue upon or otherwise collect, extend the time for payment of, modify or amend the terms of, compromise or settle for cash, credit, or otherwise upon any terms, grant other indulgences, extensions, renewals, compositions, or releases, and take or omit to take any other action with respect to the Collateral, any security therefor, any agreement relating thereto, any insurance applicable thereto, or any Person liable directly or indirectly in connection with any of the foregoing, without discharging or otherwise affecting the liability of the Grantors for the Obligations or under the Credit Agreement or any other agreement now or hereafter existing between the Lender and any Grantor.

(b) It is expressly agreed by each Grantor that, anything herein to the contrary notwithstanding, such Grantor shall remain liable under each of its contracts and each of its licenses to observe and perform all the conditions and obligations to be observed and performed by it thereunder. The Lender shall not have any obligation or liability under any contract or license by reason of or arising out of this Security Agreement or the granting herein of a Lien thereon or the receipt by Lender of any payment relating to any contract or license pursuant hereto. The Lender shall not be required or obligated in any manner to perform or fulfill any of the obligations of a Grantor under or pursuant to any contract or license, or to make any payment, or to make any inquiry as to the nature or the sufficiency of any payment received by it or the sufficiency of any performance by any party under any contract or license, or to present or file any claims, or to take any action to collect or enforce any performance or the payment of any amounts which may have been assigned to it or to which it may be entitled at any time or times.

(c) Lender may at any time after a Default or an Event of Default has occurred and be continuing (or if any rights of set-off (other than set-offs against an Account arising under the contract giving rise to the same Account) or contra accounts may be asserted with respect to the following), without prior notice to a Grantor, notify Account Debtors, and other Persons obligated on the Collateral that Lender has a security interest therein, and that payments shall be made directly to Lender for itself. Upon the request of Lender, each Grantor shall so notify Account Debtors and other Persons obligated on Collateral. Once any such notice has been given to any Account Debtor or other Person obligated on the Collateral, no Grantor shall give any contrary instructions to such Account Debtor or other Person without Lender's prior written consent.

(d) Lender may at any time in Lender's own name or in the name of a Grantor communicate with Account Debtors, parties to Contracts and obligors in respect of Instruments to verify with such Persons, to Lender's satisfaction, the existence, amount and terms of Accounts, payment intangibles, Instruments or Chattel Paper. If a Default or Event of Default shall have occurred and be continuing, each Grantor, at its own expense, shall cause the

independent certified public accountants then engaged by such Grantor to prepare and deliver to Lender at any time and from time to time promptly upon Lender's request the following reports with respect to such Grantor: (i) a reconciliation of all Accounts; (ii) an aging of all Accounts; (iii) trial balances; and (iv) a test verification of such Accounts as Lender may request. Each Grantor, at its own expense, shall deliver to Lender the results of each physical verification, if any, which such Grantor may in its discretion have made, or caused any other Person to have made on its behalf, of all or any portion of its Inventory.

16. PATENT, TRADEMARK AND COPYRIGHT COLLATERAL.

(a) Each Grantor does not have any interest in, or title to, any Patent, Trademark or Copyright except as set forth in Schedule III hereto. This Security Agreement is effective to create a valid and continuing Lien on and, upon filing of this Security Agreement with the United States Patent and Trademark Office, perfected Liens in favor of Lender on each Grantor's trademarks and trade names and such perfected Liens are enforceable as such as against any and all creditors of and purchasers from Grantor. Upon filing of this Security Agreement with the United States Patent and Trademark Office and the filing of appropriate financing statements, all action necessary or desirable to protect and perfect Lender's Lien on each Grantor's trademarks or trade names shall have been duly taken.

(b) Each Grantor shall notify Lender immediately if it knows or has reason to know that any application or registration relating to any patent, trademark or copyright (now or hereafter existing) may become abandoned or dedicated, 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 court) regarding such Grantor's ownership of any patent, trademark or copyright, its right to register the same, or to keep and maintain the same.

(c) In no event shall any Grantor, either directly or through any agent, employee, licensee or designee, file an application for the registration of any patent, trademark or copyright with the United States Patent and Trademark Office, the United States Copyright Office or any similar office or agency without giving Lender prior written notice thereof, and, upon request of Lender, such Grantor shall execute and deliver any and all additional security agreements as Lender may request to evidence Lender's Lien on such patent, trademark or copyright, and the General Intangibles of such Grantor relating thereto or represented thereby.

(d) Each Grantor shall take all actions necessary or reasonably requested by Lender to maintain and pursue each application, to obtain the relevant registration and to maintain the registration of each of the patents, trademarks and copyrights (now or hereafter existing), including the filing of applications for renewal, affidavits of use, affidavits of noncontestability and opposition and interference and cancellation proceedings, unless such Grantor shall determine that such patent, trademark or copyright is not material to the conduct of its business.

(e) In the event that any of the patent, trademark or copyright Collateral is infringed upon, or misappropriated or diluted by a third party, each Grantor shall notify Lender

promptly after such Grantor learns thereof. Each Grantor shall, unless it shall reasonably determine that such patent, trademark or copyright Collateral is in no way material to the conduct of its business or operations, promptly sue for infringement, misappropriation or dilution and to recover any and all damages for such infringement, misappropriation or dilution, and shall take such other actions as Lender shall deem appropriate under the circumstances to protect such patent, trademark or copyright Collateral.

17. INDEMNIFICATION. In any suit, proceeding or action brought by Lender relating to any Collateral for any sum owing with respect thereto or to enforce any rights or claims with respect thereto, each Grantor will save, indemnify and keep Lender harmless from and against all expense (including reasonable attorneys' fees and expenses), loss or damage suffered by reason of any defense, setoff, counterclaim, recoupment or reduction of liability whatsoever of the Account Debtor or other Person obligated on the Collateral, arising out of a breach by any Grantor of any obligation thereunder or arising out of any other agreement, indebtedness or liability at any time owing to, or in favor of, such obligor or its successors from any Grantor, except in the case of the Lender, to the extent such expense, loss, or damage is attributable solely to the gross negligence or willful misconduct of the Lender as finally determined by a court of competent jurisdiction. All such obligations of the Grantors shall be and remain enforceable against and only against the Grantors and shall not be enforceable against Lender.

18. LIMITATION ON LIENS ON COLLATERAL. No Grantor will create, permit or suffer to exist, and will defend the Collateral against, and take such other action as is necessary to remove or, if agreed to by the Lender, subordinate any Lien on the Collateral except Permitted Liens, and will defend the right, title and interest of Lender in and to any of such Grantor's rights under the Collateral against the claims and demands of all Persons whomsoever.

19. NOTICE REGARDING COLLATERAL. Each Grantor will advise Lender promptly, in reasonable detail, (i) of any Lien (other than Permitted Liens) or claim made or asserted against any of the Collateral, and (ii) of the occurrence of any other event which would have a Material Adverse Effect.

20. REMEDIES; RIGHTS UPON DEFAULT.

(a) In addition to all other rights and remedies granted to it under this Security Agreement, the Credit Agreement, the other Loan Documents and under any other instrument or agreement securing, evidencing or relating to any of the Obligations, if any Event of Default shall have occurred and be continuing, Lender may exercise all rights and remedies of a secured party under the UCC. Without limiting the generality of the foregoing, each Grantor expressly agrees that in any such event Lender, without demand of performance or other demand, advertisement or notice of any kind (except the notice specified below of time and place of public or private sale) to or upon such Grantor or any other Person (all and each of which demands, advertisements and notices are hereby expressly waived to the maximum extent permitted by the UCC and other applicable law), may forthwith enter upon the premises of such Grantor where any Collateral is located through self-help, without judicial process, without first obtaining a final judgment or giving such Grantor or any other Person notice and opportunity for a hearing on

Lender's claim or action and may collect, receive, assemble, process, appropriate and realize upon the Collateral, or any part thereof, and may forthwith sell, lease, license, assign, give an option or options to purchase, or sell or otherwise dispose of and deliver said Collateral (or contract to do so), or any part thereof, in one or more parcels at a public or private sale or sales, at any exchange at such prices as it may deem acceptable, for cash or on credit or for future delivery without assumption of any credit risk. Lender shall have the right upon any such public sale or sales and, to the extent permitted by law, upon any such private sale or sales, to purchase for the benefit of Lender, the whole or any part of said Collateral so sold, free of any right or equity of redemption, which equity of redemption each Grantor hereby releases. Such sales may be adjourned and continued from time to time with or without notice. Lender shall have the right to conduct such sales on any Grantor's premises or elsewhere and shall have the right to use each Grantor's premises without charge for such time or times as Lender deems necessary or advisable.

(b) Each Grantor further agrees, at Lender's request, to assemble the Collateral and make it available to Lender at a place or places designated by Lender which are reasonably convenient to Lender and such Grantor, whether at such Grantor's premises or elsewhere. Until Lender is able to effect a sale, lease, or other disposition of Collateral, Lender shall have the right to hold or use Collateral, or any part thereof, to the extent that it deems appropriate for the purpose of preserving Collateral or its value or for any other purpose deemed appropriate by Lender. Lender shall have no obligation to any Grantor to maintain or preserve the rights of such Grantor as against third parties with respect to Collateral while Collateral is in the possession of Lender. After default, Lender may, if it so elects, seek the appointment of a receiver or keeper to take possession of Collateral and to enforce any of Lender's remedies (for the benefit of Lender), with respect to such appointment without prior notice or hearing as to such appointment. Lender shall apply the net proceeds of any such collection, recovery, receipt, appropriation, realization or sale to the Obligations as provided in the Credit Agreement, and only after so paying over such net proceeds, and after the payment by Lender of any other amount required by any provision of law, need Lender account for the surplus, if any, to such Grantor. To the maximum extent permitted by applicable law, each Grantor waives all claims, damages, and demands against Lender arising out of the repossession, retention or sale of the Collateral except such as arise solely out of the gross negligence or willful misconduct of Lender as finally determined by a court of competent jurisdiction. Each Grantor agrees that ten (10) days prior notice by Lender of the time and place of any public sale or of the time after which a private sale may take place is reasonable notification of such matters. Each Grantor shall remain liable for any deficiency if the proceeds of any sale or disposition of the Collateral are insufficient to pay all Obligations, including any attorneys' fees or other expenses incurred by the Lender to collect such deficiency.

(c) Except as otherwise specifically provided herein, each Grantor hereby waives presentment, demand, protest or any notice (to the maximum extent permitted by applicable law) of any kind in connection with this Security Agreement or any Collateral.

(d) To the extent that applicable law imposes duties on the Lender to exercise remedies in a commercially reasonable manner, each Grantor acknowledges and agrees that it is not commercially unreasonable for the Lender (a) to fail to incur expenses reasonably deemed

significant by the Lender to prepare Collateral for disposition or otherwise to complete raw material or work in process into finished goods or other finished products for disposition, (b) to fail to obtain third party consents for access to Collateral to be disposed of, or to obtain or, if not required by other law, to fail to obtain governmental or third party consents for the collection or disposition of Collateral to be collected or disposed of, (c) to fail to exercise collection remedies against Account Debtors or other Persons obligated on Collateral or to remove Liens on or any adverse claims against Collateral, (d) to exercise collection remedies against Account Debtors and other Persons obligated on Collateral directly or through the use of collection agencies and other collection specialists, (e) to advertise dispositions of Collateral through publications or media of general circulation, whether or not the Collateral is of a specialized nature, (f) to contact other Persons, whether or not in the same business as such Grantor, for expressions of interest in acquiring all or any portion of such Collateral, (g) to hire one or more professional auctioneers to assist in the disposition of Collateral, whether or not the Collateral is of a specialized nature, (h) to dispose of Collateral by utilizing internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capacity of doing so, or that match buyers and sellers of assets, (i) to dispose of assets in wholesale rather than retail markets, (j) to disclaim disposition warranties, such as title, possession or quiet enjoyment, (k) to purchase insurance or credit enhancements to insure the Lender against risks of loss, collection or disposition of Collateral or to provide to the Lender a guaranteed return from the collection or disposition of Collateral, or (l) to the extent deemed appropriate by the Lender, to obtain the services of other brokers, investment bankers, consultants and other professionals to assist the Lender in the collection or disposition of any of the Collateral. Each Grantor acknowledges that the purpose of this Section 20(d) is to provide non-exhaustive indications of what actions or omissions by the Lender would not be commercially unreasonable in the Lender's exercise of remedies against the Collateral and that other actions or omissions by the Lender shall not be deemed commercially unreasonable solely on account of not being indicated in this Section 20(d). Without limitation upon the foregoing, nothing contained in this Section 20(d) shall be construed to grant any rights to a Grantor or to impose any duties on Lender that would not have been granted or imposed by this Security Agreement or by applicable law in the absence of this Section 20(d).

21. GRANT OF LICENSE TO USE INTELLECTUAL PROPERTY. For the purpose of enabling Lender to exercise rights and remedies under Section 20 hereof (including, without limiting the terms of Section 20 hereof, in order to take possession of, hold, preserve, process, assemble, prepare for sale, market for sale, sell or otherwise dispose of Collateral) at such time as Lender shall be lawfully entitled to exercise such rights and remedies, each Grantor hereby grants to the Lender an irrevocable, nonexclusive license (exercisable without payment of royalty or other compensation to such Grantor) to use, license or sublicense any Intellectual Property now owned or hereafter acquired by such Grantor, and wherever the same may be located, and including in such license access to all media in which any of the licensed items may be recorded or stored and to all computer software and programs used for the compilation or printout thereof.

22. LIMITATION ON LENDER'S DUTY IN RESPECT OF COLLATERAL. The Lender shall use reasonable care with respect to the Collateral in its possession or under its control. The Lender shall not have any other duty as to any Collateral in its possession or control

or in the possession or control of any agent or nominee of the Lender, or any income thereon or as to the preservation of rights against prior parties or any other rights pertaining thereto.

23. MISCELLANEOUS.

(a) **Reinstatement.** This Security Agreement shall remain in full force and effect and continue to be effective should any petition be filed by or against any Grantor for liquidation or reorganization, should any 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 any 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.

(b) **Notices.** Except as otherwise provided herein, 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 Security 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 Credit Agreement.

(c) **Severability.** Whenever possible, each provision of this Security Agreement shall be interpreted in a 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 applicable 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. This Security Agreement is to be read, construed and applied together with the Credit Agreement and the other Loan Documents which, taken together, set forth the complete understanding and agreement of the Lender and the Grantors with respect to the matters referred to herein and therein.

(d) **No Waiver; Cumulative Remedies.** The Lender shall not by any act, delay, omission or otherwise be deemed to have waived any of its rights or remedies hereunder, and no waiver shall be valid unless in writing, signed by the Lender and then only to the extent therein set forth. A waiver by Lender of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy which Lender would otherwise have had on any future occasion. No failure to exercise nor any delay in exercising on the part of the Lender, any right, power or privilege hereunder, shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or future exercise thereof or the exercise of any other right, power or privilege. The rights and remedies hereunder provided are cumulative and may be exercised singly or concurrently, and are not exclusive of

any rights and remedies provided by law. None of the terms or provisions of this Security Agreement may be waived, altered, modified or amended except by an instrument in writing, duly executed by the Lender and the Grantors.

(e) **Limitation by Law.** All rights, remedies and powers provided in this Security Agreement may be exercised only to the extent that the exercise thereof does not violate any applicable provision of law, and all the provisions of this Security Agreement are intended to be subject to all applicable mandatory provisions of law that may be controlling and to be limited to the extent necessary so that they shall not render this Security Agreement invalid, unenforceable, in whole or in part, or not entitled to be recorded, registered or filed under the provisions of any applicable law.

(f) **Termination of this Security Agreement.** Subject to Section 23(a) hereof, this Security Agreement shall terminate upon the satisfactory collateralization of all Letters of Credit and the payment in full of all other Obligations (other than indemnification Obligations as to which no claim has been asserted).

(g) **Successors and Assigns.** This Security Agreement and all obligations of the Grantors hereunder shall be binding upon the successors and assigns of the Grantors (including any debtor-in-possession on behalf of a Grantor) and shall, together with the rights and remedies of the Lender, hereunder, inure to the benefit of the Lender, all future holders of any instrument evidencing any of the Obligations and their respective successors and assigns. No sales of participations, other sales, assignments, transfers or other dispositions of any agreement governing or instrument evidencing the Obligations or any portion thereof or interest therein shall in any manner affect the Lien granted to the Lender hereunder. No Grantor may assign, sell, hypothecate or otherwise transfer any interest in or obligation under this Security Agreement.

(h) **Counterparts.** This Security Agreement may be authenticated in any number of separate counterparts, each of which shall collectively and separately constitute one and the same agreement. This Security Agreement may be authenticated by manual signature, facsimile or, if approved in writing by Lender, electronic means, all of which shall be equally valid.

(i) **Governing Law.** EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN ANY OF THE LOAN DOCUMENTS, IN ALL RESPECTS, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS SECURITY AGREEMENT AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NORTH CAROLINA APPLICABLE TO CONTRACTS MADE AND PERFORMED IN THAT STATE, AND ANY APPLICABLE LAWS OF THE UNITED STATES OF AMERICA. EACH GRANTOR HEREBY CONSENTS AND AGREES THAT THE STATE OR FEDERAL COURTS LOCATED IN MECKLENBURG COUNTY, CITY OF CHARLOTTE, SHALL HAVE NON-EXCLUSIVE JURISDICTION TO HEAR AND DETERMINE ANY CLAIMS OR DISPUTES BETWEEN THE GRANTORS AND THE LENDER PERTAINING TO THIS SECURITY AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS OR TO ANY

MATTER ARISING OUT OF OR RELATING TO THIS SECURITY AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS, PROVIDED, THAT THE LENDER AND EACH GRANTOR ACKNOWLEDGE THAT ANY APPEALS FROM THOSE COURTS MAY HAVE TO BE HEARD BY A COURT LOCATED OUTSIDE OF MECKLENBURG COUNTY, CITY OF CHARLOTTE, AND, PROVIDED, FURTHER, NOTHING IN THIS SECURITY AGREEMENT SHALL BE DEEMED OR OPERATE TO PRECLUDE LENDER FROM BRINGING SUIT OR TAKING OTHER LEGAL ACTION IN ANY OTHER JURISDICTION TO REALIZE ON THE COLLATERAL OR ANY OTHER SECURITY FOR THE OBLIGATIONS, OR TO ENFORCE A JUDGMENT OR OTHER COURT ORDER IN FAVOR OF LENDER. EACH GRANTOR EXPRESSLY SUBMITS AND CONSENTS IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR SUIT COMMENCED IN ANY SUCH COURT, AND EACH GRANTOR HEREBY WAIVES ANY OBJECTION WHICH IT MAY HAVE BASED UPON LACK OF PERSONAL JURISDICTION, IMPROPER VENUE OR FORUM NON CONVENIENS AND HEREBY CONSENTS TO THE GRANTING OF SUCH LEGAL OR EQUITABLE RELIEF AS IS DEEMED APPROPRIATE BY SUCH COURT. EACH GRANTOR HEREBY WAIVES PERSONAL SERVICE OF THE SUMMONS, COMPLAINT AND OTHER PROCESS ISSUED IN ANY SUCH ACTION OR SUIT AND AGREES THAT SERVICE OF SUCH SUMMONS, COMPLAINTS AND OTHER PROCESS MAY BE MADE BY REGISTERED OR CERTIFIED MAIL ADDRESSED TO GRANTOR AT THE ADDRESS SET FORTH IN SECTION 13.8 OF THE CREDIT AGREEMENT AND THAT SERVICE SO MADE SHALL BE DEEMED COMPLETED UPON THE EARLIER OF ACTUAL RECEIPT THEREOF OR THREE (3) DAYS AFTER DEPOSIT IN THE U.S. MAILS, PROPER POSTAGE PREPAID.

(j) Waiver of Jury Trial. BECAUSE DISPUTES ARISING IN CONNECTION WITH COMPLEX FINANCIAL TRANSACTIONS ARE MOST QUICKLY AND ECONOMICALLY RESOLVED BY AN EXPERIENCED AND EXPERT PERSON AND THE PARTIES WISH APPLICABLE STATE AND FEDERAL LAWS TO APPLY (RATHER THAN ARBITRATION RULES), THE PARTIES DESIRE THAT DISPUTES ARISING HEREUNDER OR RELATING HERETO BE RESOLVED BY A JUDGE APPLYING SUCH APPLICABLE LAWS. THEREFORE, TO ACHIEVE THE BEST COMBINATION OF THE BENEFITS OF THE JUDICIAL SYSTEM AND OF ARBITRATION, THE PARTIES HERETO WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT OR PROCEEDING BROUGHT TO RESOLVE ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE, AMONG LENDER AND ANY GRANTOR ARISING OUT OF, CONNECTED WITH, RELATED TO, OR INCIDENTAL TO THE RELATIONSHIP ESTABLISHED IN CONNECTION WITH, THIS SECURITY AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS OR THE TRANSACTIONS RELATED HERETO OR THERETO.

(k) Section Titles. The Section titles contained in this Security Agreement are and shall be without substantive meaning or content of any kind whatsoever and are not a part of the agreement between the parties hereto.

(l) No Strict Construction. The parties hereto have participated jointly in the negotiation and drafting of this Security Agreement. In the event an ambiguity or question of

intent or interpretation arises, this Security Agreement shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Security Agreement.

(m) **Advice of Counsel.** Each of the parties represents to each other party hereto that it has discussed this Security Agreement and, specifically, the provisions of Section 23(i) and Section 23(j), with its counsel.

(n) **Benefit of Lender.** All Liens granted or contemplated hereby shall be for the benefit of the Lender, and all proceeds or payments realized from Collateral in accordance herewith shall be applied to the Obligations in accordance with the terms of the Credit Agreement.

(o) **Amendment and Restatement.** To the extent that the Grantors under this Security Agreement are the same as the grantors under those certain Second Amended and Restated Security Agreements dated as of December 31, 1999, in favor of the Lender, then this Security Agreement amends and restates such Second Amended and Restated Security Agreements for each such Grantor.

(p) **License Agreement.** The Borrower is party to the Princeton Trademark License Agreement and the DAR License Agreement (the "License Agreements"), each of which contains certain restrictions on the use of certain licensed marks and on the sale of the products bearing such marks. The Lender acknowledges that any representations and warranties of the Borrower and Guarantors hereunder and under the Credit Agreement are, and the exercise of any of the rights and privileges granted to the Lender hereunder and under the Credit Agreement are, subject to the provisions of the License Agreements.

(q) **Credit Card Services Agreement; Software Licenses.** The Borrower is party to the Credit Card Services Agreement and the Software Licenses (collectively, the "Ancillary Agreements"). The Lender acknowledges that any representations and warranties of the Borrower and Guarantors hereunder and under the Credit Agreement are subject to the provisions of the Ancillary Agreements and that the exercise of any of the rights and privileges granted to the Lender hereunder and under the Credit Agreement may be subject to the provisions of the Ancillary Agreements.

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

GRANTORS:

CARLYLE & CO. JEWELERS

By: Jonald Coned
Name: Jonald Coned
Title: President

CARLYLE & CO. OF MONTGOMERY

By: Jonald Coned
Name: Jonald Coned
Title: Vice President

HAGERSTOWN JEWELERS, INC.

By: Jonald Coned
Name: Jonald Coned
Title: Vice President

J.E. CALDWELL CO.

By: Jonald Coned
Name: Jonald Coned
Title: Vice President

PARK PROMENADE, INC.

By: Jonald Coned
Name: Jonald Coned
Title: Vice President

LENDER:

BANK OF AMERICA, N.A.

By: _____
Name: James D. Cokey
Title: Senior Vice President

SCHEDULE I
to
SECURITY AGREEMENT

LOCATION OF COLLATERAL

See Schedule 2.1(d) to the Credit Agreement

SCHEDULE II
to
SECURITY AGREEMENT

JURISDICTION OF ORGANIZATION

See Schedule 2.1(d) to the Credit Agreement

SCHEDULE III

Patents, Trademarks and Copyrights

1. Patents:

NONE

2. Trademarks:

See attached.

3. Copyrights:

NONE

PROPRIETARY RIGHTS
OTHER THAN TRADE NAMES OR STYLES

1. T.M. "FOR LOVE FOR LIFE FOR NOW FOR EVER", which is subject to terms of Assignment and Agreement dated April 30, 1998, between Borrower and M/W Design, Inc.

- a) Reg. #2,347,308, Class 35, 5/2/00
- b) Reg. #2,307,099, Class 14, 1/11/00

2. S.M. "J.E. Caldwell Co.:

Reg. #1,779,304, 6/29/93

3. "Perfect Love":

Serial Number 76/014541 dated 3/31/00, pending registration.

201 North Tryon Street
Charlotte, NC 28202
PO Box 31247 (28231)
(704) 343-2000

direct: 704-343-2208
fax: 704-343-2300
emily_sample@shmm.com

November 7, 2001

VIA UPS

U.S. Department of Commerce
Patent and Trademark Office
Assignment Division, Box Assignments, CG-4
1213 Jefferson Davis Hwy., Suite 320
Washington, DC 20231

Re: Security Agreement of Trademarks

Dear Ladies and Gentlemen:

Enclosed herewith for filing in your office is a Recordation Form for Security Agreement of Trademarks from Carlyle & Co. Jewelers to Bank of America, N.A.

I have enclosed a check in the amount of \$115.00 to cover the fees for filing the Security Agreement. Please acknowledge receipt of this letter and its enclosures by executing the Receipt Copy hereof and returning it to me in the enclosed self-addressed stamped envelope. If you have any questions or require additional information, please feel free to call me at 1-800-535-7466.

Sincerely yours,



Emily A. Sample
Paralegal

:eas

Enclosures

cc: Wade M. Kennedy, Esq.

RECEIVED AND ACCEPTED this ___ day of November, 2001.

By: _____

Name: _____

Title: _____