

06-06-2002

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



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

102112897

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

1. Name of conveying party(ies): SunPark, Inc. 5-29-02
Individual(s) Association
General Partnership Limited Partnership
Corporation-State
Other
Additional name(s) of conveying party(ies) attached? Yes No

2. Name and address of receiving party(ies)
Name: Credit Suisse First Boston
Internal Mortgage Capital, LLC
Address:
Street Address: 11 Madison Avenue
City: New York State: New York Zip: 10010
Individual(s) citizenship
Association
General Partnership
Limited Partnership
Corporation-State Delaware
Other
If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No
(Designations must be a separate document from assignment)
Additional name(s) & address(es) attached? Yes No

3. Nature of conveyance:
Assignment Merger
Security Agreement Change of Name
Other
Execution Date: October 14, 1997

4. Application number(s) or registration number(s):
A. Trademark Application No.(s)
B. Trademark Registration No.(s)
2,323,433; 2,479,501; and
2,313,659
Additional number(s) attached Yes No

5. Name and address of party to whom correspondence concerning document should be mailed:
Name: Adam G. Mersereau
Internal Address:
Street Address: 303 Peachtree Street, NE Suite 5300
City: Atlanta State: GA Zip: 30308

6. Total number of applications and registrations involved: 3
7. Total fee (37 CFR 3.41): \$ 90.00
Enclosed
Authorized to be charged to deposit account
8. Deposit account number:
(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. Statement and signature. To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Adam G. Mersereau
Name of Person Signing

[Signature]
Signature

5/29/02
Date

38
Total number of pages including cover sheet, attachments, and document:

06/06/2002 LMUELLER 00000047 2323433

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

01 FC:481 40.00 DP
02 FC:482 50.00 DP

TRADEMARK REEL: 2518 FRAME: 0870

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322-5  
323-4

**BORROWER SECURITY AGREEMENT**

SECURITY AGREEMENT, dated as of October 14, 1997, made by SUNPARK, INC., a Delaware limited liability company (the "Debtor"), in favor of CREDIT SUISSE FIRST BOSTON MORTGAGE CAPITAL LLC, a Delaware limited liability company (the "Secured Party").

**WITNESSETH:**

WHEREAS, pursuant to that certain Credit Agreement, dated as of October 14, 1997, between the Debtor and the Secured Party (the "Credit Agreement"), the Secured Party has agreed to make certain Loans (as defined in the Credit Agreement) to the Debtor; and

WHEREAS, it is a condition precedent to the Secured Party entering into the Credit Agreement and making the Loans thereunder that the Debtor shall have executed and delivered this Agreement in favor of the Lender;

NOW THEREFORE, in consideration of the premises and to induce the Lender to enter into the Credit Agreement and to make the Loans thereunder, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Debtor hereby agrees with the Lender as follows:

Section 1. Defined Terms. (a) Unless otherwise defined herein, capitalized terms which are defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement and the following terms are used herein as defined in the Uniform Commercial Code in effect in the State of New York from time to time: Chattel Paper, Documents, Fixtures, Goods, Instruments and Investment Property (to be equally applicable to both the singular and plural forms of such terms).

(b) The following terms shall have the following meanings:

"Accounts" shall have the meaning set forth in the Code; and all such Accounts of the Debtor, whether now existing or existing in the future, including, without limitation, (i) all accounts receivable of the Debtor, including, without limitation, all accounts created by or arising from all of the Debtor's sales of goods or rendition of services made under any of its trade names, or through any of its divisions, (ii) all unpaid rights of the Debtor (including rescission, replevin, reclamation and stopping in transit) relating to the foregoing or arising therefrom, (iii) all rights to any repossessed goods. (iv) all reserves and credit balances held by such Person with respect to any such accounts

receivable, (v) all letters of credit, guarantees or collateral for any of the foregoing and (vi) all insurance policies or rights relating to any of the foregoing.

"Agreement" shall mean this Security Agreement, as the same may be amended, supplemented or otherwise modified from time to time.

"Blocked Account" shall mean each Deposit Account subject to a Blocked Account Agreement.

"Blocked Account Bank" shall mean each bank party to a Blocked Account Agreement.

"Code" shall mean the Uniform Commercial Code as in effect from time to time in the State of New York.

"Collateral" shall have the meaning set forth in Section 2 hereof.

"Contracts" shall mean the contracts and agreements to which the Debtor is a party, including, without limitation, each contract and agreement listed in Schedule 1-A hereto, as the same may from time to time be amended, supplemented, waived or otherwise modified, including, without limitation, (a) all rights of the Debtor to receive moneys due and to become due to it thereunder or in connection therewith, (b) all rights of the Debtor to damages arising out of, or for, breach or default in respect thereof and (c) all rights of the Debtor to perform and to exercise all remedies thereunder.

"Copyright Licenses" shall mean all written agreements providing for the grant by or to the Debtor of any right to use any Copyright, including, without limitation, any agreements listed on Schedule 1-B hereto.

"Copyrights" shall mean all of the Debtor's right, title and interest in and to all copyrights, whether or not the underlying works of authorship have been published or registered, United States copyright registrations and copyright applications, including, without limitation, any copyright registrations and copyright applications listed on Schedule 1-C hereto, and (a) all renewals thereof, (b) all income, royalties, damages and 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) the right to sue or otherwise recover for past, present and future infringements and misappropriations thereof.

"Deposit Accounts" shall mean (a) all deposit accounts and depository accounts maintained by the Debtor with any financial institution, (b) investment accounts maintained by the Debtor with any financial institution and (c) all monies, instruments and other property deposited in any such accounts and all certificates and instruments, if any, representing or evidencing such accounts.

**"Equipment"** shall mean all machinery, equipment, mobile goods and furniture, now owned or hereafter acquired by Debtor or in which Debtor now has or hereafter may acquire any right, title or interest and any and all additions, substitutions and replacements thereof, wherever located, together with all attachments, components, parts, equipment and accessories installed therein or affixed thereto, including, but not limited to, all equipment as defined in Section 9-109(2) of the Code.

**"Excluded Contracts"** shall have the meaning set forth in Section 2 hereof.

**"General Intangibles"** shall have the meaning given to it in the Code and includes, whether or not so included in such meaning, any franchise agreements or rights in favor of or granted by the Debtor to know-how, trade secrets, product or service development ideas and designs, advertising commercials, rendering, strategies and plans, blueprints, architectural drawings, site location, personnel and franchisee information, proprietary information, computer and software technology and programs, and any similar items and, all interest rate, foreign currency or similar agreements.

**"Inventory"** shall have the meaning set forth in the Code; and all such Inventory of the Debtor, including, without limitation: (i) all goods, wares and merchandise held for sale or lease (including, without limitation, all paper and paperboard products); and (ii) all goods returned or repossessed by the Debtor.

**"Obligations"** shall mean (i) the unpaid principal of, interest (including interest accruing at the then applicable rate provided in the Credit Agreement after the maturity of the Loans and interest accruing at the then applicable rate provided in this Agreement after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceedings, relating to the Debtor whether or not a claim for post-filing or post-petition interest is allowed in such proceeding) on the Loans and all Fees, when and as due, whether at maturity, by acceleration, upon one or more dates set for prepayment or otherwise and (ii) all other obligations and liabilities of every nature of the Debtor from time to time owing to the Secured Party, in each case whether direct or indirect, absolute or contingent, due or to become due, or now existing or hereafter incurred (including monetary obligations incurred during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding), which may arise under, out of, or in connection with, the Credit Agreement or any other Credit Document or under any other document made, delivered or given in connection with any of the foregoing, in each case whether on account of principal, interest, fees, indemnities, costs, expenses (including, without limitation, all fees and disbursements of counsel to the Secured Party) or otherwise.

**"Patent Licenses"** shall mean all written agreements with any other Person in connection with any of the Patents or such other Person's patents, whether the Debtor is a licensor or a licensee under any such agreement, including, without limitation, the license agreements listed on Schedule 1-D hereto, 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" shall mean all of the Debtor's right, title and interest in and to all United States patents, patent applications and patentable inventions and all reissues and extensions thereof, including, without limitation, all patents and patent applications identified in Schedule 1-E hereto, 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 other rights corresponding thereto in the 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 Debtor accruing thereunder or pertaining thereto.

"Proceeds" shall mean "proceeds", as such term is defined in Section 9-306(1) of the Code and, to the extent not included in such definition, shall include, without limitation, (a) any and all proceeds of any insurance, indemnity, warranty, guaranty or letter of credit payable to the Debtor, from time to time with respect to any of the Collateral, (b) all payments (in any form whatsoever) paid or payable to the Debtor from time to time in connection with any taking of all or part of the Collateral by any Governmental Authority or any person acting under color of Governmental Authority, (c) all judgments in favor of the Debtor in respect of the Collateral and (d) all other amounts from time to time paid or payable or received or receivable under or in connection with any of the Collateral.

"Trademark Licenses" shall mean all written agreements with any other Person in connection with any of the Trademarks or such other Person's names or trademarks, whether the Debtor is a licensor or a licensee under any such agreement, including, without limitation, the license agreements listed on Schedule 1-F hereto, 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" shall mean all of the Debtor's right, title and interest in and to all United States trademarks, service marks, trade names, trade dress or other indicia of trade origin or business identifiers, trademark and service mark registrations, and applications for trademark or service mark registrations, and any renewals thereof, including, without limitation, each registration and application identified in Schedule 1-G hereto, 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 other rights corresponding thereto in the United States and all other rights of any kind whatsoever of the Debtor 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 or business identifiers.

"Trade Secrets" shall mean all of the Debtor's right, title and interest in and to all trade secrets, including, without limitation, know-how, processes, formulae, compositions, designs, and confidential business and technical information, and all rights of any kind whatsoever accruing thereunder or pertaining thereto, including, without limitation, (a) all income, royalties, damages and payments now and hereafter due and/or payable with respect thereto, including, without limitation, payments under all licenses, non-disclosure agreements and memoranda of understanding entered into in connection therewith, and damages and payments for past or future misappropriations thereof, and (b) the right to sue or otherwise recover for past, present or future misappropriations thereof.

"Vehicles" shall mean all buses, vans, cars, trucks, trailers, construction and earth moving equipment and other vehicles covered by a certificate of title law of any state and all tires and other appurtenances to any of the foregoing.

(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.

Section 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 Debtor hereby grants to the Secured Party and its successors, endorsees, transferees and assigns a continuing security interest in all of the Debtor's right, title and interest in, to and under all of the following property now owned or at any time hereafter acquired by the Debtor or in which the Debtor now has or at any time in the future may acquire any right, title or interest (collectively, the "Collateral"): (i) all Accounts; (ii) all Chattel Paper; (iii) all Contracts; (iv) all Documents; (v) all Equipment; (vi) all General Intangibles; (vii) all Instruments; (viii) all Inventory; (ix) all Investment Property; (x) all Patents; (xi) all Patent Licenses; (xii) all Trade Secrets; (xiii) all Trademarks; (xiv) all Trademark Licenses; (xv) all Copyrights; (xvi) all Copyright Licenses; (xvii) all Vehicles; (xviii) all Blocked Accounts; (xix) all Deposit Accounts; (xx) all Goods and all other personal property whether tangible or intangible; (xxi) all books and records pertaining to the Collateral; and (xxii) to the extent not otherwise included, all Proceeds and products of any and all of the foregoing. Nothing contained in this Section 2 is intended to create a security interest in any Contract relating to the leasing of Equipment (other than the Proceeds thereof) the express terms of which prohibit the assignment thereof or the granting of a security interest therein (each, an "Excluded Contract")

or in any licenses issued by Governmental Authorities (other than the Proceeds thereof) which prohibit the assignment thereof or the granting of a security interest therein.

Section 3. Rights of Secured Party; Limitations on the Secured Party's Obligations.

(a) No Liability of the Secured Party under Accounts, Contracts and Other Collateral.

The Secured Party shall have no obligation or liability under any Account (or any agreement giving rise thereto), any Contract or any other contract (as defined in the Code) to which the Debtor is a party, or other Collateral by reason of or arising out of this Agreement or the receipt by the Secured Party of any payment relating to any of the foregoing pursuant hereto, nor shall the Secured Party be obligated in any manner to perform any of the obligations of the Debtor under or pursuant to any Account (or any agreement giving rise thereto), any Contract or any other contract (as defined in the Code) to which the Debtor is a party, or any Collateral, to make any payment, to make any inquiry as to the nature or the sufficiency of any payment received by it or as to the sufficiency of any performance by any party thereunder, to present or file any claim, to take any action to enforce any performance or to collect the payment of any amounts which may have been assigned to it or to which it may be entitled at any time or times.

(b) Notice to Obligors. Upon the request of the Secured Party at any time after the occurrence and during the continuance of an Event of Default, the Debtor shall notify the parties to any Contract or other Collateral upon request from the Secured Party that such Contracts and other Collateral have been assigned to the Secured Party and that payments in respect thereof shall be made directly to the Secured Party. At any time and from time to time after the occurrence and during the continuance of an Event of Default, the Secured Party may in its own name or in the name of others communicate with the parties to any Contract and the other Collateral to verify with them to its satisfaction the existence, amount and terms of any such Contract and other Collateral.

(c) Notice to Account Debtors. Upon the request of the Secured Party at any time after the occurrence and during the continuance of an Event of Default, the Debtor shall notify the account debtors on the Accounts that the Accounts have been assigned to the Secured Party and that payments in respect thereof shall be made directly to the Secured Party. At any time and from time to time after the occurrence and during the continuance of an Event of Default, the Secured Party may in its own name or in the name of others communicate with account debtors on the Accounts to verify with them to its satisfaction the existence, amount and terms of any Accounts.

Section 4. Representations and Warranties. The Debtor hereby represents and warrants to the Secured Party that as of the date hereof and as of each Borrowing Date to occur under the Credit Agreement after the initial Borrowing Date:

(a) Power and Authority. The Debtor has the corporate power and authority, and the legal right, to make, deliver and perform its obligations under, and to grant the security interest in the Collateral to the extent provided in, and pursuant to, this Agreement and has taken all

necessary corporate action to authorize the execution, delivery and performance of, and grant of the security interest in the Collateral to the extent provided in, and pursuant to, this Agreement.

(b) Title; No Other Liens. Except for the Liens granted to the Secured Party pursuant to this Agreement and the Liens permitted under Section 6.02 of the Credit Agreement, the Debtor owns each item of the Collateral owned by it free and clear of any and all Liens. Except as set forth on Schedule 2 hereto or as otherwise permitted under Section 6.02 of the Credit Agreement, 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, except such as have been filed in favor of the Secured Party pursuant to this Agreement.

(c) Perfected First Priority Liens. (i) This Agreement is effective to create, as collateral security for the Obligations, valid and enforceable security interest in all of the Debtor's right, title and interest in, to and under the Collateral in favor of the Secured Party.

(ii) Except with respect to (A) Liens on Deposit Accounts, Liens on Vehicles and Liens on Equipment constituting Fixtures or (B) Liens upon Patents, Patent Licenses, Trademarks and Trademark Licenses to the extent that (I) such Liens cannot be perfected by the filing of financing statements under the Uniform Commercial Code or by the filing and acceptance thereof in the United States Patent and Trademark Office or the execution and delivery of a Blocked Account Agreement or (II) such Patents, Patent Licenses, Trademarks and Trademark Licenses which are not, individually or in the aggregate, material to the business of the Debtor, upon filing of the financing statements delivered to the Secured Party by the Debtor on the Closing Date in the jurisdictions listed on Schedule 3 hereto (which financing statements are in proper form for filing in such jurisdictions) and the delivery to, and continuing possession by, the Secured Party or its nominee, of all Instruments, Chattel Paper and Documents, together with an assignment endorsed in blank, a security interest in which is perfected by possession, the security interest created pursuant to this Agreement will constitute a valid security interest and, to the extent provided herein, a first priority perfected security interest in the Collateral in favor of the Secured Party, which Liens will be prior to all other Liens (other than Permitted Existing Liens) of all other Persons and which Liens are enforceable as such as against all other Persons.

(d) Consents. Except as set forth on Schedule 4 hereto, no consent of (i) any party (other than the Debtor) to any Contract (other than Excluded Contracts) or (ii) any obligor in respect of any Account is required, or purports to be required, to be obtained by or on behalf of the Debtor in connection with the execution, delivery and performance of this Agreement that has not been obtained. Each Contract, Trademark License, Patent License, Copyright License and Account constituting Collateral is in full force and effect and constitutes a valid and legally enforceable obligation of the Debtor and (to the knowledge of the Debtor) 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) and



except to the extent the failure of any such Contract, Trademark License, Patent License, Copyright License or Account to be in full force and effect or valid or legally enforceable could not reasonably be expected, individually or in the aggregate as to all such Contracts, Trademark Licenses, Patent Licenses, Copyright Licenses and Accounts, to have a material adverse effect on the value of the Collateral. Except as set forth on Schedule 5 hereto, 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 Contract (other than Excluded Contracts), Trademark License, Patent License, Copyright License or Account constituting Collateral by the Debtor or (to the knowledge of the Debtor) any other party thereto other than those which have been duly obtained, made or performed and are in full force and effect and those the failure of which to make or obtain could, individually or in the aggregate as to all Contracts, Trademark Licenses, Patent Licenses, Copyright Licenses and Accounts, not be reasonably expected to have a material adverse effect on the value of the Collateral. Neither the Debtor nor (to the knowledge of the Debtor) any other party to any Contract, Trademark License, Patent License, Copyright License or Account constituting Collateral is in default in the performance or observance of any of the terms thereof, except for such defaults as would in the aggregate as to all Contracts, Trademark Licenses, Patent Licenses, Copyright Licenses and Accounts not reasonably be expected to have a material adverse effect on the value of the Collateral. The right, title and interest of the Debtor in, to and under each Contract, Trademark License, Patent License, Copyright License and Account constituting Collateral are not subject to any defense, offset, counterclaim or claim which would be reasonably expected in the aggregate as to all Contracts, Trademark Licenses, Patent Licenses, Copyright Licenses and Accounts to have a material adverse effect on the value of the Collateral.

(e) Location of Tangible Property. The Inventory, the Equipment and the Vehicles constituting Collateral are kept at the locations listed on Schedule 6 hereto and/or such other locations of which the Debtor shall provide written notice to the Secured Party pursuant to Section 5(k) hereof.

(f) Chief Executive Office. The Debtor's chief executive office and chief place of business and the place where it maintains its books and records is located at the address set forth on Schedule 7 hereto or such other location of which the Debtor shall have provided written notice to the Secured Party pursuant to Section 5(k) hereof.

(g) Accounts. The amount represented by the Debtor to the Secured Party from time to time as owing by each account debtor or by all account debtors in respect of the Accounts will at such time be the correct amount, in all material respects, actually owing by such account debtor or debtors thereunder, except to the extent that appropriate reserves therefor have been established on the books of the Debtor in accordance with GAAP. The places where the Debtor keeps its records concerning the Accounts are listed in Section 4(f) hereof or such other location or locations of which the Debtor shall have provided prior written notice to the Secured Party pursuant to Section 5(k) hereof. Unless otherwise indicated in writing to the Secured Party, each Account arises out of a bona fide sale and delivery of goods or rendition of services by the Debtor.

Section 5. Covenants. The Debtor covenants and agrees with the Secured Party that, from and after the date of this Agreement until the termination of this Agreement in accordance with Section 12(a):

(a) Further Documentation; Delivery of Instruments; Vehicles; etc. At any time and from time to time, upon the written request of the Secured Party and at the sole expense of the Debtor, the Debtor will promptly and duly execute and deliver such further instruments and documents and take such further action as the Secured Party 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 Debtor also hereby authorizes the Secured Party to file any such financing or continuation statement without the signature of the Debtor to the extent permitted by applicable law. A carbon, photographic or other reproduction of this Agreement shall be sufficient as a financing statement for filing in any jurisdiction. All Instruments and Chattel Paper shall be immediately delivered to the Secured Party, or to such Person designated by the Secured Party, duly endorsed in a manner satisfactory to the Secured Party, to be held as Collateral pursuant to this Agreement. The Debtor shall not permit any other Person to possess any such Collateral at any time. The Debtor shall take all actions and execute, deliver and file all instruments and documents as the Lender shall reasonably request in order to perfect the security interest of the Lender in the Vehicles owned by the Debtor.

(b) Compliance with Terms of Contracts, etc. The Debtor will perform and comply in all material respects with all its obligations under the Contracts to which it is a party and all its other contractual obligations relating to the Collateral, including, without limitation, any of its obligations under any lease of real property on which any of the Collateral is located, unless (i) such performance or compliance is fully excused by breach by the other party or parties thereto or (ii) such failure to comply or perform could not reasonably be expected individually or in the aggregate to have a material adverse effect on the value of the Collateral.

(c) Indemnification. The Debtor agrees to pay, and to save the Secured Party and its affiliates and their respective officers, directors, employees, representatives, agents and successors 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 Debtor in paying any and all excise, sales or other similar taxes which may be payable or determined to be payable with respect to any of the Collateral, (ii) with respect to, or resulting from, any delay by the Debtor in complying with any Requirement of Law applicable to any of the Collateral or (iii) in connection with any of the transactions contemplated by this Agreement, provided that such indemnity shall not, as to the Secured Party or any of its affiliates or any of their respective officers, directors, employees, representatives, agents and successors, be available to the extent that such liabilities, costs and expenses resulted from the gross negligence or willful misconduct of the person seeking indemnification as determined by a final non-appealable court of competent jurisdiction. In any suit, proceeding or action brought by the Secured Party under any Contract, Account or any other Collateral for any sum owing thereunder, or to enforce any

provisions of any Contract, Account or any other Collateral, the Debtor will save, indemnify and keep the Secured Party and its affiliates and their respective officers, directors, employees, representatives, agents and successors harmless from and against all expense, loss or damage suffered by reason of any defense, set-off, counterclaim, recoupment or reduction or liability whatsoever of the obligor thereunder, arising out of any obligation thereunder or arising out of any other agreement, indebtedness or liability at any time owing to or in favor of such account debtor, such obligor or any of their respective successors from the Debtor.

(d) Maintenance of Records. The Debtor will keep and maintain at its own cost and expense reasonably satisfactory and complete records of the Collateral, including, without limitation, a record of all payments received and all credits granted with respect to the Collateral, and shall mark such records to evidence this Agreement and the Liens and the security interests created hereby. For the Secured Party's further security, the Secured Party, shall have a security interest in all of the Debtor's books and records pertaining to the Collateral.

(e) Limitation on Liens on Collateral. The Debtor 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 adverse claim on or to any of the Collateral (other than the Liens created hereby and permitted under Section 6.02 of the Credit Agreement) and the Debtor will defend the right, title and interest of the Secured Party in and to any of the Collateral against the claims and demands of all Persons whomsoever.

(f) Limitations on Dispositions of Collateral. Without the prior written consent of the Secured Party, the Debtor 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, except as otherwise permitted by the Credit Agreement.

(g) Limitations on Modifications, Waivers, Extensions of Collateral. The Debtor will not, except in the ordinary course of business and to the extent permitted by the Credit Agreement, amend, modify, terminate or waive any material provision of any Contract, any Account or other Collateral, which could reasonably be expected to materially adversely affect the value of such Contract, Account or other Collateral as Collateral. The Debtor will promptly deliver to the Secured Party a copy of each material demand, notice or document received by it relating in any way to any Contract, Account or any other Collateral.

(h) Limitations on Discounts, Compromises, Extensions of Time. At all times, the Debtor will not, except in the ordinary course of business consistent with past practices, grant any extension of the time of payment of any Contract, Account or other Collateral, compromise, compound or settle the same for less than the full amount thereof, release, wholly or partially, any Person liable for the payment thereof, or allow any credit or discount whatsoever thereon, unless such extensions, compromises, compoundings, settlements, releases, credits or discounts could not, individually or in the aggregate, materially detract from the value of such Collateral.

(i) Further Identification of Collateral. The Debtor will furnish to the Secured Party 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 Secured Party may reasonably request, all in reasonable detail.

(j) Notices. The Debtor will advise the Secured Party promptly, in reasonable detail, at its address set forth in Section 14 hereof, (i) of any Lien (other than Liens created hereby and Liens permitted under Section 6.02 of the Credit Agreement), on, or material adverse claim asserted against, any of the Collateral and (ii) of the occurrence of any other event which could reasonably be expected individually or in the aggregate to have a material adverse effect on the aggregate value of the Collateral or the Liens created hereunder.

(k) Changes in Locations, Name, etc. The Debtor will not (i) change the location of its chief executive office/chief place of business from that specified in Section 4(f) hereof or remove its books and records from the location specified in Section 4(f) hereof, (ii) permit any of the Inventory, Equipment or Vehicles constituting Collateral to be kept at a location other than those listed on Schedule 6 hereto, unless such Inventory, Equipment or Vehicles is conveyed, sold, leased, transferred, assigned or otherwise disposed of as permitted by the Credit Agreement or (iii) change its name, identity or corporate structure unless, in each case, the Debtor shall have complied with the following:

(i) with respect to clauses (i) and (iii) above, the Debtor (x) shall have given the Secured Party at least thirty (30) days' prior written notice thereof and (y) prior to effecting any such change, shall have taken such actions as may be necessary or, upon the reasonable request of the Secured Party, advisable to continue the perfection and priority of the Liens granted pursuant hereto; and

(ii) with respect to clause (ii) above, the Debtor (x) shall give the Secured Party written notice no later than fifteen (15) days prior to moving or keeping any (1) material quantity of Inventory (it being understood that Inventory with a value of \$55,000 or more in the aggregate kept at a location for thirty (30) days or more shall constitute a material quantity of Inventory) or (2) Equipment or Vehicles with a value of \$55,000 individually or \$200,000 in the aggregate at any location of which the Secured Party had not previously been notified, of such location, and (y) promptly after commencing to keep any such Inventory, Equipment or Vehicles at any location referred to in subclause (x)(1) or (2) above, shall have taken such actions as may have been necessary or reasonably advisable to perfect the Liens granted pursuant hereto with respect to such Inventory, Equipment and Vehicles at such location;

provided in each case under clauses (A)(y) and (B)(y) that the Debtor shall have taken all actions required by Section 5(a) hereof in connection with such actions of the Debtor.

(l) Protection of Trade Secrets. The Debtor shall take all steps which it reasonably deems appropriate under the circumstances, and consistent with industry practice, to preserve and protect the secrecy of all material Trade Secrets of the Debtor.

(m) Maintenance of Equipment and Vehicles. The Debtor will maintain each item of Equipment and each Vehicle in good operating condition, ordinary wear and tear and immaterial impairments of value and damage by the elements excepted, and will provide all maintenance, service and repairs necessary for such purpose, except to the extent that the failure to do any of the foregoing could not reasonably be expected to materially adversely affect the value of such Collateral.

(n) Acquisition of Intellectual Property. Within fifteen (15) days after the end of each calendar quarter, the Debtor will notify the Secured Party of (i) any material registration of Copyright, Patent or Trademark or (ii) any exclusive rights under a material Copyright License, Patent License or Trademark License, and shall take such actions as may be reasonably requested by the Secured Party to perfect the security interest granted to the Secured Party therein (including, without limitation) (x) the execution and delivery of a Patent and Trademark Security Agreement or other comparable agreements with respect to Copyrights or Copyright Licenses and (y) the making of appropriate filings (I) of financing statements under the Uniform Commercial Code of any applicable jurisdiction and/or (II) in the United States Patent and Trademark Office or, with respect to Copyrights and Copyright Licenses, other applicable office).

(o) The Blocked Accounts and Cash Collateral Account.

(i) The Debtor hereby transfers to the Secured Party the exclusive dominion and control of the Blocked Account maintained with each Blocked Account Bank.

(i) To the extent required by the Credit Agreement, the Debtor agrees and covenants that all cash shall be deposited into a Blocked Account and all proceeds of Collateral shall be deposited in the Block Accounts.

(iii) So long as no Event of Default shall have occurred and be continuing, the Debtor is hereby authorized by the Secured Party to direct the disposition of such funds then on deposit in the Blocked Account Banks, which direction shall not be exercised by the Secured Party unless and until an Event of Default shall have occurred and be continuing.

(iv) If any Event of Default shall have occurred and be continuing, upon notification by the Secured Party to the Debtor and the Blocked Account Banks, the authorization of the Debtor under subsection (iii) above shall be revoked and all deposits contained therein shall be transferred to an account established by the Secured Party, in the name of the Secured Party and under the sole dominion and control of the Secured Party (the "Cash Collateral Account"), to be held by the

Secured Party as Collateral for the Obligations or applied to the Secured Obligations in accordance with this Agreement (all such deposits in any such Cash Collateral Account shall constitute "Collateral" for all purposes of this Agreement).

Section 6. Secured Party's Appointment as Attorney-in-Fact.

(a) Powers. The Debtor hereby irrevocably constitutes and appoints the Secured Party and any officer or agent of the Secured Party, 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 Debtor and in the name of the Debtor or in its own name, from time to time in the Secured Party's discretion, for the purpose of carrying out the terms of this Agreement, to take any and all appropriate action and to execute any and all documents and instruments which may be reasonably necessary or desirable to accomplish the purposes of this Agreement to the extent permitted by law, and, without limiting the generality of the foregoing, the Debtor hereby gives the Secured Party the power and right, on behalf of the Debtor, without notice to or assent by the Debtor, to do, at any time when an Event of Default has occurred and is continuing, the following to the extent permitted by law:

(i) in the name of the Debtor 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 Account, Instrument, General Intangible or 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 Secured Party for the purpose of collecting any and all such moneys due under such Collateral whenever payable;

(ii) to pay or discharge taxes and Liens levied or placed on the Collateral, to effect any repairs or any insurance called for by the terms of this Agreement and to pay all or any part of the premiums therefor and the costs thereof;

(iii) (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 Secured Party or as the Secured Party 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 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 such Debtor 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 Secured Party may deem appropriate; (G) subject to any pre-existing

reserved rights or licenses, to assign any Patent, Trademark or Copyright (along with the goodwill of the business to which any such Patent, Trademark or Copyright pertains), for such term or terms, on such conditions, and in such manner, as the Secured Party 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 Secured Party were the absolute owner thereof for all purposes, and to do, at the Secured Party's option and the Debtor's expense, at any time, or from time to time, all acts and things which the Secured Party deems reasonably necessary or advisable to protect, preserve or realize upon the Collateral and the Secured Party's Liens thereon and to effect the intent of this Agreement, all as fully and effectively as the Debtor might do; and

(iv) in the case of any Patents, Trademarks or Copyrights, to execute and deliver any and all agreements, instruments, documents, and papers as the Secured Party may reasonably request to evidence the Secured Party's security interest in any Patent, Trademark or Copyright and the goodwill and general intangibles of the Debtor relating thereto or represented thereby.

The Debtor 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 the payment in full of the Obligations and the termination of the Credit Agreement.

(b) Other Powers. The Debtor also authorizes the Secured Party, from time to time if an Event of Default shall have occurred and be continuing, to execute and/or file and record, in connection with any sale provided for in Section 9 hereof, any endorsements, assignments or other instruments of conveyance or transfer with respect to the Collateral.

(c) No Duty on the Part of the Secured Party. The powers conferred on the Secured Party and hereunder are solely to protect the Secured Party's interests in the Collateral and shall not impose any duty upon the Secured Party to exercise any such powers. The Secured Party 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 affiliates, nor any of their respective officers, directors, employees, agents or successors shall be responsible to the Debtor for any act or failure to act hereunder, except for their gross negligence or willful misconduct as determined by a final non-appealable court of competent jurisdiction.

Section 7. Performance by Secured Party of the Debtor's Obligations. If the Debtor fails to perform or comply with any of its agreements contained herein and the Secured Party, as provided for by the terms of this Agreement, shall perform or comply, or otherwise cause performance or compliance, with such agreements, the reasonable expenses of the Secured Party incurred in connection with such performance or compliance, together with interest thereon at a rate per annum equal to the default rate applicable to the Loans as set forth in the Credit Agreement, shall be payable by the Debtor to the Secured Party within two (2) Business Days after written demand therefor from the Secured Party.

Section 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 Debtor consisting of cash, checks and other non-cash items shall be held by the Debtor in trust for the Secured Party, segregated from other funds of the Debtor, and shall, forthwith upon receipt by the Debtor, be turned over to the Secured Party in the exact form received by the Debtor (duly indorsed by the Debtor to the Secured Party, if required) and (b) any and all such Proceeds received by the Secured Party (whether from the Debtor or otherwise) shall be held by the Secured Party as collateral security for the Obligations (whether matured or unmatured), and any or all such Proceeds then or at any time thereafter may, in the sole discretion of the Secured Party, be applied by the Secured Party against the Obligations then due and owing in such order as the Secured Party shall determine in its sole discretion.

Section 9. Remedies. If an Event of Default shall occur and be continuing, the Secured Party 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 the Secured Party in this Agreement and the other Credit Documents and in any other instrument or agreement securing, evidencing or relating to the Obligations. Without limiting the generality of the foregoing, the Secured Party, 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 Debtor 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 Secured Party 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 Secured Party 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 Debtor, which right or equity is hereby waived and released. The Debtor further agrees, at the Secured Party's request, to assemble the Collateral and make it available to the Secured Party at places which the Secured Party shall reasonably select, whether at the Debtor's premises or elsewhere. The Secured Party 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 Secured Party, including, without limitation, reasonable attorneys' fees and expenses, to the payment and performance in whole or in part of the Obligations then due and owing, in the order of priority specified in Section 8 hereof, and only after such application and after the payment by the Secured Party of any other amount required by any provision of law, including, without limitation, Section 9-504(1)(c) of the Code, need the Secured Party account for the surplus, if any, to the Debtor. To the extent permitted by applicable law, (a) the Debtor waives all claims, damages and demands it may acquire against the Secured Party arising out of the repossession, retention or sale of the Collateral, other than any such claims, damages and demands that may arise from its gross



negligence or willful misconduct, as determined by a final non-appealable court of competent jurisdiction and (b) 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 ten (10) days before such sale or other disposition. The Debtor shall remain liable for any deficiency if the proceeds of any sale or other disposition of the Collateral are insufficient to pay in full all Obligations, including, without limitation, the reasonable fees and expenses of any attorneys employed by the Secured Party to collect such deficiency as provided in the Credit Agreement.

Section 10. Limitation on Duties Regarding Preservation of Collateral. The Secured Party's sole duty with respect to the custody, safekeeping and physical preservation of the Collateral in its possession, under Section 9-207 of the Code or otherwise, shall be to deal with it in the same manner as the Secured Party deals with similar property for its own account. Neither the Secured Party nor any of its affiliates nor any of their respective officers, directors, employees, representatives 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 Debtor or any other Person.

Section 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 the termination of this Agreement in accordance with Section 12 (a) hereof.

Section 12. Release of Collateral and Termination. (a) This Agreement shall remain in full force and effect and be binding in accordance with and to the extent of its terms and the security interest created by this Agreement shall not be released until the payment in full of the Obligations (other than contingent obligations under indemnification provisions provided for in the Credit Documents for which claims are not outstanding) shall have occurred and the Credit Agreement and the Commitments shall have terminated, at which time the Collateral shall be released from the Liens created hereby, and this Agreement and all obligations (other than those expressly stated to survive such termination) of the Secured Party and the Debtor hereunder shall terminate and all rights to the Collateral shall revert to the Debtor, provided that if any payment, or any part thereof, of any of the Obligations is rescinded or must otherwise be restored or returned by the Secured Party upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Debtor or any other Credit Party, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or a trustee or similar officer for, the Debtor or any other Credit Party or any substantial part of its property, or otherwise, this Agreement, all rights hereunder and the Liens created hereby shall continue to be effective, or be reinstated, as though such payments had not been made. Upon request of the Debtor following any such termination, the Secured Party shall deliver (without recourse and without any representation or warranty and at the sole cost and expense of the Debtor) to the Debtor any Collateral held by the Secured Party hereunder that has not theretofore been sold or released by the Secured Party pursuant to this Agreement, and execute and deliver (without recourse and without any representation or warranty and at the sole cost and expense of the Debtor) to the Debtor such documents as the Debtor shall reasonably request to evidence such termination.

(b) If any of the Collateral shall be sold or otherwise disposed of by the Debtor (other than to a wholly-owned Subsidiary of the Debtor) in connection with a sale or other disposition in a transaction permitted by the Credit Agreement and the proceeds of such sale or other disposition are applied to the unpaid principal amount of the Loans in accordance with the provisions of the Credit Agreement, to the extent required to be so applied, then the Secured Party, at the request of the Debtor, shall execute and deliver to the Debtor (without recourse and without any representation or warranty and at the sole cost and expense of the Debtor) all releases or other documents reasonably necessary or desirable for the release of the Liens created hereby on such Collateral.

Section 13. Interpretation. In the event of a conflict between any term of this Agreement and the terms of any of the Credit Agreement, the terms of the Credit Agreement shall control.

Section 14. Notices. All notices, requests and demands under this Agreement shall be given in accordance with Section 8.02 of the Credit Agreement.

Section 15. Counterparts. This Agreement may be executed by one or more of the parties hereto in any number of separate counterparts (including telecopy) and all of said counterparts, each of which when so executed and delivered shall be deemed an original, and all of which shall together constitute one and the same agreement.

Section 16. Amendments, Waivers, etc. Neither this Agreement nor any terms hereof may be waived, amended, modified or otherwise supplemented except in writing signed by the parties hereto. In the case of any waiver, the Secured Party and the Debtor shall be restored to their former position and rights hereunder and under the other Credit Documents, and any Default or Event of Default waived shall be deemed to be cured and not continuing; but no such waiver shall extend to any subsequent or other Default or Event of Default, or impair any right consequent thereon.

Section 17. No Waiver; Remedies Cumulative. No failure or delay on the part of the Lender in exercising any right, remedy, power or privilege hereunder or under any other Credit Document and no course of dealing between the Debtor or any other Credit Party and the Secured Party shall operate as a waiver thereof; nor shall any single or partial exercise of, or any abandonment or discontinuance of steps to enforce, any right, remedy, power or privilege hereunder or under any other Credit Document preclude any other or further exercise thereof or the exercise of any other rights, remedies, powers or privileges hereunder or thereunder. The rights, remedies, powers and privileges provided herein and in the other Credit Documents are cumulative and may be exercised singularly or concurrently and are not exclusive of any other rights, remedies, powers or privileges provided by law. No notice to or demand on the Debtor in any case shall entitle the Debtor to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of the Secured Party to any other or future action in any circumstances without notice or demand.

Section 18. Benefits of Agreement. This Agreement shall be binding upon and inure to the benefit of the Debtor and the Secured Party and their respective successors and assigns, except that the Debtor may not assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the Secured Party.

SECTION 19. GOVERNING LAW. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS AGREEMENT SHALL BE GOVERNED BY, AND BE CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

SECTION 20. SUBMISSION TO JURISDICTION; VENUE, ETC. THE DEBTOR HEREBY IRREVOCABLY AND UNCONDITIONALLY:

(A) SUBMITS FOR ITSELF AND ITS PROPERTY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT, OR FOR RECOGNITION AND ENFORCEMENT OF ANY JUDGMENT IN RESPECT THEREOF, TO THE NON-EXCLUSIVE GENERAL JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK LOCATED IN NEW YORK COUNTY, THE COURTS OF THE UNITED STATES OF AMERICA FOR THE SOUTHERN DISTRICT OF NEW YORK, AND APPELLATE COURTS FROM ANY THEREOF;

(B) CONSENTS THAT ANY SUCH ACTION OR PROCEEDING MAY BE BROUGHT IN SUCH COURTS AND WAIVES ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE VENUE OF ANY SUCH ACTION OR PROCEEDING IN ANY SUCH COURT OR THAT SUCH ACTION OR PROCEEDING WAS BROUGHT IN AN INCONVENIENT COURT AND AGREES NOT TO PLEAD OR CLAIM THE SAME;

(C) AGREES THAT SERVICE OF PROCESS IN ANY SUCH ACTION OR PROCEEDING MAY BE EFFECTED BY MAILING A COPY THEREOF BY REGISTERED OR CERTIFIED MAIL (OR ANY SUBSTANTIALLY SIMILAR FORM OF MAIL), POSTAGE PREPAID, TO THE DEBTOR AT ITS ADDRESS SET FORTH IN SECTION 14 HEREOF OR AT SUCH OTHER ADDRESS OF WHICH THE SECURED PARTY SHALL HAVE BEEN NOTIFIED PURSUANT THERETO AND WAIVES ANY OBJECTION TO SUCH SERVICE OF PROCESS AND FURTHER WAIVES AND AGREES NOT TO PLEAD OR CLAIM THAT SUCH SERVICE OF PROCESS WAS IN ANY WAY INVALID OR INEFFECTIVE;

(D) AGREES THAT NOTHING HEREIN SHALL AFFECT THE RIGHT OF THE SECURED PARTY TO EFFECT SERVICE OF PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR SHALL LIMIT THE RIGHT OF THE SECURED PARTY TO SUE IN ANY OTHER JURISDICTION; AND

(E) WAIVES, TO THE MAXIMUM EXTENT NOT PROHIBITED BY LAW, ANY RIGHT IT MAY HAVE TO CLAIM OR RECOVER IN ANY LEGAL ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY ANY SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES.

Section 21. Headings Descriptive. The headings of the sections of this Agreement are inserted for convenience only and shall not in any way affect the meaning or construction of any provisions of this Agreement.

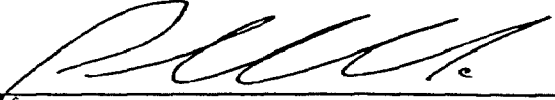
Section 22. Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or thereof or affecting the validity, enforceability or legality of such provisions in any other jurisdiction.

SECTION 23. WAIVER OF JURY TRIAL. THE DEBTOR, AND THE SECURED PARTY, BY ITS ACCEPTANCE HEREOF, HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE TRIAL BY JURY IN ANY LEGAL ACTION, PROCEEDING OR COUNTERCLAIM RELATING TO THIS AGREEMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY.

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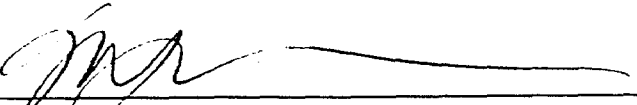
IN WITNESS WHEREOF, the undersigned has caused this Agreement to be duly executed and delivered officer as of the date first above written.

SUNPARK, INC.

By   
Name: PAUL L. SNYDER, III  
Title: PRES. / CEO

ACCEPTED AND AGREED TO:

CREDIT SUISSE FIRST BOSTON  
MORTGAGE CAPITAL LLC, as  
Secured Party

By   
Name: Marc J. Garren  
Title: Authorized Signatory

Schedule 1-A

CONTRACTS AND AGREEMENTS

A. Purchase Agreements

1. Purchase Agreement, dated as of September 1, 1995, among SunPark, Inc. (formerly Justin II, Inc.), Olympic Management Systems, Inc., Airpark of Pa., Inc., Park 'N Go of Ohio, Inc., Airpark International I, Limited Partnership, and Park 'N Go of Ohio, L.P., as amended as of November 22, 1995.
2. Asset Purchase Agreement, dated as of August 16, 1996, by and between Joseph J. Schneider, personally and on behalf of Travel Park, Inc., d/b/a Flying Carport Airport Valet Parking Service, Inc., and SunPark, Inc., as amended as of December 3, 1996.
3. Asset Purchase Agreement, dated August, 1996, by and between SunPark, Inc., Stylianos S. Manousos, Edward J. Kennedy and Bayou Memphis, Inc., as amended as of November 1, 1996.

B. Agreements Relating to Employment

1. Employment Agreement, dated as of October \_\_, 1997, by and between SunPark, Inc. and Paul L. Snyder, III.
2. Employment Agreement, dated as of June 6, 1996, by and between SunPark, Inc. and Paul L. Snyder, III.
3. Confidential Separation Agreement and Release, dated April 1, 1997 by and between SunPark, Inc., SunPark Acquisition Corp. and Stewart Barber.
4. Letter from SunPark, Inc., dated as of March 31, 1997 as amended August 29, 1997, to Randy Anger.
5. Letter Agreement, between SunPark, Inc. and Paul Snyder, III, dated as of March 31, 1997, as amended August 29, 1997, regarding options to purchase Shares.
6. Letter Agreement, between SunPark, Inc. and Thomas Ayers, dated as of March 31, 1997, as amended August 29, 1997, regarding options to purchase Shares.
7. Letter from SunPark, Inc., dated as of August 28, 1997, to William Kelly.

### C. Non-Compete Agreements

1. Non-Competition Agreement, dated November 22, 1995, between Paul L. Snyder, II, Olympic Management Systems, Inc. and SunPark, Inc.
2. Non-Compete Agreement, dated as of August 16, 1996, by and between Joseph J. Schneider, personally and on behalf of TravelPark, Inc., and SunPark, Inc.
3. Non-Compete Agreement, dated as of August, 1996, by and between Stylianos S. Manousos, Edward J. Kennedy, Margaret Manousos and Pamela Kennedy, personally and on behalf of Bayou Memphis, Inc., and SunPark, Inc.

### D. Service and Advertising Agreements

1. Airport Advertising Contract, dated January 14, 1997, by and between Interspace Airport Advertising and SunPark, Inc.
2. Outdoor Display Advertising Agreement, commencing on earlier of May 1, 1997 or completion of the display, between SunPark, Inc. and 3M Media.
3. Rental Service Agreement, dated March 11, 1996, between Unitog Rental Services, Inc. and 3C Airport Parking, Airpark and Philadelphia Park 'N Go.
4. Sign Location Lease, dated September 22, 1988, between Whiteco Metrocom, a division of Whiteco Industries, Inc., and SunPark, Inc. (by assignment).
5. Supplemental Service Contract dated April 17, 1996, between Energy Systems and Service, Inc. and SunPark, Inc. (as assignee of TravelPark, Inc.).
6. Contract, effective as of July 1, 1997, between SunPark, Inc. and Ackerly Airport Advertising, regarding advertising in Columbus.
7. Contract for Advertising Services, dated June 23, 1997, between Metro Traffic Control and SunPark, Inc.
8. Management Agreement, dated March 22, 1996, by and between HBC Associates and SunPark, Inc. (Boston Management Agreement).
9. Memphis International Airport Automobile Parking and Concession Agreement, effective November 1, 1996, between the Memphis-Shelby County Airport Authority and SunPark, Inc.

10. Letter Agreement, dated December 22, 1994, between Olympic Management Systems, Inc. and the Niagara Frontier Transportation Authority, regarding access fees for Greater Buffalo International Airport.
11. Access Arrangement, effective September 1, 1997, pursuant to the Permit Terms and Conditions of the Metropolitan Washington Airports Authority ("MWAA"), executed by MWAA and SunPark, Inc.
12. Airport Display Contract by and between Ackerley Airport Advertising and 3-C Airport Parking dated May 14, 1997.
13. 3M Media Outdoor Display Advertising Agreement by and between National Advertising Company and SunPark, Inc. dated February 14, 1997.
14. Beverage Service Agreement by and between Lambert's Coffee and Park Ride & Fly dated November 15, 1996.
15. Preventive Maintenance Renewal between Time Recorders Unlimited, Inc. and Flying Carport dated November 1, 1996.
16. Columbus Municipal Airport Authority Rules regarding Off-Site Parking Operators and Off-Site Car Rental Operators dated November 1996.
17. Maintenance Supply Agreement by and between Minolta Business Systems, Inc. and Flying Carport dated October 30, 1996.
18. Contract for Advertising Display Space at the Greater Buffalo International Airport by and between Transportation Media, Inc. and AirPark Airport Parking dated October 14, 1996.
19. Participation Agreement by and between Entertainment Publications, Inc. and Bayou Memphis Inc. d/b/a Park Ride & Fly dated July 30, 1996.
20. Lease Maintenance Agreement by and between Radio Communications Service, Inc. and SunPark, Inc. dated June 25, 1996.
21. Rental Service Agreement by and between Allied Industrial Laundry, a Division of Christopher Service Co. and AirPark dated June 17, 1996.
22. Rental Service Agreement by and between Unitog Rental Services, Inc. and Park 'N Go dated April 19, 1996.



23. Supplemental Service Contract between Energy Systems Service, Inc. and Travel Park, Inc. d/b/a Flying Carport dated April 17, 1996.
24. Advertising Contract by and between Bell Atlantic Yellow Pages and Park 'N Go Airport Parking dated April 9, 1996.
25. Preventative Maintenance and Service Agreement between Parking Sales Corporation and SunPark, Inc. dated March 13, 1996.
26. Maintenance Service Agreement by and between Tele-Communications, Inc. and 3-C Airport Parking dated January 23, 1996.
27. Niagara Frontier Transportation Authority Commercial Ground Transportation Rules and Regulations for the Landside Terminal Operations at the Greater Buffalo International Airport dated April 25, 1994.
28. Exhibitor Display Space Contract by and between Transportation Media Company and 3-C Rent-A-Car & Airport Parking dated October 17, 1989.
29. Sign Location Lease Agreement by and between Whiteco Metrocom and Auto Club Service Corp. d/b/a 3-C Rent-A-Car dated September 22, 1988.
30. Utility Easement Agreement by and between Snyder Corp., National Holdings and Peter J. Schmitt dated December 26, 1986.
31. Utility Easement Agreement by and between Snyder Corp. and Niagara Mohawk Power Corporation dated July 23, 1986.

E. Other

1. Guaranty, dated as of November 22, 1995, between Paul L. Snyder, II and SunPark, Inc.
2. Escrow Agreement, dated as of December 2, 1996, by and between Joseph J. Schneider personally and on behalf of Travel Park, Inc. and SunPark, Inc.
3. Novation Agreement, dated as of December 26, 1996, by and among Travel Park, Inc., SunPark, Inc., and the US Marshal's Office.
4. Side Letter, dated October 31, 1996, from Stan Manousos to Paul L. Snyder, III, relating to indemnification.

5. Side Letter, dated August 21, 1996, by and between SunPark, Inc. and Bayou Memphis regarding the Asset purchase Agreement.
6. Letter Agreement dated November 22, 1995, between SunPark, Inc. and Olympic Management Systems, Inc. regarding Clark Purdy parking rights.

Schedule 1-B

COPYRIGHT LICENSES

None.

Schedule 1-C

COPYRIGHT REGISTRATIONS  
AND APPLICATIONS

None.

Schedule 1-D

PATENT LICENSES

None.

Schedule 1-E

PATENTS AND PATENT APPLICATIONS

None.

Schedule 1-F

TRADEMARK LICENSES

None.

Schedule 1-G

REGISTRATIONS AND APPLICATIONS

A. TRADEMARKS (registration pending)

SunPark (trademark, service mark and design)  
P SunPark (trademark, service mark and design)

B. TRADEMARKS (unregistered)

Park 'N Go  
3C  
Buffalo Air Park  
Air Park  
3C Airport Valet Parking  
3C Airport Parking  
Park Ride 'N Fly (Memphis)  
Travel Park  
Air Park  
Worldwide Airport Parking



Schedule 2

COLLATERAL LIENS

None.

Schedule 3

JURISDICTIONS FOR FILING  
OF FINANCING STATEMENTS

1. New York Secretary of State
2. Pennsylvania Secretary of State
3. Prothonotary of Delaware County, Pennsylvania
4. Prothonotary of Philadelphia County, Pennsylvania
5. Recorder of Deeds of Delaware County, Pennsylvania
6. Department of Records of Philadelphia County, Pennsylvania
7. Ohio Secretary of State
8. Franklin County, Ohio (UCC Office)
9. Franklin County, Ohio (Real Estate Office)
10. Tennessee Secretary of State
11. Shelby County Register UCC Records
12. Shelby County Register Real Property Records
13. Virginia Secretary of State
14. Massachusetts Secretary of State

Schedule 4

REQUIRED CONSENTS

None.

Schedule 5

REQUIRED GOVERNMENTAL CONSENTS

Consent required for transfer of FCC licenses issued in connection with two-way radios used on buses.

Schedule 6

LOCATION OF TANGIBLE PROPERTY

1. 4095/4099 Genesee Street  
Cheektowaga, New York 14224  
(Buffalo Airpark)
2. 688-690 Delaware Avenue  
Buffalo, New York 14209
3. 1399 Stelzer Road  
Columbus, Ohio 43219
4. 333 Buell Road  
Gates, New York 14624
5. One Scott Way  
Lester, Pennsylvania 19113
6. 7060 Essington Avenue  
Philadelphia, Pennsylvania 19153
7. 2805 South Crystal Drive  
Arlington, Virginia
8. 2731 Airways  
Memphis, Tennessee
9. Number 28 and 70 Northern Avenue Parking Lot  
Boston, Massachusetts

Schedule 7

ADDRESS OF CHIEF EXECUTIVE OFFICE

SunPark, Inc.  
690 Delaware Avenue  
Buffalo, New York 14209