03-14-2002

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

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U.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):
FDMC Holdings, Inc. a/k/a
FDMC Holdings Inc.

2-27-02

- [ ] Individual(s)
- [ ] Association
- [ ] General Partnership
- [ ] Limited Partnership
- [x] Corporation-State
- [ ] Other Delaware

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

2. Name and address of receiving party(ies)
Name: Comerica Bank
Internal Address: One Detroit Center, 9th Floor
Street Address: 500 Woodward Ave.
City: Detroit State: MI Zip: 48226

- [ ] Individual(s) citizenship
- [ ] Association
- [ ] General Partnership
- [ ] Limited Partnership
- [ ] Corporation-State
- [x] Other Michigan banking corporation

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 [x] No

OFFICE OF PUBLIC RECORDS
2002 FEB 27 PM 3:01
FINANCE SECTION

3. Nature of conveyance:

- [ ] Assignment
- [ ] Merger
- [x] Security Agreement
- [ ] Change of Name
- [ ] Other

Execution Date: 1/15/02

4. Application number(s) or registration number(s):
A. Trademark Application No.(s) 76/159770
76/159767; 76/159768; 76/159771
B. Trademark Registration No.(s)

Additional number(s) attached [x] Yes [ ] No

5. Name and address of party to whom correspondence concerning document should be mailed:
Name: Susan M. Kornfield
Internal Address: Bodman, Longley & Dahling LLP
Street Address: 110 Miller, Suite 300
City: Ann Arbor State: MI Zip: 48104

03/13/2002 DBYRNE 00000058 76159770
01 FC:481 40.00 OP
02 FC:482 175.00 OP

6. Total number of applications and registrations involved: ..... 8

7. Total fee (37 CFR 3.41).....$ 215.00

- [x] Enclosed
- [ ] Authorized to be charged to deposit account

8. Deposit account number:
02-2880

**DO NOT USE THIS SPACE**

9. Signature.

| Susan M. Kornfield | Susan M. Kornfield | 27 Feb 2002 |
|---|---|---|
| Name of Person Signing | Signature | Date |

Total number of pages including cover sheet, attachments, and document: 20

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

**Schedule I**

**TRADEMARKS AND TRADEMARK LICENSES**

| **Trademark** | **Serial/Registration No.** | **Owner** | **Notes/Issues** |
|---|---|---|---|
| FDMC (and Design) | 76/159770 | FDMC Holdings Inc. | None |
| GFI (and Design) | 76/159767 | FDMC Holdings Inc. | None |
| GATEWAY FASTENERS INC. | 76/159768 | FDMC Holdings Inc. | None |
| CREATIVE ASSEMBLY SYSTEMS INC. | 76/159771 | FDMC Holdings Inc. | None |
| CAS (and Design) | 76/159772 | FDMC Holdings Inc. | None |
| AMC (and Design) | 76/159773 | FDMC Holdings Inc. | None |
| AERO-MISSILE COMPONENTS INC. | 76/159774 | FDMC Holdings Inc. | None |
| FASTENER DISTRIBUTION AND MARKETING COMPANY INC. | 76/159769 | FDMC Holdings Inc. | None |

::ODMA\MHODMA\Detroit;366552;2

**FDMC HOLDINGS, INC.**

**Recordation Form Cover Sheet**

**Continuation of Item 4**

Additional Trademark Application Nos.

76/159772
76/159773
76/159774
76/159769

# PATENT AND TRADEMARK SECURITY AGREEMENT

PATENT AND TRADEMARK SECURITY AGREEMENT, dated as of January 15, 2002, made by FDMC HOLDINGS, INC., a Delaware corporation (the "Grantor"), in favor of COMERICA BANK, a Michigan banking corporation (the "Bank").

W I T N E S S E T H:

WHEREAS, Grantor, Bank and the Borrowers are parties to that certain Credit Agreement dated as July 3, 2000, as amended November 30, 2001, January 15, 2002, and as the same may be further amended or modified from time to time, the "Loan Agreement"); and

WHEREAS, the Grantor owns certain Trademarks and Trademark Licenses listed on Schedule I hereto; and

WHEREAS, the Grantor owns certain Patents and Patent Licenses listed on Schedule II hereto; and

WHEREAS, it is a condition precedent to the obligation of the Bank to make credit advances to Borrowers under the Loan Agreement that the Grantor shall have executed and delivered this Agreement to the Bank;

NOW, THEREFORE, in consideration of the premises and to induce the Bank to enter into the Loan Agreement and to make advances to Borrowers thereunder, the Grantor hereby agrees with the Bank, as follows:

1. Defined Terms. (a) Unless otherwise defined herein, capitalized terms defined in the Loan Agreement are used herein as defined therein. The following terms shall have the following meanings:

"Agreement": this Patent and Trademark Security Agreement, as the same may be amended, supplemented, waived or otherwise modified from time to time.

"Borrowers": shall mean Grantor, Fastener Distribution and Marketing Company, Inc., Creative Assembly Systems, Inc., Gateway Fasteners, Inc., Aero-Missile Components, Inc., FDMC Finance, Inc. and each other party which becomes obligated as a "Company" under the Loan Agreement.

"Code": Act No. 174 of the Michigan Public Acts of 1962, as amended, revised or replaced from time to time, including without limit as amended by Act No. 348 of the Michigan Public Acts of 2000.

"Collateral": as defined in Section 2 of this Agreement.

"Event of Default": any default or event of default described in the Loan Agreement and lapse of any applicable grace and/or cure periods.

"General Intangibles": as defined in the Code, including, without limitation, all Patents and Trademarks now or hereafter owned by the Grantor to the extent such Patents and Trademarks would be included in General Intangibles under the Code.

"Lien": any lien, security interest, pledge, encumbrance or other similar charge, whether voluntary or involuntary and however created.

"Notes": the Notes as defined in the Loan Agreement, as each may be amended, replaced, supplemented or modified from time to time.

"Obligations": the collective reference to the unpaid principal of and interest on (including, without limitation, interest accruing after the maturity of the Notes and interest accruing after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to the Grantor or Borrower whether or not a claim for post-filing or post-petition interest is allowed in such proceeding) the Notes, and all other obligations and liabilities of the Grantor and/or Borrower to the Bank, whether direct or indirect, absolute or contingent, due or to become due, or now existing or hereafter incurred, including, without limitation, obligations and liabilities which may arise under, out of, or in connection with, the Loan Agreement, the Notes, or any other document made, delivered or given in connection therewith, in each case whether on account of principal, interest, reimbursement obligations, fees, indemnities, costs, expenses or otherwise (including, without limitation, all reasonable fees and disbursements of counsel to the Bank).

"Patent License": all United States license agreements with any other person in connection with any of the Patents or such other person's patents, whether the Grantor is a licensor or a licensee under any such license agreement, including, without limitation, the license agreements listed on Schedule II hereto and made a part hereof, subject, in each case, to the terms of such license agreements and the right to prepare for sale, sell and advertise for sale, all inventory now or hereafter covered by such licenses.

"Patents": all United States patents, patent applications and patentable inventions, including, without limitation, all patents and patent applications identified in Schedule II attached hereto and made a part hereof, and including without limitation (a) all inventions and improvements described and claimed therein, and patentable inventions, (b) the right to sue or otherwise recover for any and all past, present and future infringements and misappropriations thereof, (c) all income, royalties, damages and other payments now and hereafter due and/or payable with respect thereto (including, without limitation, payments under all licenses entered into in connection therewith, and damages and payments for past or future infringements thereof), and (d) all rights corresponding thereto in the



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United States and all reissues, divisions, continuations, continuations-in-part, substitutes, renewals, and extensions thereof, all improvements thereon, and all other rights of any kind whatsoever of the Grantor accruing thereunder or pertaining thereto (Patents and Patent Licenses being, collectively, the "Patent Collateral").

"Trademark License": all United States license agreements with any other person in connection with any of the Trademarks or such other person's names or trademarks, whether the Grantor is a licensor or a licensee under any such license agreement, including, without limitation, the license agreements listed on Schedule I hereto and made a part hereof, subject, in each case, to the terms of such license agreements, and the right to prepare for sale, sell and advertise for sale, all inventory now or hereafter covered by such licenses.

"Trademarks": all trademarks, service marks, trade names, trade dress or other indicia of trade origin, trademark and service mark registrations, and applications for trademark or service mark registrations (except for "intent to use" applications for trademark or service mark registrations filed pursuant to Section 1(b) of the Lanham Act, unless and until an Amendment to Allege Use or a Statement of Use under Sections 1(c) and 1(d) of said Act has been filed), and any renewals thereof, including, without limitation, each registration and application identified in Schedule I attached hereto and made a part hereof, and including without limitation (a) the right to sue or otherwise recover for any and all past, present and future infringements and misappropriations thereof, (b) all income, royalties, damages and other payments now and hereafter due and/or payable with respect thereto (including, without limitation, payments under all licenses entered into in connection therewith, and damages and payments for past or future infringements thereof) and (c) all rights corresponding thereto in the United States and all other rights of any kind whatsoever of the Grantor accruing thereunder or pertaining thereto, together in each case with the goodwill of the business connected with the use of, and symbolized by, each such trademark, service mark, trade name, trade dress or other indicia of trade origin (Trademarks and Trademark Licenses being, collectively, the "Trademark Collateral").

(b) The words "hereof," "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and section and paragraph references are to this Agreement unless otherwise specified.

(c) The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms.

2. Grant of Security Interest. As collateral security for the prompt and complete payment and performance when due (whether at the stated maturity, by acceleration or otherwise) of the Obligations, the Grantor hereby assigns, pledges and grants to the Bank a security interest in all of the following property now owned or at any time hereafter acquired by



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the Grantor or in which the Grantor now has or at any time in the future may acquire any right, title or interest (collectively, the "Collateral"):

(i) all Trademarks;

(ii) all Trademark Licenses;

(iii) all Patents;

(iv) all Patent Licenses;

(v) all general intangibles connected with the use of or symbolized by the Trademarks and Patents; and

(vi) to the extent not otherwise included, all proceeds and products of any and all of the foregoing;

3. Grantor Remains Liable; Limitations on Bank's Obligations. Anything herein to the contrary notwithstanding, (a) the Grantor shall remain liable under the contracts and agreements included in the Collateral to the extent set forth therein to perform all of its duties and obligations thereunder to the same extent as if this Agreement had not been executed, (b) the exercise by the Bank of any of the rights hereunder shall not release the Grantor from any of its duties or obligations under the contracts and agreements included in the Collateral, and (c) the Bank shall not have any obligation or liability under the contracts and agreements included in the Collateral by reason of this Agreement, nor shall the Bank be obligated to perform any of the obligations or duties of the Grantor thereunder or to take any action to collect or enforce any claim for payment assigned hereunder.

4. Representations and Warranties. The Grantor represents and warrants as follows:

(a) Title; No Other Liens. Except for the Liens granted to the Bank, the Grantor is (or, in the case of after-acquired Collateral, will be) the sole, legal and beneficial owner of the entire right, title and interest in and to the Trademarks set forth on Schedule I hereto and the Patents set forth in Schedule II hereto free and clear of any and all liens. No security agreement, financing statement or other public notice similar in effect with respect to all or any part of the Collateral is on file or of record in any public office (including, without limitation, the United States Patent and Trademark Office) except such as may have been filed in favor of the Bank pursuant to this Agreement.

(b) Perfected First Priority Liens. (i) This Agreement is effective to create, as collateral security for the Obligations, valid and enforceable Liens on the Collateral in favor of the Bank.



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(ii) Upon filing of the financing statements delivered to the Bank (and the recording of this Agreement in the United States Patent and Trademark Office), the Liens created pursuant to this Agreement will constitute valid and perfected Liens on the Collateral in favor of the Bank, which Liens will be prior to all other Liens on the Collateral, and which Liens are enforceable as such against all creditors of and purchasers (except to the extent that the recording of an assignment or other transfer of title to the Bank in the United States Patent and Trademark Office may be necessary for such enforceability) from the Grantor, except as such enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether considered in a proceeding in equity or at law).

(c) Consents. No consent of any party (other than such Grantor) to any Patent License or Trademark License constituting Collateral is required, or purports to be required, to be obtained by or on behalf of such Grantor in connection with the execution, delivery and performance of this Agreement that has not been obtained. Each Patent License and Trademark License constituting Collateral is in full force and effect and constitutes a valid and legally enforceable obligation of the Grantor and (to the knowledge of the Grantor) each other party thereto except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditor's rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law). No consent or authorization of, filing with or other act by or in respect of any governmental authority is required in connection with the execution, delivery, performance, validity or enforceability of any of the Patent Licenses or Trademark Licenses by any party thereto other than those which have been duly obtained, made or performed and are in full force and effect. Neither the Grantor nor (to the knowledge of the Grantor) any other party to any Patent License or Trademark License constituting Collateral is in default in the performance or observance of any of the terms thereof, except for such defaults as would not reasonably be expected, in the aggregate, to have a material adverse effect on the value of the Collateral. The right, title and interest of the Grantor in, to and under each Patent License and Trademark License constituting Collateral are not subject to any defense, offset, counterclaim or claim.

(d) Schedules I and II are Complete; All Filings Have Been Made. Set forth in Schedules I and II is a complete and accurate list of the Trademarks and Patents owned by the Grantor of the date hereof. The Grantor has made all necessary filings and recordations to protect and maintain its interest in the Trademarks and Patents set forth in Schedules I and II, including, without limitation, all necessary filings and recordings, and payments of all maintenance fees, in the United States Patent and Trademark Office to the extent such Trademarks and Patents are material to the Grantor's business. Set forth in Schedules I and II is a complete and accurate list of all of the material Trademark Licenses and Patent Licenses owned by the Grantor as of the date hereof.



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(e) The Trademarks and Trademark Licenses are Subsisting and Not Adjudged Invalid. As of the date hereof, each trademark registration and trademark application of the Grantor set forth in Schedule I is subsisting and has not been adjudged invalid, unregisterable or unenforceable, in whole or in part, and, to the best of the Grantor's knowledge, is valid, registerable and enforceable. As of the date hereof, each of the Trademark Licenses set forth in Schedule I is validly subsisting and has not been adjudged invalid or unenforceable, in whole or in part, and, to the best of the Grantor's knowledge, is valid and enforceable. As of the date hereof, the Grantor has notified the Bank in writing of all uses of any item of Trademark Collateral of which the Grantor is aware which could reasonably be expected to lead to such item becoming invalid or unenforceable, including unauthorized uses by third parties and uses which were not supported by the goodwill of the business connected with such Collateral.

(f) The Patent and Patent Licenses are Subsisting and Not Adjudged Invalid. As of the date hereof, each Patent and patent application of the Grantor set forth in Schedule II is subsisting and has not been adjudged invalid, unpatentable or unenforceable, in whole or in part, and, to the best of the Grantor's knowledge, is valid, patentable and enforceable. As of the date hereof, each of the Patent Licenses set forth in Schedule II is validly subsisting and has not been adjudged invalid or unenforceable, in whole or in part, and, to the best of the Grantor's knowledge, is valid and enforceable. As of the date hereof, the Grantor has notified the Bank in writing of all uses of any item of Patent Collateral material to the Grantor's business of which the Grantor is aware which could reasonably be expected to lead to such item becoming invalid or unenforceable.

(g) No Previous Assignments or Releases. As of the date hereof, the Grantor has not made a previous assignment, sale, transfer or agreement constituting a present or future assignment, sale, transfer or encumbrance of any of the Collateral, except with respect to exclusive licenses granted in the ordinary course of business or as permitted by this Agreement or the Loan Documents. As of the date hereof, the Grantor has not granted any license, shop right, release, covenant not to sue, or non-assertion assurance to any person with respect to any part of the Collateral.

(h) Proper Statutory Notice. The Grantor has marked its products with the trademark registration symbol the numbers of all appropriate patents, the common law trademark symbol or the designation "patent pending," as the case may be, to the extent that it is reasonably and commercially practicable.

(i) No Knowledge of Claims Likely to Arise. Except for the Trademark Licenses and Patent Licenses listed in Schedules I and II hereto, the Grantor has no knowledge of the existence of any right or any claim (other than as provided by this Agreement) that is likely to be made under or against any item of Collateral contained on Schedules I and II.

(j) No Knowledge of Existing or Threatened Claims. No claim has been made and is continuing or, to the best of the Grantor's knowledge, threatened that the use by the



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Grantor of any item of Collateral is invalid or unenforceable or that the use by the Grantor of any Collateral does or may violate the rights of any person. To the best of the Grantor's knowledge, there is currently no infringement or unauthorized use of any item of Collateral contained on Schedules I and II.

5. Covenants. The Grantor covenants and agrees with the Bank that, from and after the date of this Agreement until the payment in full of the Obligations:

(a) Further Documentation; Pledge of Instruments and Chattel Paper. At any time and from time to time, upon the written request of the Bank or the Grantor, as the case may be, and at the sole expense of the Grantor, the Grantor or the Bank, as the case may be, will promptly and duly execute and deliver such further instruments and documents and take such further action as the Bank or the Grantor may reasonably request for the purpose of obtaining or preserving the full benefits of this Agreement and of the rights and powers herein granted, including, without limitation, the filing of any financing or continuation statements under the Uniform Commercial Code in effect in any jurisdiction with respect to the Liens created hereby. The Grantor also hereby authorizes the Bank to file any such financing or continuation statement without the signature of the Grantor to the extent permitted by applicable law. A carbon, photostatic or other reproduction of this Agreement shall be sufficient as a financing statement for filing in any jurisdiction. The Bank agrees to notify the Grantor and the Grantor agrees to notify the Bank of any financing or continuation statement filed by it pursuant to this Section 5(a), provided that any failure to give any such notice shall not affect the validity or effectiveness of any such filing.

(b) Indemnification and Expenses. The Grantor agrees to pay, and to save the Bank harmless from, any and all liabilities and reasonable costs and expenses (including, without limitation, reasonable legal fees and expenses) (i) with respect to, or resulting from, any delay by the Grantor in complying with any material requirement of law applicable to any of the Collateral, or (ii) in connection with any of the transactions contemplated by this Agreement, provided that such indemnity shall not be available to the extent that such liabilities, costs and expenses resulted from the gross negligence or willful misconduct of the Bank, its agents or employees. In any suit, proceeding or action brought by the Bank under any of the Collateral for any sum owing thereunder, or to enforce any of the Collateral, the Grantor will save, indemnify and keep the Bank harmless from and against all expense, loss or damage suffered by reason of any defense or counterclaim raised in any such suit, proceeding or action.

(c) Maintenance of Records. The Grantor will keep and maintain at its own cost and expense reasonably satisfactory and complete records of the Collateral, and shall mark such records to evidence this Agreement and the Liens and the security interests created hereby.

(d) Right of Inspection. Upon reasonable advance notice to the Grantor, the Bank and its respective representatives shall have access during normal business hours to



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all the books, correspondence and records of the Grantor, and the Bank and its respective representatives may examine the same, and to the extent reasonable take extracts therefrom and make photocopies thereof, and the Grantor agrees to render to the Bank, at the Grantor's reasonable cost and expense, such clerical and other assistance as may be reasonably requested with regard thereto.

(e) Compliance with Laws, etc. The Grantor will comply in all material respects with all requirements of law applicable to the Collateral or any part thereof, except to the extent that the failure to so comply would not be reasonably expected to materially adversely affect in the aggregate the Bank's rights hereunder, the priority of its Liens on the Collateral or the value of the Collateral.

(f) Further Identification of Collateral. The Grantor will furnish to the Bank from time to time such statements and schedules further identifying and describing the Collateral, and such other reports in connection with the Collateral, as the Bank may reasonably request, all in reasonable detail.

(g) Security Interest in Any Newly Acquired Collateral. The Grantor agrees that should it obtain an ownership interest in any Trademark, Patent, Trademark License or Patent License which is not now a part of the Collateral, (i) the provisions of Section 2 shall automatically apply thereto, (ii) any such Trademark, Patent, Trademark License and Patent License shall automatically become part of the Collateral, and (iii) with respect to any ownership interest in any Trademark, Patent, Trademark License or Patent License that the Grantor should obtain which the Grantor reasonably deems is material to its business, it shall give notice thereof to the Bank in writing, in reasonable detail, within 30 days after acquiring such ownership interest. The Grantor authorizes the Bank to modify this Agreement by amending Schedules I and II (and will cooperate with the Bank in effecting any such amendment) to include on Schedule I any Trademark and Trademark License and on Schedule II any Patent or Patent License of which it receives notice under this Section.

(h) Maintenance of the Trademark Collateral. The Grantor agrees to take all necessary steps, including, without limitation, in the United States Patent and Trademark Office or in any court, to (i) maintain each trademark registration and each Trademark License identified on Schedule I hereto, and (ii) pursue each trademark application now or hereafter identified in Schedule I hereto, including, without limitation, the filing of responses to office actions issued by the United States Patent and Trademark Office, the filing of applications for renewal, the filing of affidavits under Sections 8 and 15 of the United States Trademark Act, and the participation in opposition, cancellation, infringement and misappropriation proceedings, except, in each case in which the Grantor has reasonably determined that any of the foregoing is not of material economic value to it. The Grantor agrees to take corresponding steps with respect to each new or acquired trademark registration, trademark application or any rights obtained under any Trademark License, in each case, which it is now or later becomes entitled, except in each case in which the Grantor has reasonably determined that any of the foregoing is not of material

economic value to it. Any expenses incurred in connection with such activities shall be borne by the Grantor.

(i) Maintenance of the Patent Collateral. The Grantor agrees to take all necessary steps, including, without limitation, in the United States Patent and Trademark Office or in any court, to (i) maintain each Patent and each Patent License identified on Schedule II hereto, and (ii) pursue each patent application, now or hereafter identified in Schedule II hereto, including, without limitation, the filing of divisional, continuation, continuation-in-part and substitute applications, the filing of applications for reissue, renewal or extensions, the payment of maintenance fees, and the participation in interference, reexamination, opposition, infringement and misappropriation proceedings, except in each case in which the Grantor has reasonably determined that any of the foregoing is not of material economic value to it. The Grantor agrees to take corresponding steps with respect to each new or acquired Patent, patent application, or any rights obtained under any Patent License, in each case, which it is now or later becomes entitled, except in each case in which the Grantor has reasonably determined that any of the foregoing is not of material economic value to it. Any expenses incurred in connection with such activities shall be borne by the Grantor.

(j) Grantor Shall Not Abandon any Collateral. The Grantor shall not abandon any trademark registration, Patent or any pending trademark or patent application, without the written consent of the Bank, unless the Grantor shall have previously determined that such use or the pursuit or maintenance of such trademark registration, Patent or pending trademark or patent application is not of material economic value to it, in which case, the Grantor will, at least annually, give notice of any such abandonment to the Bank in writing.

(k) Infringement of Any Collateral. In the event that the Grantor becomes aware that any item of the Collateral which the Grantor has reasonably determined to be material to its business is infringed or misappropriated by a third party, the Grantor shall promptly notify the Bank promptly and in writing, in reasonable detail, and shall take such actions as the Grantor or the Bank deems reasonably appropriate under the circumstances to protect such Collateral, including, without limitation, suing for infringement or misappropriation and for an injunction against such infringement or misappropriation. Any expense incurred in connection with such activities shall be borne by the Grantor. The Grantor will advise the Bank promptly and in writing, in reasonable detail, of any adverse determination or the institution of any proceeding (including, without limitation, the institution of any proceeding in the United States Patent and Trademark Office or any court) regarding any item of the Collateral.

(l) Limitation on Liens on Collateral. The Grantor will not create, incur or permit to exist, will defend the Collateral against, and will take such other action as is reasonably necessary to remove, any Lien or material adverse claim on or to any of the Collateral, other than the liens created by this Agreement, and will defend the right, title



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and interest of the Bank in and to any of the Collateral against the claims and demands of all persons whomsoever.

(m) Limitations on Dispositions of Collateral. Without the prior written consent of the Bank, the Grantor will not sell, assign, transfer, exchange or otherwise dispose of, or grant any option with respect to, the Collateral, or attempt, offer or contract to do so.

(n) Notices. The Grantor will advise the Bank promptly, in reasonable detail, (i) of any Lien (other than Liens created hereby) on, or material adverse claim asserted against, Patents or Trademarks and (ii) of the occurrence of any other event which would reasonably be expected in the aggregate to have a material adverse effect on the aggregate value of the Collateral or the Liens created hereunder.

6. Bank's Appointment as Attorney-in-Fact.

(a) Powers. The Grantor hereby irrevocably constitutes and appoints the Bank, and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of the Grantor and in the name of the Grantor or in its own name, from time to time in the Bank's discretion, for the purpose of carrying out the terms of this Agreement after the occurrence of an Event of Default, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary or desirable to accomplish the purposes of this Agreement, and, without limiting the generality of the foregoing, the Grantor hereby gives the Bank the power and right, on behalf of the Grantor, without notice to or assent by the Grantor, to do the following at any time after the occurrence of an Event of Default, and to the extent permitted by law:

(i) to execute and deliver any and all agreements, instruments, documents, and papers as the Bank may reasonably request to evidence the Bank's security interest in any of the Collateral;

(ii) in the name of the Grantor or its own name, or otherwise, to take possession of and indorse and collect any checks, drafts, notes, acceptances or other instruments for the payment of moneys due under any general intangible (to the extent that any of the foregoing constitute Collateral) or with respect to any other Collateral and to file any claim or to take any other action or institute any proceeding in any court of law or equity or otherwise deemed appropriate by the Bank for the purpose of collecting any and all such moneys due under any such General Intangible or with respect to any such other Collateral whenever payable;

(iii) to pay or discharge Liens placed on the Collateral, other than Liens permitted under this Agreement; and



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(iv) (A) to direct any party liable for any payment under any of the Collateral to make payment of any and all moneys due or to become due thereunder directly to the Bank or as the Bank shall direct; (B) to ask for, or demand, collect, receive payment of and receipt for, any and all moneys, claims and other amounts due or to become due at any time in respect of or arising out of any of the Collateral; (C) to sign and indorse any invoices, freight or express bills, bills of lading, storage or warehouse receipts, drafts against debtors, assignments, verifications, notices and other documents in connection with any of the Collateral; (D) to commence and prosecute any suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect the Collateral or any thereof and to enforce any other right in respect of any Collateral; (E) to defend any suit, action or proceeding brought against the Grantor with respect to any of the Collateral; (F) to settle, compromise or adjust any suit, action or proceeding described in clause (E) above and, in connection therewith, to give such discharges or releases as the Bank may deem appropriate; (G) subject to any pre-existing rights or licenses, to assign any Patent or Trademark constituting Collateral (along with the goodwill of the business to which any such Patent or Trademark pertains), for such term or terms, on such conditions, and in such manner, as the Bank shall in its sole discretion determine; and (H) generally, to sell, transfer, pledge and make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though the Bank were the absolute owner thereof for all purposes, and to do, at the Bank's option and the Grantor's expense, at any time, or from time to time, all acts and things which the Bank deems necessary to protect, preserve or realize upon the Collateral and the Bank's Liens thereon and to effect the intent of this Agreement, all as fully and effectively as the Grantor might do.

The Grantor hereby ratifies all that said attorneys shall lawfully do or cause to be done by virtue hereof. This power of attorney is a power coupled with an interest and shall be irrevocable until payment in full of the Obligations.

(b) Other Powers. The Grantor also authorizes the Bank, from time to time if an Event of Default shall have occurred and be continuing, to execute, in connection with any sale provided for in Section 8 hereof, any endorsements, assignments or other instruments of conveyance or transfer with respect to the Collateral.

(c) No Duty on the Part of Bank. The powers conferred on the Bank hereunder are solely to protect the Bank's interests in the Collateral and shall not impose any duty upon the Bank to exercise any such powers. The Bank shall be accountable only for amounts that it actually receives as a result of the exercise of such powers, and neither it nor any of its officers, directors, employees or agents shall be responsible to the Grantor for any act or failure to act hereunder, except for their own gross negligence or willful misconduct.

7. Performance by Bank of Grantor's Obligations. If the Grantor fails to perform or comply with any of its agreements contained herein and the Bank, as provided for by the terms of this Agreement, shall itself perform or comply, or otherwise cause performance or compliance,



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with such agreement, the reasonable expenses of the Bank incurred in connection with such performance or compliance, together with interest thereon at the rate provided in the Loan Agreement, shall be payable by the Grantor to the Bank on demand and shall constitute Obligations secured hereby.

8. Proceeds. It is agreed that if an Event of Default shall occur and be continuing, (a) all proceeds of any Collateral received by the Grantor consisting of cash, checks and other near-cash items shall be held by the Grantor in trust for the Bank, segregated from other funds of the Grantor, and at the request of the Bank shall, forthwith upon receipt by the Grantor, be turned over to the Bank in the exact form received by the Grantor (duly indorsed by the Grantor to the Bank, if required by the Bank) and (b) any and all such proceeds received by the Bank (whether from the Grantor or otherwise) may, in the sole discretion of the Bank, be held by the Bank as collateral security for the Obligations (whether matured or unmatured) and/or then or at any time thereafter may be applied by the Bank against, the Obligations then due and owing. Any balance of such proceeds remaining after the payment in full of the Obligations shall be paid over to the Grantor or to whomsoever may be lawfully entitled to receive the same.

9. Remedies. If an Event of Default shall occur and be continuing, the Bank may exercise all rights and remedies of a secured party under the Code, and, to the extent permitted by law, all other rights and remedies granted to it in this Agreement and in any other instrument or agreement securing, evidencing or relating to the Obligations. Without limiting the generality of the foregoing, the Bank, without demand of performance or other demand, presentment, protest, advertisement or notice of any kind (except any notice required by law referred to below) to or upon the Grantor or any other person (all and each of which demands, defenses, advertisements and notices are hereby waived) may in such circumstances, to the extent permitted by law, forthwith collect, receive, appropriate and realize upon the Collateral, or any part thereof, and/or may forthwith sell, lease, assign, give option or options to purchase, or otherwise dispose of and deliver the Collateral or any part thereof (or contract to do any of the foregoing) in one or more parcels at public or private sale or sales, at any exchange, broker's board or office of the Bank or elsewhere upon such terms and conditions as it may deem advisable and at such prices as it may deem best, for cash or on credit or for future delivery without assumption of any credit risk. The Bank shall have the right, to the extent permitted by law, upon any such sale or sales, to purchase the whole or any part of the Collateral so sold, free of any right or equity of redemption in the Grantor, which right or equity is hereby waived or released. The Grantor further agrees, at the Bank's request, upon the occurrence and during the continuance of an Event of Default, to assemble the Collateral and make it available to the Bank at places which the Bank shall reasonably select, whether at the Grantor's premises or elsewhere. In the event of any sale, assignment, or other disposition of any of the Collateral, the goodwill of the business connected with and symbolized by any Trademark Collateral subject to such disposition shall be included, and the Grantor shall supply to the Bank or its designee the Grantor's know-how and expertise relating to the Collateral subject to such disposition, and the Grantor's notebooks, studies, reports, records, documents and things embodying the same or relating to the inventions, processes or ideas covered by, and to the manufacture of any products under or in connection with, the Collateral subject to such disposition, and the Grantor's customer's lists, studies and surveys and other records and documents relating to the distribution, marketing, advertising and



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sale of products relating to the Collateral subject to such disposition. The Bank shall apply the net proceeds of any such collection, recovery, receipt, appropriation, realization or sale, after deducting all reasonable costs and expenses of every kind incurred therein or incidental to the care or safekeeping of any of the Collateral or in any way relating to the Collateral or the rights of the Bank, including, without limitation, reasonable attorneys' fees and disbursements, to the payment in whole or in part of the Obligations then due and owing, and only after such application and after the payment by the Bank of any other amount required by any provision of law, including, without limitation, any section of the Code, need the Bank account for the surplus, if any, to the Grantor. To the extent permitted by applicable law, the Grantor waives all claims, damages and demands it may acquire against the Bank arising out of the repossession, retention or sale of the Collateral, other than any such claims, damages and demands that may arise from the gross negligence or willful misconduct of the Bank. If any notice of a proposed sale or other disposition of Collateral shall be required by law, such notice shall be deemed reasonable and proper if given at least 10 days before such sale or other disposition. The Grantor shall remain liable for any deficiency if the proceeds of any sale or other disposition of the Collateral are insufficient to pay the then outstanding Obligations, including the reasonable fees and disbursements of any attorneys employed by the Bank to collect such deficiency.

Any sale of any Collateral under this Agreement shall be a perpetual bar against Grantor with respect to that Collateral. At any sale or other disposition of Collateral pursuant to this Section 9, Bank disclaims all warranties which would otherwise be given under the Code, including without limit a disclaimer of any warranty relating to title, possession, quiet enjoyment or the like, and Bank may communicate these disclaimers to a purchaser at such disposition. This disclaimer of warranties will not render the sale commercially unreasonable.

Grantor agrees that Bank shall be under no obligation to accept any noncash proceeds in connection with any sale or disposition of Collateral unless failure to do so would be commercially unreasonable. If Bank agrees in its sole discretion to accept noncash proceeds (unless the failure to do so would be commercially unreasonable), Bank may ascribe any commercially reasonable value to such proceeds. Without limiting the foregoing, Bank may apply any discount factor in determining the present value of proceeds to be received in the future or may elect to apply proceeds to be received in the future only as and when such proceeds are actually received in cash by Bank.

The following shall be the basis for any finder of fact's determination of the value of any Collateral which is the subject matter of a disposition giving rise to a calculation of any surplus or deficiency under Section 9.615 (f) of the Code (as in effect on or after July 1, 2001): (a) the Collateral which is the subject matter of the disposition shall be valued in an "as is" condition as of the date of the disposition, without any assumption or expectation that such Collateral will be repaired or improved in any manner; (b) the valuation shall be based upon an assumption that the transferee of such Collateral desires a resale of the Collateral for cash promptly (but no later than 30 days) following the disposition; (c) all reasonable closing costs customarily borne by the seller in commercial sales transactions relating to property similar to such Collateral shall be deducted including, without limitation, brokerage commissions, tax prorations, attorneys' fees, whether inside or outside counsel is used, and marketing costs; (d) the value of the Collateral



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which is the subject matter of the disposition shall be further discounted to account for any estimated holding costs associated with maintaining such Collateral pending sale (to the extent not accounted for in (c) above), and other maintenance, operational and ownership expenses; and (e) any expert opinion testimony given or considered in connection with a determination of the value of such Collateral must be given by persons having at least 5 years experience in appraising property similar to the Collateral and who have conducted and prepared a complete written appraisal of such Collateral taking into consideration the factors set forth above. The "value" of any such Collateral shall be a factor in determining the amount of proceeds which would have been realized in a disposition to a transferee other than a secured party, a person related to a secured party or a secondary obligor under Section 9-615(f) of the Code.

10. Limitation on Duties Regarding Preservation of Collateral. The Bank's sole duty with respect to the custody, safekeeping and physical preservation of the Collateral in its possession, under the Code or otherwise, shall be to deal with it in the same manner as the Bank deals with similar property for its own account. Neither the Bank nor any of its directors, officers, employees or agents shall be liable for failure to demand, collect or realize upon all or any part of the Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of the Grantor or any other person.

11. Powers Coupled with an Interest. All authorizations and agencies herein contained with respect to the Collateral are powers coupled with an interest and are irrevocable until payment in full of the Obligations.

12. Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

13. Section Headings. The Section headings used in this Agreement are for convenience of reference only and are not to affect the construction hereof or be taken into consideration in the interpretation hereof.

14. No Waiver; Cumulative Remedies. The Bank shall not by any act (except by a written instrument pursuant to Section 15 hereof), delay, indulgence, omission or otherwise be deemed to have waived any right or remedy hereunder or to have acquiesced in any Event of Default or in any breach of any of the terms and conditions hereof. No failure to exercise, nor any delay in exercising, on the part of the Bank, any right, power or privilege hereunder shall operate as a waiver thereof. No single or partial exercise of any right, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. A waiver by the Bank of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy which the Bank would otherwise have on any future occasion. The rights and remedies herein provided are cumulative, may be exercised singly or concurrently and are not exclusive of any rights or remedies provided by law.



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15. Waivers and Amendments; Successors and Assigns. None of the terms or provisions of this Agreement may be waived, amended, supplemented or otherwise modified except by a written instrument executed by the Grantor and the Bank. This Agreement shall be binding upon the successors and assigns of the Grantor and shall inure to the benefit of the Bank and its successors and assigns, except that the Grantor may not assign, transfer or delegate any of its rights or obligations under this Agreement without the prior written consent of the Bank.

16. Notices. All notices, requests and demands to or upon the respective parties hereto shall be made in accordance with the notice terms provided in the loan documents between the Grantor and the Bank.

17. GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF MICHIGAN WITHOUT REGARD TO THE PRINCIPLES OF CONFLICT OF LAWS THEREOF.

18. Waiver of Jury Trial. The Grantor hereby waives any right to trial by jury in the event of litigation regarding the performance or enforcement of, or in any way related to, this Agreement.



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IN WITNESS WHEREOF, the Grantor has caused this Agreement to be duly executed and delivered as of the date first above written.

**FDMC HOLDINGS, INC.**, a Delaware corporation

By: Alan Katz

Its: President Alan Katz

Address: 351 Camer Drive
Bensalem, Pennsylvania 19020

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**Schedule II**

## PATENTS AND PATENT LICENSES

### I. PATENTS

| Patent Number | Issue Date | Title |
|---|---|---|
| None. | | |

### II. PATENTS IN THE APPLICATION PROCESS

None.

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