

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

**RECORDATION FORM COVER SHEET
TRADEMARKS ONLY**

U.S. DEPARTMENT OF COMMERCE
U.S. Patent and Trademark Office
Docket No. 53505-0000002

Tab settings ⇌ ⇌ ⇌ ▼ ▼ ▼ ▼ ▼ ▼ ▼

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

1. Name of conveying party(ies):

eVineyard, Inc.

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

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

2. Name and address of receiving party(ies)

Name: Flying Disc Investment L.P.

Internal Address: _____

Street Address: 930 Tahoe Boulevard, #802-336

City: Incline Village State: Nevada Zip: 89451

- Individual(s) citizenship _____
- Association _____
- General Partnership _____
- Limited Partnership Delaware
- 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: May 2, 2002

4. Application number(s) or registration number(s):

A. Trademark Application No.(s)
See attached list

B. Trademark Registration No.(s)
See attached list

Additional number(s) attached Yes No

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

Douglas L. Hendricks
Morrison & Foerster LLP
425 Market Street
San Francisco, California 94105-2482

6. Total number of applications and registrations involved: 22

7. Total fee (37 CR 3.41) \$ 565.00

- Enclosed
- Authorized to be charged to deposit account, referencing Attorney Docket 53505000002

8. Deposit account number:

03-1952

(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.

Douglas L. Hendricks
Name of Person Signing

Douglas L. Hendricks
Signature

5-10-02
Date

Total number of pages including cover sheet, attachments, and document: 25

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

APPLICATIONS

<u>MARK</u>	<u>SERIAL NUMBER</u>
BUILD YOUR CELLAR	76/323,925
MAN AND BOTTLE design only	76/133,692
MAN AND BOTTLE design only	76/133,691
WINE ANYONE	75/811,234
WINE.COM	76/133,494
WINE.COM	76/133,493
WINE.COM	76/133,492
WINE.COM and design	76/133,694
WINE.COM and design	76/133,488
WINE.COM and design	76/133,489
WINE ODYSSEY	76/324,182
WINES OF THE WORLD	76/324,181

REGISTRATIONS

<u>MARK</u>	<u>REGISTRATION NUMBER</u>
ASK THE CORK DORK	2,303,037
CLASSIC CELLARS	2,426,706
DISCOVERY CLUB	2,475,229
EVINEYARD	2,350,861
MAN AND BOTTLE design only	2,498,220
NAXON	2,379,410
NAXON NETWORK	2,379,416
VIRTUAL VINEYARDS	2,537,943
VIRTUAL VINEYARDS	2,079,604
WWW.VIRTUALVIN.COM	2,114,253

[EXECUTION COPY]

SECURITY AGREEMENT

SECURITY AGREEMENT, dated as of May 2, 2002, among eVineyard, Inc., a Delaware corporation (the "Borrower"), and Flying Disc Investments, L.P., a Delaware limited partnership (the "Secured Party" or "Lender").

W I T N E S S E T H

WHEREAS, the Secured Party has made a loan and certain other financial accommodations to the Borrower as set forth in the Revolving Note and Term Note (each as hereinafter defined); and

WHEREAS, the Lender and the Borrower (the "Parties") agree that the Borrower's obligation to repay the Revolving Note and Term Note (collectively, the "Notes") shall be secured by certain Collateral (as hereinafter defined) of the Borrower;

NOW THEREFORE, in consideration of the foregoing premises, the Borrower hereby agrees with the Secured Party, as follows:

1. Defined Terms. All terms used in this Security Agreement shall have the meanings ascribed to them in the Revolving Note unless otherwise defined herein, and the following terms shall have the following meanings:

"**Books and Records**" means all books, documents, files and records pertaining to the Collateral wherever located, including, but not limited to, all ledger sheets, computer files and programs, tapes, discs, cards, accounting records, and all equipment containing any of the foregoing.

"**Collateral**" means all personal property and fixtures of the Borrower of every kind and description, tangible or intangible, whether now or hereafter existing, whether now owned or hereafter acquired, and wherever located, including, but not limited to, the following: all cash, funds in escrow accounts, deposits, securities or instruments of the Borrower; all inventory of the Borrower; all liquor licenses of the Borrower; all furniture, fixtures and similar property of the Borrower; all machinery and equipment of the Borrower; all accounts receivable of the Borrower; all contract rights of the Borrower, including, without limitation, all royalties under any license agreements, all management fees, incentive fees, performance fees and all other proceeds of any and all such contracts, and the right to enforce any and all rights under such contracts in the Secured Party's name or in the name of the Borrower; all rights of the Borrower as a bailee; all other rights of the Borrower

to the payment of money; any and all rights the Borrower may have pursuant to a bailee's lien; all interests of the Borrower in goods as to which an account receivable shall have arisen; all files, records (including, without limitation, computer programs, tapes and related electronic data processing software) and writings of the Borrower or in which the Borrower has an interest in any way relating to the foregoing property; all Books and Records of the Borrower; all goods, instruments, documents of title, policies and certificates of insurance, securities, chattel paper, deposits, cash or other property owned by the Borrower or in which the Borrower has an interest; all general intangibles of the Borrower (including, without limitation, all patents, trademarks, trade names, service marks, copyrights and applications for any of the foregoing; all rights to use patents, trademarks, trade names, service marks and copyrights of any person; and any rights of the Borrower to retrieval from third parties of electronically processed and recorded information pertaining to any of the types of collateral referred to in this definition); any other property of the Borrower, real or personal, tangible or intangible; any sums at any time credited by or due to the Borrower, including deposits; and all proceeds and products of and accessions to all of the foregoing. The "Collateral" does not include the Excluded Collateral.

"**Excluded Collateral**" means those assets pledged by Borrower to Sand Hill Capital II, LP ("Sand Hill") (as assignee of Sand Hill Capital Special Purposes, LLC) as of the date hereof, pursuant to that certain Loan Agreement, dated as of May 4, 2001, between Sand Hill Capital Special Purposes, LLC and Borrower (as amended, the "Sand Hill Agreement").

"**Person**" means any natural person, corporation, partnership, limited liability company, trust, governmental entity or any other legal entity.

"**Revolving Note**" means that certain Consolidated Revolving Note, dated the date hereof, made by Borrower in favor of Lender.

"**Sand Hill Loan**" means the loan(s) made to Borrower pursuant to the Sand Hill Agreement.

"**Solvent**" means, as to any Person, such Person owns property whose fair saleable value is greater than the amount required to pay all of such Person's indebtedness (including contingent debts).

"**Subsidiary**" means any Person of which a Person owns, directly or indirectly through one or more intermediaries, more than 50% of the Voting Stock at the time of determination.

"Term Note" means that certain Consolidated Term Note, dated the date hereof, made by Borrower in favor of Lender.

"UCC" mean the Uniform Commercial Code as adopted in any applicable jurisdiction.

"Voting Stock" means securities of any class or classes of a corporation or other Person the holders of which are ordinarily, in the absence of contingencies, entitled to elect a majority of the corporate directors (or Persons performing similar functions).

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 Notes and this Security Agreement, the Borrower hereby grants to the Secured Party and its successors and permitted assigns, a security interest in all the Collateral now owned or at any time hereafter acquired by the Borrower or in which the Borrower now has or at any time in the future may acquire any right, title or interest.

The Borrower hereby irrevocably makes, constitutes and appoints Lender and any of the Lender's officers, employees or agents as its true and lawful attorneys-in-fact with power (i) to execute, file and/or record any notice, financing statement, continuation statement, instrument or documents that Lender may consider reasonably necessary or desirable to create, perfect, preserve, continue, transfer, effect or validate the security interest in the Collateral described herein, and the Borrower hereby authorizes Lender to file any financing statements in any jurisdiction at any time it deems necessary or desirable to perfect, protect, maintain or transfer the interests of the Secured Party, with or without the signature of the Borrower, and specifically authorizes Lender to file such statements without its signature and (ii) to exercise all or any of the voting rights and/or other consensual rights pertaining to the Collateral.

3. Representations and Warranties. The Borrower hereby represents and warrants to the Lender that:

(a) Organization. The Borrower is duly organized and validly existing under the laws of the State of Delaware, and it has full power and authority, and has taken all action necessary, to execute and deliver the Notes and this Security Agreement and to fulfill its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby.

(b) No Conflicts. Except as set forth on Schedule 3(d) hereto, the execution, delivery and performance by Borrower of the Notes and this Security Agreement and the fulfillment of its obligations hereunder and thereunder do not and will not violate any law or

regulation applicable to it or any agreement to which it is a party or by which it is bound or any of its constitutive documents.

(c) Enforceability. The Notes and this Security Agreement have been duly authorized, executed and delivered by Borrower and constitute its legal, valid and binding obligations, enforceable in accordance with the terms hereof and thereof.

(d) Consents. Except as set forth in Schedule 3(d) hereto, all approvals, authorizations, consents, licenses or other actions by, or filings with, any governmental authority or other Person necessary for the validity and enforceability of the Borrower's obligations under the Notes and this Security Agreement have been obtained.

(e) Capital Structure. As of the date hereof, Schedule 3(e) hereto states (i) the correct names of Borrower and each of its Subsidiaries, the jurisdiction of incorporation of each such Person and the percentage of its Voting Stock owned by Borrower and/or its Subsidiaries, (ii) the name of each corporate or joint venture affiliate of Borrower and the nature of the affiliation, and (iii) the number of authorized, issued and treasury shares of Borrower and each Subsidiary of Borrower. Borrower (and its Subsidiaries, if applicable) has good title to all of the shares it purports to own of the stock of each of its Subsidiaries, free and clear in each case of any liens or other encumbrances. All such shares have been duly issued and are fully paid and non-assessable.

(f) Title: Other Liens. Except for (i) materialmen's and mechanic's liens incurred in the ordinary course of Borrower's business and that do not relate to overdue amounts owing to such Persons, (ii) the security interest granted to Sand Hill in the Excluded Collateral to secure the obligations owed by Borrower to Sand Hill under the Sand Hill Agreement and (iii) the leases set forth on Schedule 3(f) hereto, the Borrower owns all of its assets free and clear of any and all liens, security interests, encumbrances or claims of others. Except as provided in the preceding sentence, no security agreement, financing statement or similar public notice with respect to all or any part of the Borrower's assets is on file or of record in any public office, except such as may have been filed in favor of the Secured Party pursuant to this Security Agreement.

(g) Perfected Liens. Upon the filing of the UCC-1 financing statement attached hereto as Exhibit A, the security interest granted pursuant to this Security Agreement will constitute a perfected security interest in the Collateral in favor of the Secured Party, which is prior to any and all other liens, security interests, and encumbrances and is enforceable as such against all creditors of and purchasers from the Borrower, except in the case of that portion of the Collateral in which a perfected security interest may only be obtained by taking possession thereof ("Special Collateral"), the Lender will obtain a perfected security interest in such Special Collateral upon taking possession thereof.

(h) Consents as to Collateral. No consent or authorization of, or filing or notice with or to, any Person in respect of any Collateral is required, or purports to be required, in connection with the execution, delivery and performance of this Security Agreement, or to make the representations and warranties contained herein true and complete.

(i) Domicile; Places of Business. The Borrower is a Delaware corporation. The place where the Borrower keeps its records concerning the Collateral is 1200 NW Naito Parkway, Suite 220, Portland, Oregon, 97209.

(j) Patents, Trademarks, Copyrights and Licenses. Borrower and its Subsidiaries own or possess all the patents, trademarks, service marks, trade names, copyrights and licenses necessary for the present and planned future conduct of their businesses, without any known conflict with the rights of others. All such patents, trademarks, service marks, tradenames, copyrights, licenses and other similar rights are listed on Schedule 3(j) hereto.

(k) Compliance with Laws. Borrower and its Subsidiaries have duly complied with, and their respective properties, business operations and leaseholds are in compliance in all material respects with, the provisions of all applicable federal, state and local laws, rules and regulations ("Applicable Law") and there have been no citations, notices or orders of noncompliance issued to Borrower or any of its Subsidiaries thereunder where such non-compliance could reasonably be expected to have a material adverse effect upon the Borrower and/or any of its Subsidiaries. Borrower and its Subsidiaries have established and maintain an adequate monitoring system to ensure that each such Person remains in compliance with Applicable Law.

(l) Litigation. Except as set forth on Schedule 3(l) hereto, there are no actions, suits, proceedings or investigations pending on the date hereof, or to the best knowledge of Borrower, threatened on the date hereof, against or affecting Borrower or any of its Subsidiaries, or the business, operations, properties, prospects, profits or condition of any such Person, that will, if decided adversely (either individually or in the aggregate), have a material adverse effect upon the Borrower and/or any of its Subsidiaries. Neither Borrower nor any of its Subsidiaries is in default on the date hereof with respect to any order, writ, injunction, judgment, decree or rule of any court, governmental authority or arbitration board or tribunal.

(m) Margin Stock. Neither Borrower nor any of its Subsidiaries has used, nor will the Borrower use or permit its Subsidiaries to use, any of the loans extended by the Lender to the Borrower (whether pursuant to the Notes, the "Old Notes" (as defined in the Term Note) or the "Old Note" (as defined in the Revolving Note)) for the purpose of purchasing or carrying any Margin Stock as defined in Regulations G, T, U and/or X of the Board of Governors of the Federal Reserve System of the United States.

(n) **Full Disclosure.** The financial statements provided to Lender relating to Borrower and/or its Subsidiaries do not, nor does this Security Agreement or any other written statement of Borrower to Lender, contain any untrue statement of a material fact or omit a material fact necessary to make the statements contained therein or herein not misleading. There is no fact that Borrower has failed to disclose to Lender in writing which materially affects adversely or, so far as Borrower can now foresee, will materially affect adversely the properties, business, prospects, profits or condition (financial or otherwise) of Borrower or any of its Subsidiaries or the ability of Borrower or its Subsidiaries to perform under this Security Agreement or the Notes.

(o) **Solvent Financial Condition.** The Borrower and its Subsidiaries are now and, after giving effect to the loans evidenced by the Notes, at all times will be Solvent.

(p) **Taxes.** The federal tax identification number of Borrower and each of its Subsidiaries is shown on Schedule 3(e) hereto. Except as set forth on Schedule 3(p) hereto, Borrower and each of its Subsidiaries have filed all federal, state and local tax returns and other reports that such Person is required by law to file and has paid, or made provision for the payment of, all taxes upon it, their income and properties as and when such taxes are due and payable, except to the extent that such taxes are being properly contested in good faith. The provision for taxes on the books of Borrower and each of its Subsidiaries is adequate for all years not closed by applicable statutes, and for its current fiscal year.

4. **Covenants.** The Borrower hereby covenants and agrees with the Secured Party that, from and after the date of this Security Agreement until all of the obligations under the Notes and the Security Agreement are paid in full:

(a) **Further Documentation: Pledge of Instruments.** At any time and from time to time, upon the written request of the Lender, and at the sole expense of the Borrower, the Borrower will promptly and duly execute and deliver such further instruments and documents and take such further action as the Lender may reasonably request for the purpose of obtaining or preserving the full benefits of the Loan Documents and of the rights and powers herein granted, including, without limitation, the filing of any financing or continuation statements under the UCC in effect in any jurisdiction with respect to the security interest created hereby. The Borrower also hereby authorizes the Lender to file any such financing or continuation statements without the signature of the Borrower to the extent permitted by applicable law. A carbon, photographic or other reproduction of this Security Agreement shall be sufficient as a financing statement for filing in any jurisdiction.

(b) **Limitation on Liens on Collateral.** Except for (i) materialmen's and mechanic's liens incurred in the ordinary course of Borrower's business and that do not relate to overdue amounts owing to such Persons and (ii) the security interests created in the Excluded

Collateral in connection with the Sand Hill Agreement, the Borrower will not create, incur or permit to exist, will defend the Collateral against, and will take such other action as is necessary to remove, any lien, security interest or claim on or to the Collateral, and will defend the right, title and interest of the Secured Party in and to any of such Collateral against the claims and demands of all Persons.

(c) Limitations on Dispositions of Collateral. Except in the ordinary course of the Borrower's business, the Borrower will not sell, assign, transfer, license or otherwise dispose of any of the Collateral, or attempt, offer or contract to do so.

(d) Notices. The Borrower will advise the Secured Party promptly (i) of any lien (other than the lien created hereby or relating to the lien on the Excluded Collateral pursuant to the Sand Hill Agreement) on, or claim asserted against, any of the Collateral and (ii) of the occurrence of any other event that could reasonably be expected to have a material adverse effect on the Collateral, the value of the Collateral, or the interests of the Secured Party in the Collateral or on the security interest created hereunder.

(e) Changes in Locations, Name, etc. The Borrower will not (i) change the location of its chief executive office or chief place of business from that specified in paragraph 3(i) hereof (except that, upon prior written notice to Lender, the Borrower may change its chief executive office or chief place of business to San Francisco, California), (ii) change its name, jurisdiction or organization, identity or corporate structure or (iii) alter or amend (by merger or otherwise) any of its constitutive documents.

(f) Maintenance of Existence; Conduct of Business. The Borrower will, and will cause each of its Subsidiaries to, preserve and maintain its corporate existence and all of its leases, privileges, licenses, permits, franchises, qualifications and rights that are necessary in the ordinary conduct of its business. The Borrower will, and will cause each of its Subsidiaries to, conduct such businesses in the manner in which such businesses are conducted as of the date hereof.

(g) Maintenance of Properties. The Borrower will, and will cause each of its Subsidiaries to, maintain, keep and preserve all of its properties necessary in the conduct of its business in good working order and condition (exclusive of ordinary wear and tear).

(h) Insurance. The Borrower will, and will cause each of its Subsidiaries to, maintain insurance with financially sound and reputable insurance companies in such amounts and covering such risks as are usually carried by Persons engaged in similar businesses and owning similar properties in the same general areas in which the Borrower and its Subsidiaries operate, provided that in any event the Borrower will maintain and cause each of its Subsidiaries to maintain workmen's compensation insurance, property insurance, comprehensive general liability

insurance and products liability insurance reasonably satisfactory to the Lender. Each general liability insurance policy shall name the Lender as additional insured, each insurance policy covering Collateral shall name the Lender as loss payee and all such policies shall provide that they will not be canceled or materially changed without thirty (30) days' prior written notice to the Lender.

(i) Inspection Rights. At any reasonable time, the Borrower will, and will cause each of its Subsidiaries to, permit representatives of the Lender to examine, copy and make extracts from its books and records, to visit and inspect its properties, and to discuss its business, operations and financial condition with its officers, employees and independent certified public accountants.

(j) Keeping Books and Records. The Borrower will, and will cause each of its Subsidiaries to, maintain proper books of record and account in which full, true and correct entries in conformity with generally accepted accounting principles ("GAAP") shall be made of all dealings and transactions in relation to its business and activities.

(k) Compliance with Laws. The Borrower will, and will cause each of its Subsidiaries to, comply with all Applicable Laws.

(l) Further Assurance. The Borrower will, and will cause each of its Subsidiaries to, execute and deliver such further documentation and take such further action as may be reasonably requested by the Lender to carry out the provisions and purposes of the Loan Documents and to create, preserve and perfect the security interest of the Lender in the Collateral. The Borrower will, and will cause each of its Subsidiaries to, comply in all respects with the terms and provisions of the Notes and this Security Agreement.

(m) Debt. The Borrower will not, and will not permit any of its Subsidiaries to, incur, create, assume or permit to exist any indebtedness, except: (i) indebtedness owed to the Lender; (ii) indebtedness owed to Sand Hill under the Sand Hill Agreement on the date hereof; and (iii) indebtedness relating to trade payables incurred by Borrower and/or its Subsidiaries that are not then overdue, provided however that the aggregate indebtedness outstanding under this clause (iii) may not exceed \$50,000.00 at any time.

(n) Distribution. The Borrower will not, and Borrower will not permit any of its Subsidiaries to, declare or make any (i) payment of any dividends or other distributions on capital stock or equity of such Person (except distributions in such stock or equity) or (ii) redemption or acquisition of its securities or equity (or any warrant or option for the purchase of any such securities or equity) unless made contemporaneously from the net proceeds of the sale of such Person's securities or equity.

(o) **Investments.** The Borrower will not make, and Borrower will not permit any of its Subsidiaries to make, any acquisition of property in exchange for cash or other property, whether in the form of an acquisition of securities, equities or other indebtedness or obligations, except acquisitions of the following: (i) investments in one or more Subsidiaries of Borrower to the extent existing on the date hereof; (ii) goods held for sale or lease or to be used in the manufacture of goods or the rendition of services by Borrower or any of its Subsidiaries in the ordinary course of business; and (iii) cash equivalents (e.g., treasury bills, money market funds).

(p) **Affiliate Transactions.** The Borrower will not enter into or be a party to, or permit any of its Subsidiaries to enter into or be a party to, any transaction with any affiliate of the Borrower or any stockholder thereof, except in the ordinary course of business and pursuant to the reasonable requirements of the Borrower's or its Subsidiary's business and upon fair and reasonable terms which are fully disclosed to and consented to by Lender and are no less favorable to the Borrower or such Subsidiary than would be obtained in a comparable arm's-length transaction with a Person not an affiliate of Borrower or a Subsidiary thereof.

5. **Remedies.** If an "Event of Default" under any Note or a default under any other Loan Document shall occur and be continuing, the Lender may exercise, in addition to all other rights and remedies granted in this Security Agreement and the other Loan Documents and in any other instrument or agreement securing, evidencing or relating to the Notes, all rights and remedies of a secured party under the UCC. Without limiting the generality of the foregoing, the Lender, 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 Borrower or any other Person (all and each of which demands, presentments, protests, defenses, advertisements and notices are hereby waived), may in such circumstances forthwith collect, receive, appropriate, realize upon, and use in its business or otherwise the Collateral, or any part thereof, and/or may transfer, assign, license or otherwise dispose of and deliver the Collateral or any part thereof (or contract to do any of the foregoing), 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, free of any right or equity of redemption in the Borrower, which right or equity is hereby waived or released. The Borrower further agrees, at the request of the Lender to assemble the Books and Records and make them available to the Secured Party at places which the Secured Party, shall reasonably select, whether at the premises of the Borrower or elsewhere. To the extent permitted by applicable law, the Borrower waives all claims, damages and demands it may acquire against the Secured Party arising out of the exercise by it of any rights hereunder, except for acts or failures to act constituting gross negligence or willful misconduct. If any notice of a proposed sale or other disposition of the Collateral shall be required by law, such notice shall be deemed reasonable and proper if given at least ten (10) days before such sale or other disposition.

6. Powers Coupled with an Interest; IRREVOCABLE PROXY. All authorizations, powers of attorney and agencies in favor of Lender herein contained are irrevocable and are powers coupled with an interest.

7. Amendments, etc. with respect to the Loan. The Borrower will remain obligated hereunder, and the Collateral shall remain subject to the security interest granted hereby, notwithstanding that (without any reservation of rights against the Borrower, and without notice to or further assent by the Borrower) any demand for payment of any Note, or the liability of any other Person upon or for any part thereof, or any collateral security or guaranty therefor or right of offset with respect thereto, may, from time to time, in whole or in part, be renewed, extended, amended, modified, supplemented or terminated, in whole or in part, as the Secured Party may deem advisable from time to time, and any guaranty, right of offset or other collateral security at any time held by the Secured Party for the payment of any Note may be sold, exchanged, waived, surrendered or released. The Secured Party shall have no obligation to protect, secure, perfect or insure any other lien or security interest at any time held by it as security for the Notes or any property subject thereto. The Borrower waives any and all notice of the creation, renewal, extension or accrual of the Notes and notice of or proof of reliance by the Secured Party upon this Security Agreement; and all dealings between the Borrower and the Secured Party shall likewise be conclusively presumed to have been had or consummated in reliance upon this Security Agreement. The Borrower waives diligence, presentment, protest, demand for payment and notice of default or nonpayment to or upon the Borrower, or any other Person with respect to the Notes.

8. Severability. Any provision of this Security Agreement that 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.

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

10. No Waiver; Cumulative Remedies. The Secured Party shall not by any act (except by a written instrument pursuant to Paragraph 11 hereof), delay, indulgence, omission or otherwise be deemed to have waived any right or remedy hereunder or to have acquiesced in any default or event of default or in any breach of any of the terms and conditions hereof or under the Notes. No failure to exercise, nor any delay in exercising, on the part of the Secured Party, any right, power or privilege hereunder or under the Notes shall operate at a waiver thereof. No single or partial exercise of any right, power or privilege hereunder or under the Notes shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. A waiver by Lender of any right or remedy hereunder or under the Notes on any one

occasion shall not be construed as a bar to any right or remedy which the Secured Party 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.

11. Waivers and Amendments; Successors and Assigns; Governing Law. None of the terms or provisions of this Security Agreement may be waived, amended, supplemented or otherwise modified except by written agreement signed by the Borrower and the Lender. This Security Agreement shall be binding upon the successors and assigns of the Borrower and shall inure to the benefit of the Secured Party and its respective successors and assigns. **THIS SECURITY AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF CALIFORNIA (WITHOUT REGARD TO ITS PRINCIPLES OF CONFLICTS OF LAWS).**

12. Notices. All notices, requests and demands or other communications provided for herein shall be given in writing by hand delivery against receipt therefor, by internationally recognized courier, by fax (if receipt thereof is confirmed by telephone by the addressee thereof) or by registered or certified mail return receipt requested, and shall be addressed:

If to the Secured Party, to:

Flying Disc Investment L.P.
930 Tahoe Boulevard, #802-336
Incline Village, Nevada 89451
Attention: Chris Kitze
Telephone: (650) 227-2101
Facsimile: (650) 227-2103

If to the Borrower, to:

eVineyard, Inc.
1200 NW Naito Parkway, Suite 220
Portland, Oregon 97209
Attention: Peter Ekman
Telephone: (503) 276-0900
Facsimile: (503) 224-6078

Except as otherwise provided in this Security Agreement, each such notice shall be deemed given and effective upon receipt if sent by hand delivery, by internationally recognized courier or by fax, or five (5) business days after the time it is mailed in any post office or branch post office regularly maintained by the United States Government, if sent by registered or certified mail.

13. **CHOICE OF FORUM; WAIVER OF JURY TRIAL.** ALL SUITS AND CLAIMS RELATING TO ANY OF THE LOAN DOCUMENTS AND/OR THE SIDE LETTER SHALL BE MADE ONLY IN STATE OR FEDERAL COURTS LOCATED IN THE STATE OF CALIFORNIA. THE BORROWER HEREBY WAIVES ALL RIGHTS TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING IN ANY MATTER RELATING, DIRECTLY OR INDIRECTLY, TO THIS SECURITY AGREEMENT, THE OTHER LOAN DOCUMENTS AND/OR THE SIDE LETTER.

14. **Survival.** All representations and warranties of the Borrower contained in this Security Agreement and the Notes shall survive the execution and delivery of this Security Agreement and such Notes.

15. **Miscellaneous.**

(a) Lender may (but shall not be obligated to) discharge past due taxes, liens, security interests or other encumbrances at any time levied or placed on the Collateral and not permitted hereunder, and may (but shall not be obligated to) pay for the maintenance and preservation of the Collateral to the extent the Borrower fails to do so, and the Borrower agrees to reimburse Lender on demand for any payment made or any expense incurred by it pursuant to the foregoing authorization; provided, however, that nothing in this Section shall be interpreted as excusing the Borrower from the performance of any covenants or other promises with respect to taxes, liens, security interests or other encumbrances and maintenances as set forth herein or in the Notes.

(b) The Borrower will upon demand pay to Lender the amount of any and all reasonable out-of-pocket expenses, including the reasonable fees and expenses of its counsel and of any experts or agents that Lender may incur in connection with (i) the administration and/or modification of this Security Agreement, (ii) the custody or preservation of, or the sale of, collection from, or other realization upon, any of the Collateral, (iii) the exercise or enforcement of any of the rights of the Secured Party hereunder or (iv) the Borrower's failure to perform or observe any of the provisions hereof. In addition, the Borrower will indemnify and hold Lender harmless from and against any and all liability incurred by Lender hereunder or in connection herewith, unless such liability shall be due to the gross negligence or willful misconduct of Lender.

16. **Termination.** This Security Agreement shall terminate when the Notes and all other amounts owed by Borrower hereunder have been fully paid, at which time the Secured Party shall execute and deliver to the Borrower all UCC termination statements and similar documents that the Borrower shall reasonably request to evidence such termination; provided, however, that all indemnities of the Borrower contained in this Security Agreement shall survive, and remain operative and in full force and effect regardless of, the termination of this Security Agreement.

17. **Borrower's Release of Lender.** Excepting only the obligations created by the Loan Documents and the Side Letter (defined below), Borrower on behalf of itself and its respective parents, subsidiaries, predecessors, successors, assigns, affiliates, partners and all persons acting or purporting to act on its behalf, does hereby forever, fully and completely release and discharge Lender and each of its respective partners, affiliates, successors, predecessors and assigns, and each of their respective past and present employees, officers, directors, participants, agents, representatives, consultants, attorneys, accountants, shareholders and owners, each in its, his or her individual and representative capacities (the "**Borrower Released Parties**"), from any claims, costs and expenses (including, without limitation, attorneys' fees), damages, injuries, suits, actions and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, contingent or fixed, related to any actions taken by or on behalf of any Borrower Released Party to date, and any injury or loss allegedly related thereto (the "**Borrower Released Matter**" or "**Borrower Release**"). The Borrower Release shall include all claims related to the Borrower Released Matter (collectively, the "**Released Matters**") that the Borrower does not now know or suspect to exist in its favor, which, if known by it, would materially have affected its decision to enter into the Borrower Release. The Borrower acknowledges and agrees that it has been informed by its attorneys and advisors of, and that it is familiar with and hereby expressly waives, the provisions of Section 1542 of the California Civil Code, and any similar statute, code, law or regulation of any State of the United States, or of the United States, to the fullest extent that it may waive such rights and benefits. Section 1542 provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

The Borrower acknowledges that it is aware that it may hereafter discover claims presently unknown or unsuspected, or facts in addition to or different from those which it now knows or believes to be true, as to the Released Matters. The Borrower further acknowledges that there is a risk that subsequent to the execution of this Security Agreement, it may suffer loss, damages or injuries which are in some way related to the Released Matters, but which are unknown or unanticipated at the time this Security Agreement is signed. Nevertheless, it is the intention of the Borrower through this Security Agreement, to fully, finally and forever release all such matters, and all claims that are Released Matters, which do now exist, may exist or heretofore have existed. In furtherance of such intention, the release herein given shall be and remain in effect as a full and complete release of the Released Matters, notwithstanding the discovery or existence of any such additional or different claims or facts related thereto by the Borrower. The Borrower understands that the Borrower Release herein given shall apply to all known, unknown, anticipated and unanticipated results of the Released Matters. In entering into this release, the Borrower does not rely upon any statement, representation or promise of any other Person. The Borrower represents

and warrants that it has received independent legal advice from attorneys of its choice with regard to the advisability of executing this Security Agreement and Borrower Release, and prior to the execution of this Security Agreement by the Borrower, Borrower's attorneys reviewed this Security Agreement and the Borrower Release provided for herein and discussed this Security Agreement and the Borrower Release provided for herein with it. The Borrower executed this Security Agreement and the Borrower Release provided for herein voluntarily, with full knowledge of their significance, and with the express intention of affecting the legal consequences provided by law.

18. **Entire Agreement.** This Security Agreement, the other Loan Documents and the letter, dated April 26, 2002, from Lender to Borrower attached hereto as Exhibit B (the "Side Letter") constitute the entire agreement of the Parties with respect to the respective subject matters thereof, and supersede all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and finally integrated into this Security Agreement, the other Loan Documents and the Side Letter.


19. **Conditions Subsequent.** Within five (5) calendar days after the date of this Security Agreement (except that in the case of the following clause (ii), the Borrower shall have fourteen (14) calendar days after the date of this Agreement), the Borrower shall provide to Lender, in form and substance satisfactory to Lender and its counsel, the following: (i) properly completed and executed patent and trademark recordation forms for filing with the U.S. Patent and Trademark Office relating to that portion of the Collateral consisting of patent applications, patents, trademark applications and trademarks, as applicable (the "PTO Forms"); (ii) the Shareholder Consents (defined in Schedule 3(d) hereof); (iii) the Certificates and Transfer Powers; (iv) the Subsidiaries' Constitutive Documents; and (v) good standing certificates for each of the Borrower's Subsidiaries.

20. **Solvency.** The Borrower acknowledges the Lender is relying on (i) Borrower's representation in Section 3(o) herein that Borrower and its Subsidiaries are now Solvent and, after giving effect to the loans evidenced by the Notes, at all times will be Solvent and (ii) the fact that the Borrower has received a valuation from Houlihan Lokey Howard & Zukin which supports such representations.


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IN WITNESS WHEREOF, the Borrower and Secured Party have caused this Security Agreement to be duly executed and delivered as of the date first above written.

FLYING DISC INVESTMENTS, L.P.

By: 
Name: Chris Fitze
Title: General Partner

eVINEYARD, INC.

By: 
Name: PETER EGAN
Title: CEO

LIST OF SCHEDULES

Schedule 3(d) -	Consents
Schedule 3(e) -	Capital Structure
Schedule 3(j) -	Trademarks, Copyrights, etc.
Schedule 3(l) -	Litigation
Schedule 3(p) -	Tax Identification Numbers

LIST OF EXHIBITS

Exhibit A	UCC-1 Financing Statement
Exhibit B	Side Letter

Schedule 3(d)

The consents (the "Shareholder Consents") of each of the Borrower's Series A Shares, Series B Shares and Series C Shares to the issuance of the Old Notes (as defined in the Term Note) and the Old Note (as defined in the Revolving Note), to the consolidation of such notes into the Term Note and Revolving Note, as applicable, and the other transactions hereunder.

Schedule 3(e)

Borrower and Subsidiaries

eVineyard, Inc. (Delaware) TIN 93-1268905

Subsidiaries:

eVineyard Retail Sales LLC (Texas)	TIN 76-0616579
eVineyard, LLC (Florida)	TIN 65-0949123
eVineyard Retail Sales-Mass. Inc. (Mass.)	TIN 04-3507526

Capitalization Table

eVineyard, Inc.

	<u>Issued</u>	<u>Authorized</u>	<u>Treasury</u>
Preferred (a) (b)	6,175,641	20,000,000	0
Common (c)	2,639,955	30,000,000	0

- (a) Not including outstanding warrants for 732,678 shares.
- (b) Not including anti-dilution shares that should have been issued to the Series B upon conversion to common stock of 202,886 shares.
- (c) Not including outstanding warrants and stock options of 975,409 shares

Subsidiaries

The Company owns 100% of the outstanding shares of each of eVineyard Retail Sales LLC and eVineyard Retail Sales - Mass. Inc. and a majority of eVineyard, LLC

Schedule 3(f)

Leasor:

**USBancorp, Manifest Funding services
Varesources, Inc., Philadelphia, PA**

Leased Equipment/Vehicles

**leased (2) Ford Vans
leased various computer equipment**

Schedule 3(j)

Trademark Status

	Jurisdiction	Class	Status
ASK THE CORK DORK®	United States	42	Registered Supplemental Register
BUILD YOUR CELLAR™	United States	42	Filed
CLASSIC CELLARS®	United States	42	Registered
DISCOVERY CLUB®	United States	42	Registered
MAN AND BOTTLE design only™	United States	42, 16, 35	Filed
NAXON®	United States	35	Registered
NAXON NETWORK®	United States	35	Registered
VIRTUAL VINEYARDS and design™	Canada		Allowed
VIRTUAL VINEYARDS™	United States	33	Approved for Publication
VIRTUAL VINEYARDS®	United States	35	Registered
WINE ANYONE™	United States	33, 35	Published
WINE ANYONE®	California Oregon New York	33, 35 33, 35 33, 35	Registered Registered Filed
WINE ODYSSEY™	United States	42	Filed
WINE.COM™	United States	35, 16, 42	Filed
WINE.COM and design™	United States	42, 16, 35	Filed
WINES OF THE WORLD™	United States	42	Filed

WINESHOPPER.COM®	New Hampshire	42	Registered
WINESHOPPER.COM™	United States	33, 35	Filed
WWW.VIRTUALVIN.COM®	United States	35	Registered

Schedule 3(I)

1. **TDC SOLUTIONS, INC. vs E-VINYARD, INC.**, in connection with a contract for the provision of software development and consulting services. Total claim is approximately \$110,000.
2. **MATEEL ENVIRONMENTAL JUSTICE FOUNDATION vs EVINEYARD, INC, AND VARIOUS UNNAMED PARTIES** seeking an injunction and civil damages for failure to give clear and reasonable warnings to those residents of California who drink wine from crystal glassware that contains lead and lead components. Damages are sought in the amount of \$2,500 per each day of the violation.
3. Potential claims by third party vendors in connection with a contract between **CYBERSIGHT, LLC** and the Company pursuant to which CyberSight was authorized to place cyber-ads with third parties. Many of such third parties have not been paid by CyberSight and have requested payment from the Company. Potential exposure to the Company is \$500,000.

Schedule 3(p)

Extension of time for filing federal and state income and franchise tax returns for the period ended December 31, 2001 and estimated taxes due were filed and paid on March 15, 2002 under the tax numbers listed in Schedule 3(e) above.

Extensions were prepared for eVineyard, Inc 93-1268905 for the period ended December 31, 2000. The subsidiary tax identification numbers were not referenced.

The Company is unable to confirm at this time whether estimated taxes were filed for its subsidiaries.