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

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

1. Name of conveying party(ies): Hornblower Yachts, Inc. Individual(s) Association General Partnership Limited Partnership Corporation-State Other Additional name(s) of conveying party(ies) attached? Yes No

2. Name and address of receiving party(ies) Name: Fleet Capital Corporation Internal Address: Street Address: 15260 Ventura Boulevard, #400 City: Sherman Oaks State: CA Zip: 91403 Individual(s) citizenship Association General Partnership Limited Partnership Corporation-State Delaware Other If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No Additional name(s) & address(es) attached? Yes No

3. Nature of conveyance: Assignment Merger Security Agreement Change of Name Other Execution Date: 12/21/98

4. Application number(s) or registration number(s): A. Trademark Application No.(s) 75205293; 75774338; 75771287 and 75774331 B. Trademark Registration No.(s) 2420930 Additional number(s) attached Yes No

5. Name and address of party to whom correspondence concerning document should be mailed: Name: Murphy Sheneman Julian & Rogers Internal Address: Attention: Elaine Howard, Legal Assistant Street Address: 101 California Street 39th Floor City: San Francisco State: CA Zip: 94111

6. Total number of applications and registrations involved: 5 7. Total fee (37 CFR 3.41): \$ 140.00 Enclosed Authorized to be charged to deposit account 8. Deposit account number: 20-0052

9. Signature. Christina E Wilson Elaine Howard Signature Date 12/06/01

Total number of pages including cover sheet, attachments, and document: 11

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

12/13/2001 GTOM11 00000046 200052 75205293

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TRADEMARK REEL: 002407 FRAME: 0916

# INTELLECTUAL PROPERTY SECURITY AGREEMENT

This Intellectual Property Security Agreement (this "Agreement") is made as of December 21, 1998, by and between **HORNBLOWER YACHTS, INC.**, a California corporation ("Assignor"), and **FLEET CAPITAL CORPORATION**, a Rhode Island corporation ("Assignee").

## RECITALS

A. Assignor, Yacht Partners, Ltd., Yacht Partners, Ltd IV, and Assignee are parties to that certain Loan and Security Agreement of even date herewith, pursuant to which Assignee is providing financial accommodations to Assignor on the terms and conditions set forth therein. (Said Loan and Security Agreement, as in effect from time to time, together with all exhibits and schedules thereto, is hereinafter referred to as the "Loan Agreement"). All capitalized terms used in this Agreement and not otherwise defined herein will have the respective meanings set forth in the Loan Agreement.

B. In order to induce Assignee to enter into the Loan Agreement and make the Loans to or for the benefit of Assignor as provided for therein, Assignor has agreed to grant a first priority security interest in certain intangible property to Assignee for purposes of securing the obligations of Assignor to Assignee.

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

1. Grant of Security Interest. As collateral security for the prompt and complete payment and performance of all of Assignor's obligations and liabilities of every nature, now or hereafter existing, under or arising out of or in connection with the Loan Agreement or otherwise, and all extensions or renewals thereof, whether for principal, interest, fees, expenses, indemnities or otherwise, whether voluntary or involuntary, direct or indirect, absolute or contingent, liquidated or unliquidated, whether or not jointly owed with others, and whether or not from time to time decreased or extinguished and later increased, created or incurred, and all or any portion of such obligations or liabilities that are paid, to the extent all or any part of such payment is avoided or recovered directly or indirectly from Assignee as a preference, fraudulent transfer or otherwise (all such obligations and liabilities being the "Underlying Debt"), and all obligations of every nature of Assignor now or hereafter existing under this Agreement (all such obligations, together with the Underlying Debt, being the "Secured Obligations"), Assignor hereby assigns, transfers, conveys and grants to Assignee a first priority security interest, as security, in and to Assignor's entire right, title and interest in, to and under the following (all of which shall collectively be called the "Intellectual Property Collateral"):

(a) Any and all copyright rights, copyright applications, copyright registrations and like protections in each work or authorship and derivative work thereof that

INTELLECTUAL PROPERTY  
SECURITY AGREEMENT (HYI)

is created by Assignor, whether published or unpublished and whether or not the same also constitutes a trade secret, now or hereafter existing, created, acquired or held, including without limitation those set forth on **Exhibit A** attached hereto (collectively, the "Copyrights");

(b) Any and all trade secrets, and any and all intellectual property rights in computer software and computer software products now or hereafter existing, created, acquired or held;

(c) Any and all design rights which may be available to Assignor now or hereafter existing, created, acquired or held;

(d) All patents, patent applications and like protections, including without limitation improvements, divisions, continuations, renewals, reissues, extensions and continuations-in-part of the same, including without limitation the patents and patent applications set forth on **Exhibit B** attached hereto (collectively, the "Patents");

(e) Any trademark and servicemark rights, whether registered or not, applications to register and registrations of the same and like protections, and the entire goodwill of the business of Assignor connected with and symbolized by such trademarks, including without limitation those set forth on **Exhibit C** attached hereto (collectively, the "Trademarks");

(f) Right to the proceeds arising from any and all claims for damages by way of past, present and future infringement of any of the rights included above, with the right, but not the obligation, to sue on behalf of and collect such damages for said use or infringement of the intellectual property rights identified above;

(g) All licenses or other rights to use any of the Copyrights, Patents or Trademarks, and all license fees and royalties arising from such use to the extent permitted by such license or rights;

(h) All amendments, renewals and extensions of any of the Copyrights, Trademarks or Patents; and

(i) All proceeds and products of the foregoing, including without limitation all payments under insurance or any indemnity or warranty payable in respect of any of the foregoing.

2. **Authorization and Request.** Assignor authorizes and requests that the Register of Copyrights and the Commissioner of Patents and Trademarks record this security agreement.

3. Covenants and Warranties. Assignor represents, warrants, covenants and agrees as follows:

(a) Assignor is now the sole owner of the Intellectual Property Collateral, except for non-exclusive licenses granted by Assignor to its customers in the ordinary course of business;

(b) Performance of this Agreement does not conflict with or result in a breach of any agreement to which Assignor is party or by which Assignor is bound, in any case, the effect of which could reasonably be expected to have a Material Adverse Effect;

(c) During the term of this Agreement, Assignor will not transfer or otherwise encumber any interest in the Intellectual Property Collateral, except for non-exclusive licenses granted by Assignor in the ordinary course of business or as set forth in this Agreement;

(d) To its knowledge, each of the Patents is valid and enforceable, and no part of the Intellectual Property Collateral has been judged invalid or unenforceable, in whole or in part, and no claim has been made that any part of the Intellectual Property Collateral violates the rights of any third party, in any case, the effect of which could reasonably be expected to have a Material Adverse Effect;

(e) Assignor shall promptly advise Assignee of any subsequent ownership right of the Assignor in or to any Trademark, Patent or Copyright not specified in this Agreement, and any other material change in the composition of the Intellectual Property Collateral;

(f) Assignor shall (i) protect, defend and maintain the validity and enforceability of the Trademarks, Patents and Copyrights, unless Assignor determines that reasonable business practices suggest that such efforts are not appropriate, (ii) use commercially reasonable efforts to detect infringements of the Trademarks, Patents and Copyrights and promptly advise Assignee in writing of material infringements detected and (iii) not allow any Trademarks, Patents or Copyrights to be abandoned, forfeited or dedicated to the public without the written consent of Assignee, unless Assignor determines that reasonable business practices suggest that abandonment is appropriate.

(g) Assignor shall promptly register the most recent version of any of Assignor's Copyrights, if not so already registered, and shall, from time to time, execute and file such other instruments, and take such further actions as Assignee may reasonably request from time to time to perfect or continue the perfection of Assignee's interest in the Intellectual Property Collateral;

(h) This Agreement creates in favor of Assignee a valid security interest in the Intellectual Property Collateral in the United States of America listed on the Exhibits hereto securing the Secured Obligations, and upon the filing of the UCC financing statements in the appropriate jurisdictions and making the filings referred to in clause (i) below, a perfected first priority security interest in such collateral;

(i) Except for, and upon, the filing with the United States Patent and Trademark office with respect to the Patents and Trademarks and the Register of Copyrights with respect to the Copyrights necessary to perfect the security interests created hereunder, and except for the filing of the UCC financing statements, and except as has been already made or obtained, no authorization, approval or other action by, and no notice to or filing with, any U.S. governmental authority or U.S. regulatory body is required either (i) for the grant by Assignor of the security interest granted hereby or for the execution, delivery or performance of this Agreement by Assignor in the United States or (ii) for the perfection in the United States or the exercise by Assignee of its rights and remedies hereunder;

(j) All information heretofore, herein or hereafter supplied to Assignee by or on behalf of Assignor with respect to the Intellectual Property Collateral is accurate and complete in all material respects.

(k) Assignor shall not enter into any agreement that would materially impair or conflict with Assignor's obligations hereunder without Assignee's prior written consent. Assignor shall not permit the inclusion in any contract to which it becomes a party of any provisions that could or might in any way prevent the creation of a security interest in Assignor's rights and interests in any property included within the definition of the Intellectual Property Collateral acquired under such contracts, except that certain contracts may contain anti-assignment provisions that could in effect prohibit the creation of a security interest in such contracts, and except that Assignor shall not be prohibited from granting non-exclusive licenses, or entering into marketing and distribution agreements in the normal course of its business.

(l) Upon any executive officer of Assignor obtaining actual knowledge thereof, Assignor will promptly notify Assignee in writing of any event that could reasonably be expected to have a Materially Adverse Effect.

4. Assignee's Rights. Upon or after the occurrence of an Event of Default and during the continuation thereof, Assignee shall have the right, but not the obligation, to take, at Assignor's sole expense, any actions that Assignor is required under this Agreement to take but which Assignor fails to take. Assignor shall reimburse and indemnify Assignee for all costs and expenses incurred in the exercise of its rights under this section 4.

5. [INTENTIONALLY OMITTED]

6. Further Assurances; Attorney in Fact.

(a) On a continuing basis, Assignor will, subject to any prior licenses, encumbrances and restrictions and prospective licenses, make, execute, acknowledge and deliver, and file and record in the proper filing and recording places in the United States, all such instruments, including appropriate financing and continuation statements and collateral agreements and filings with the United States Patent and Trademark Office and the Register of Copyrights, and take all such action as may reasonably be deemed necessary or advisable, or as reasonably requested by Assignee, to perfect Assignee's security interest in all Copyrights, Patents and Trademarks and otherwise to carry out the intent and purposes of this Agreement, or for assuring and confirming to Assignee the grant or perfection of a security interest in all Intellectual Property Collateral.

(b) Upon or after the occurrence of an Event of Default and during the continuation thereof, Assignor hereby irrevocably appoints Assignee as Assignor's attorney-in-fact, with full authority in the place and stead of Assignor and in the name of Assignor, from time to time in Assignee's discretion, to take any action and to execute any instrument which Assignee may deem necessary or advisable to accomplish the purposes of this Agreement, including:

(i) To modify, in its sole discretion, this Agreement without first obtaining Assignor's approval of or signature to such modification by amending Exhibit A, Exhibit B or Exhibit C hereto, as appropriate, to include reference to any right, title or interest in any Copyrights, Patents or Trademarks acquired by Assignor after the execution hereof or to delete any reference to any right, title or interest in any Copyrights, Patents or Trademarks in which Assignor no longer has or claims any right, title or interest; and

(ii) To file, in its sole discretion, one or more financing or continuation statements and amendments thereto, relative to any of the Intellectual Property Collateral, without the signature of Assignor where permitted by law.

7. Events of Default. The occurrence of any of the following shall constitute an event of default under this Agreement (each an "Event of Default"):

(a) An "Event of Default" occurs under and as defined in the Loan Agreement; or

(b) Assignor breaches any warranty or agreement made by Assignor in this Agreement and, as to any breach that is capable of cure, Assignor fails to cure such breach within the cure period provided by subsection 10.1.6 of the Loan Agreement.

8. Remedies. Upon the occurrence and continuance of an Event of Default, Assignee shall have the right to exercise all the remedies of a secured party under the California Uniform Commercial Code, including without limitation the right to require

Assignor to assemble the Intellectual Property Collateral and any tangible property in which Assignee has a security interest and to make it available to Assignee at a place designated by Assignee. Assignee shall have a nonexclusive, royalty free license to use the Copyrights, Patents and Trademarks to the extent reasonably necessary to permit Assignee to exercise its rights and remedies upon the occurrence and during the continuation of an Event of Default. Assignor will pay any reasonable expenses (including attorneys' fees) incurred by Assignee in connection with the exercise of any of Assignee's rights hereunder, including without limitation any expense incurred in disposing of the Intellectual Property Collateral. All of Assignee's rights and remedies with respect to the Intellectual Property Collateral shall be cumulative.

9. Indemnity. Assignor agrees to defend, indemnify and hold harmless Assignee and each of its officers, employees, and agents against: (a) all obligations, demands, claims, and liabilities claimed or asserted by any other party in connection with the transactions contemplated by this Agreement, and (b) all losses or expenses in any way suffered, incurred, or paid by Assignee as a result of or in any way arising out of, following or consequential to transactions between Assignee and Assignor, whether under this Agreement or otherwise (including without limitation reasonable attorneys' fees and expenses), except for losses arising from or out of Assignee's gross negligence or willful misconduct.

10. Reassignment. At such time as Assignor shall completely satisfy all of the Secured Obligations, Assignee shall execute and deliver to Assignor all deeds, assignments and other instruments as may be necessary or proper to revest in Assignor full title to the property assigned hereunder, subject to any disposition thereof which may have been made by Assignee pursuant hereto.

11. Course of Dealing. No course of dealing, nor any failure to exercise, nor any delay in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

12. Amendments. This Agreement may be amended only by a written instrument signed by both parties hereto.

13. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute the same instrument.

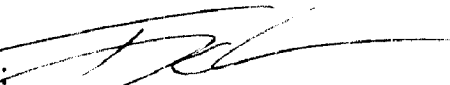
14. California Law and Jurisdiction. This Agreement shall be governed by the laws of the State of California, without regard for choice of law provisions. Assignor and Assignee consent to the exclusive jurisdiction of any state or federal court located in Los Angeles County, California.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

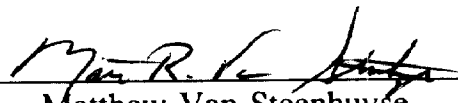
Assignor:

**HORNBLLOWER YACHTS, INC.**

By:   
\_\_\_\_\_  
Terry A. MacRae  
President

Assignee:

**FLEET CAPITAL CORPORATION**

By:   
\_\_\_\_\_  
Matthew Van Steenhuyse  
S.E. Vice President

INTELLECTUAL PROPERTY  
SECURITY AGREEMENT (HYI)



**EXHIBIT A**

**COPYRIGHTS AND COPYRIGHT LICENSES**

Federal Copyrights

Copyrights

Registration Number

Application Number

AS OF THE DATE OF THIS AGREEMENT,  
ASSIGNOR OWNS NO COPYRIGHTS OR COPYRIGHT LICENSES

**EXHIBIT B**

**PATENTS AND PATENT LICENSES**

Federal Patents

Patent

Registration Number

Application Number

AS OF THE DATE OF THIS AGREEMENT,  
ASSIGNOR OWNS NO PATENTS OR PATENT LICENSES

**EXHIBIT C**

**TRADEMARKS AND TRADEMARK LICENSES**

Federal Trademarks

| <u>Trademark</u> | <u>Application Number</u> | <u>Registration Number</u> |
|------------------|---------------------------|----------------------------|
| HORNBLOWER       | 75-775818                 | R2420930                   |
| CRUISE US        | 75-205293                 |                            |
| EXTREME EXPRESS  | 75-774338                 |                            |
| HORNBLOWER       | 75-771287                 |                            |
| EXTREME CRUISES  | 75-774331                 |                            |