08-12-2002

8-12-02

Form PTO-1594
(Rev. 03/01)
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Tab settings ⇨⇨⇨

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

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

1. Name of conveying party(ies):

Jacques Moret, Inc. 8-12-02

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

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

2. Name and address of receiving party(ies)

Name: JPMorgan Chase Bank

Internal Address:

Street Address: 1411 Broadway

City: New York State: NY Zip: 10018

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

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

Execution Date: 8/9/2002

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

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

B. Trademark Registration No.(s) See Schedule A attached.

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

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

Name: Jeffrey L. Dunetz, Esq.

Internal Address:

Reitler Brown, LLC

Street Address: 800 Third Avenue

City: New York State: NY Zip: 10022

6. Total number of applications and registrations involved: 24

7. Total fee (37 CFR 3.41).....$ 615.00

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

8. Deposit account number:

DO NOT USE THIS SPACE

9. Signature.

Joseph Harary — Name of Person Signing

Signature

8/9/02 — Date

Total number of pages including cover sheet, attachments, and document: 2

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

08/12/2002 TDIAZ1 00000097 1515511
01 FC:481 40.00 OP
02 FC:482 575.00 OP

SCHEDULE A

TRADEMARKS SUBJECT TO SECURITY INTEREST

Registered Trademark	Registration No.
JACQUES MORET	1,515,511
BODY MOTION	1,479,721
BODY MOVES	1,582,628
MORET ULTRA	1,865,864
ACTIV-8	1,753,079
I'M A PRINCESS	2,114,682
JUST IMAGINE	2,171,645
ULTRA	2,252,267
JACQUES MORET	1,051,920
ACTIVE AMERICA	2,239,255
CODE 18	2,276,531
LINEAR	2,222,755
COOL SYSTEM SUPPORT	2,356,128
SPEED DRI	2,414,630
MORET ULTRA (Design)	2,452,049
DRY FX	2,422,256
M (Design)	1,931,632

Trademark Application	Serial No.
COTTON SHIMMER	75-928,262
ENERGY & MOTION	76-279,943
M (Design)	78-124,452
BLUE FX	75-916,222
FLEXTEL	78-082,949
COOL SYSTEM TECHNOLOGY	78-103,038
CST COOL SYSTEM TECHNOLOGY	78-103,040

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SECURITY AGREEMENT

SECURITY AGREEMENT, dated as of August 9, 2002 (as amended, supplemented, restated or otherwise modified from time to time, this "Agreement"), made by **JACQUES MORET, INC.** (the "Borrower") and each of the other Persons (such capitalized term and all other capitalized terms not otherwise defined herein to have the meanings provided for in Article I) listed on the signature pages hereof (such other Persons, together with the Additional Collateral Grantors (as defined in Section 7.2(b)) and the Borrower are collectively referred to as the "Grantors" and individually as a "Grantor"), in favor of **JPMORGAN CHASE BANK**, as agent (in such capacity, the "Agent") for each of the Lender Parties.

W I T N E S S E T H:

WHEREAS, pursuant to a Credit Agreement, dated as of the date hereof (as amended, supplemented, restated or otherwise modified from time to time, the "Credit Agreement"), among the Borrower, the various lending institutions (individually a "Lender" and collectively the "Lenders") as are, or may from time to time become, parties thereto and the Agent, the Lenders have extended Commitments to make Credit Extensions to the Borrower;

WHEREAS, as a condition precedent to the making of the initial Credit Extension under the Credit Agreement, each Grantor is required to execute and deliver this Agreement; and

WHEREAS, each Grantor has duly authorized the execution, delivery and performance of this Agreement;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to induce the Lenders to make Credit Extensions (including the initial Credit Extension) to the Borrower pursuant to the Credit Agreement, each Grantor agrees, for the benefit of each Lender Party, as follows:

ARTICLE I
DEFINITIONS

The following terms (whether or not underscored) when used in this Agreement, including its preamble and recitals, shall have the following meanings (such definitions to be equally applicable to the singular and plural forms thereof):

"**Account**" means a right to payment of a monetary obligation, whether or not earned by performance (and shall include invoices, contracts, rights, accounts receivable, notes, refunds, indemnities, interest, late charges, fees, undertakings and all other obligations and amounts owing to any Grantor from any Person):

(a) for property that has been or is to be sold, leased, licensed, assigned or otherwise disposed of;

(b) for services rendered or to be rendered;

(c) for a policy of insurance issued or to be issued;

(d) for a secondary obligation incurred or to be incurred;

(e) for energy provided or to be provided;

(f) for the use or hire of a vessel under a charter or other contract;

(g) arising out of the use of a credit or charge card or information contained on or for use with the card; or

(h) as winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a State, or person licensed or authorized to operate the game by a State or governmental unit of a State.

"**Additional Collateral Grantors**" is defined in clause (b) of Section 7.2.

"**Agent**" is defined in the preamble.

"**Agreement**" is defined in the preamble.

"**Assigned Agreements**" is defined in clause (o) of Section 2.1.

"**Authenticate**" means

(a) to sign; or

(b) to execute or otherwise adopt a symbol, or encrypt or similarly process a record in whole or in part, with the present intent of the authenticating person to identify the person and adopt or accept a record.

"**Bank Agency and Control Agreement**" mean a account control agreement in form and substance satisfactory to the Agent entered into among the Grantor, the Agent and a bank where a Deposit Account of such Grantor is maintained, as such agreement may be amended, modified, supplemented, restated or otherwise modified from time to time.

"**Borrower**" is defined in the preamble.

"**Chattel Paper**" means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods.

"**Collateral**" is defined in Section 2.1.

"**Collateral Account**" is defined in clause (b) of Section 4.1.2.

"**Commercial Tort Claim**" means a claim arising in tort with respect to which:

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(a) the claimant is an organization; or

(b) the claimant is an individual and the claim:

(i) arose in the course of the claimant's business or profession; and

(ii) does not include damages arising out of personal injury to or the death of an individual.

"**Commodity Account**" means an account maintained by a Commodity Intermediary in which a Commodity Contract is carried out for a Commodity Customer.

"**Commodity Contract**" means a commodity futures contract, an option on a commodity futures contract, a commodity option or any other contract that, in each case, is

(a) traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to the federal commodities laws; or

(b) traded on a foreign commodity board of trade, exchange or market, and is carried on the books of a Commodity Intermediary for a Commodity Customer.

"**Commodity Customer**" means a Person for whom a Commodity Intermediary carries a Commodity Contract on its books.

"**Commodity Intermediary**" means

(a) a Person who is registered as a futures commission merchant under the federal commodities laws; or

(b) a Person who in the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities laws.

"**Computer Hardware and Software Collateral**" means:

(a) all computer and other electronic data processing hardware, integrated computer systems, central processing units, memory units, display terminals, printers, features, computer elements, card readers, tape drives, hard and soft disk drives, cables, electrical supply hardware, generators, power equalizers, accessories and all peripheral devices and other related computer hardware;

(b) all software programs (including both source code, object code and all related applications and data files), whether now owned or hereafter acquired by each Grantor, designed for use on the computers and electronic data processing hardware described in clause (a) above;

(c) all licenses and leases of software programs;

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(d) all firmware associated therewith;

(e) all documentation (including flow charts, logic diagrams, manuals, guides and specifications) with respect to such hardware, software and firmware described in the preceding clauses (a) through (c); and

(f) all rights with respect to all of the foregoing, including any and all copyrights, licenses, options, warranties, service contracts, program services, test rights, maintenance rights, support rights, improvement rights, renewal rights and indemnifications and any substitutions, replacements, additions or model conversions of any of the foregoing.

"**Control**" means any appropriate method of gaining control of collateral under the U.C.C.

"**Copyright Collateral**" means all copyrights of each Grantor, whether statutory or common law, registered or unregistered, now or hereafter in force throughout the world including all of such Grantor's right, title and interest in and to all copyrights registered in the United States Copyright Office or anywhere else in the world and also including the copyrights referred to in Item A of Schedule IV attached hereto, and all applications for registration thereof, whether pending or in preparation, all copyright licenses, including each copyright license referred to in Item B of Schedule IV attached hereto, the right to sue for past, present and future infringements of any thereof, all rights corresponding thereto throughout the world, all extensions and renewals of any thereof and all proceeds of the foregoing, including licenses, royalties, income, payments, claims, damages and proceeds of suit.

"**Credit Agreement**" is defined in the first recital.

"**Deposit Account**" means a demand, time, savings, passbook, or similar account (including all bank accounts, collection accounts and concentration accounts, together with all funds held therein and all certificates and instruments, if any, from time to time representing or evidencing such accounts) maintained with a bank.

"**Distributions**" means all stock or other dividends, liquidating dividends, Equity Interests resulting from (or in connection with the exercise of) splits, reclassifications, warrants, options, non-cash dividends and all other distributions (whether similar or dissimilar to the foregoing) on or with respect to any ESOP Pledged Shares constituting Collateral, but shall not include Dividends.

"**Dividends**" means cash dividends and cash distributions with respect to any ESOP Pledged Shares made in the ordinary course of business and not as a liquidating dividend.

"**Documents**" means a document of title or a receipt of the type described in Section 7-201(2) of the U.C.C.

"**Electronic Chattel Paper**" means Chattel Paper evidenced by a record or records consisting of information stored in an electronic medium.

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"**Entitlement Holder**" means a Person identified in the records of a Securities Intermediary as the Person having a Security Entitlement against the Securities Intermediary. If a person acquires a Security Entitlement by virtue of Section 8-501(b)(2) or (3) of the U.C.C., such person is the Entitlement Holder.

"**Equipment**" means all machinery, equipment in all its forms, wherever located, including all computers, furniture and furnishings, all other property similar to the foregoing (including tools, parts, rolling stock and supplies of every kind and description), components, parts and accessories installed thereon or affixed thereto and all parts thereof, and all Fixtures and all accessories, additions, attachments, improvements, substitutions and replacements thereto and therefor.

"**ESOP Pledged Shares**" means the shares of capital stock of the Borrower listed on Schedule VII hereto, as adjusted pursuant to Section 7.11.

"**Financial Asset**" means

(a) a Security;

(b) an obligation of a Person or a share, participation or other interest in a Person or in property or an enterprise of a Person, which is, or is of a type, dealt with in or traded on financial markets, or which is recognized in any area in which it is issued or dealt in as a medium for investment; or

(c) any property that is held by a Securities Intermediary for another person in a Securities Account if the Securities Intermediary has expressly agreed with the other Person that the property is to be treated as a Financial Asset under Article 8 of the U.C.C. As the context requires, the term Financial Asset shall mean either the interest itself or the means by which a Person's claim to it is evidenced, including a certificated or uncertificated Security, a certificate representing a Security or a Security Entitlement.

"**Fixtures**" means all items of Equipment, whether now owned or hereafter acquired, of any Grantor that become so related to particular real estate that an interest in them arises under any real estate law applicable thereto.

"**General Intangible**" means any personal property, including things in action, payment intangibles and software, other than Accounts, Chattel Paper, Commercial Tort Claims, Deposit Accounts, Documents, Goods, Instruments, Investment Property, Letter-of-Credit Rights, Letters of Credit, money, and oil, as, or other minerals before extraction.

"**Goods**" means all things that are movable when a security interest attaches, including:

(a) Fixtures;

(b) standing timber that is to be cut and removed under a conveyance or contract for sale;

(c) the unborn young of animals;

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(d) crops grown, growing, or to be grown, even if the crops are produces on trees, vines, or bushes;

(e) manufactured homes; and

(f) computer programs embedded in goods and any supporting information provided in connection with a transaction relating to the program if (i) the program is associated with the goods in such a manner that is customarily is considered part of the goods, or (ii) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods.

"**Grantor**" and "**Grantors**" are defined in the preamble.

"**Intellectual Property Collateral**" means, collectively, the Computer Hardware and Software Collateral, the Copyright Collateral, the Patent Collateral, the Trademark Collateral and the Trade Secrets Collateral.

"**Instrument**" means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary endorsement or assignment.

"**Inventory**" means goods, other than farm products, which:

(a) are leased by a Person as lessor;

(b) are held by a Person for sale or lease or to be furnished under a contract of service;

(c) are furnished by a Person under a contract of service; or

(d) consist of raw materials, work in process, or materials used or consumed in a business,

and includes, without limitation, (i) finished goods, returned goods and materials and supplies of any kind, nature or description which are or might be used in connection with the manufacture, packing, shipping, advertising, selling or finishing of any of the foregoing; (ii) all goods in which a Grantor has an interest in mass or a joint or other interest or right of any kind (including goods in which Grantor has an interest or right as consignee); (iii) all goods which are returned to or repossessed by any Grantor; and (iv) all accessions thereto, products thereof and documents therefor.

"**Investment Property**" means all Securities (whether certificated or uncertificated), Security Entitlements, Securities Accounts and Commodity Contracts and Commodity Accounts of each Grantor; provided, however, that Investment Property shall not include any certificated Securities constituting Collateral (as defined in the Pledge Agreement).

"**Lender**" and "**Lenders**" are defined in the first recital.

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"**Lender Party**" means, as the context may require, any Lender, any Issuer or the Agent and each of its respective successors, transferees and assigns.

"**Letter-of-Credit Right**" means a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance, but excludes the right of a beneficiary to demand payment or performance under a letter of credit.

"**Patent Collateral**" means:

(a) all letters patent and applications for letters patent throughout the world (including all patent applications in preparation for filing anywhere in the world), including each patent and patent application referred to in Item A of Schedule II attached hereto;

(b) all patent licenses, including each patent license referred to in Item B of Schedule II attached hereto;

(c) all reissues, divisions, continuations, continuations-in-part, extensions, renewals and reexaminations of any of the items described in clauses (a) and (b) above; and

(d) all proceeds of, and rights associated with, the foregoing (including license royalties and proceeds of infringement suits), the right to sue third parties for past, present or future infringements of any patent or patent application, including any patent or patent application referred to in Item A of Schedule II attached hereto, and for breach or enforcement of any patent license, including any patent license referred to in Item B of Schedule II attached hereto, and all rights corresponding thereto throughout the world.

"**Payment Intangible**" means a general intangible under which the account debtor's principal obligation is a monetary obligation.

"**Proceeds**" means the following property:

(a) whatever is acquired upon the sale, lease, license, exchange or other disposition of the Collateral;

(b) whatever is collected on, or distributed on account of, the Collateral;

(c) rights arising out of the Collateral; and

(d) to the extent of the value of the Collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the Collateral.

"**Receivables Collateral**" means, collectively, Accounts, Documents, Instruments and Chattel Paper.

"**Secured Obligations**" is defined in Section 2.2.

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"**Securities**" means any obligations of an issuer or any shares, participations or other interests in an issuer or in property or an enterprise of an issuer which

(a) are represented by a certificate representing a security in bearer or registered form, or the transfer of which may be registered upon books maintained for that purpose by or on behalf of the issuer;

(b) are one of a class or series or by its terms is divisible into a class or series of shares, participations, interests or obligations; and

(c) (i) are, or are of a type, dealt with or trade on securities exchanges or securities markets or (ii) are a medium for investment and by their terms expressly provide that they are a security governed by Article 8 of the U.C.C.

"**Securities Account**" shall mean an account to which a Financial Asset is or may be credited in accordance with an agreement under which the Person maintaining the account undertakes to treat the Person for whom the account is maintained as entitled to exercise rights that comprise the Financial Asset.

"**Securities Act**" is defined in clause (a) of Section 6.3.

"**Security Agreement Supplement**" is defined in clause (b) of Section 7.2.

"**Security Entitlements**" means the rights and property interests of an Entitlement Holder with respect to a Financial Asset.

"**Security Intermediary**" means

(a) a clearing corporation; or

(b) a Person, including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity.

"**Supporting Obligation**" means a Letter-of-Credit Right or secondary obligation that supports the payment or performance of an Account, Chattel Paper, Document, General Intangible, Instrument or Investment Property, including, without limitation, all security agreements, guaranties, leases and other contracts securing or otherwise relating to any such Accounts, Chattel Paper, Documents, Instruments, including Goods represented by the sale or lease of delivery which gave rise to any of the foregoing, returned or repossessed merchandise and rights of stoppage in transit, replevin, reclamation and other rights and remedies of an unpaid vendor, lienor or secured party.

"**Tangible Chattel Paper**" means Chattel Paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.

"**Trademark Collateral**" means:

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(a) all trademarks, trade names, corporate names, company names, business names, fictitious business names, trade styles, trade dress, service marks, certification marks, collective marks, logos, other source of business identifiers, prints and labels on which any of the foregoing have appeared or appear, designs and general intangibles of a like nature (all of the foregoing items in this clause (a) being collectively called a "Trademark"), now existing anywhere in the world or hereafter adopted or acquired, whether currently in use or not, all registrations and recordings thereof and all applications in connection therewith, whether pending or in preparation for filing, including registrations, recordings and applications in the United States Patent and Trademark Office or in any office or agency of the United States of America or any State thereof or any foreign country, including those referred to in Item A of Schedule III attached hereto;

(b) all Trademark licenses, including each Trademark license referred to in Item B of Schedule III attached hereto;

(c) all reissues, extensions or renewals of any of the items described in clauses (a) and (b) above;

(d) all of the goodwill of the business connected with the use of, and symbolized by the items described in, clauses (a) and (b) above; and

(e) all proceeds of, and rights associated with, the foregoing, including any claim by each Grantor against third parties for past, present or future infringement or dilution of any Trademark, Trademark registration or Trademark license, including any Trademark, Trademark registration or Trademark license referred to in Item B of Schedule III attached hereto, or for any injury to the goodwill associated with the use of any such Trademark or for breach or enforcement of any Trademark license.

"Trade Secrets Collateral" means common law and statutory trade secrets and all other confidential or proprietary information and all know-how obtained by or used in or contemplated at any time for use in the business of any Grantor (all of the foregoing being collectively called a "Trade Secret"), whether or not such Trade Secret has been reduced to a writing or other tangible form (including all documents and things embodying, incorporating or referring in any way to such Trade Secret) all Trade Secret licenses, including each Trade Secret license referred to in Schedule V attached hereto, and including the right to sue for and to enjoin and to collect damages for the actual or threatened misappropriation of any Trade Secret and for the breach or enforcement of any such Trade Secret license.

"U.C.C." means the Uniform Commercial Code as from time to time in effect in the State of New York or, with respect to any Collateral located in any state or jurisdiction other than the State of New York, the Uniform Commercial Code as from time to time in effect in such state or jurisdiction.

SECTION 1.2 **Credit Agreement Definitions**. Unless otherwise defined herein or the context otherwise requires, terms used in this Agreement, including its preamble and recitals, have the meanings provided in the Credit Agreement.

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SECTION 1.3 **U.C.C. Definitions**. Unless otherwise defined herein or the context otherwise requires, terms for which meanings are provided in the U.C.C. are used in this Agreement, including its preamble and recitals, with such meanings.

ARTICLE II
SECURITY INTEREST

SECTION 2.1 **Grant of Security**. Each Grantor hereby assigns and pledges to the Agent for its benefit and the ratable benefit of each of the Lender Parties, and hereby grants to the Agent for its benefit and the ratable benefit of each of the Lender Parties a security interest in, all of its right, title and interest in and to the following, whether now or hereafter existing or acquired (collectively, the "Collateral"):

(a) all Equipment in all of its forms of such Grantor;

(b) all Inventory in all of its forms of such Grantor;

(c) all Accounts in all of its forms of such Grantor;

(d) all Intellectual Property Collateral in all of its forms of such Grantor;

(e) all General Intangibles in all of its forms of such Grantor;

(f) all Investment Property of such Grantor;

(g) all Deposit Accounts of such Grantor;

(h) all Chattel Paper of such Grantor;

(i) all Commercial Tort Claims of such Grantor;

(j) all Goods of such Grantor;

(k) all Instruments of such Grantor;

(l) all Payment Intangibles of such Grantor;

(m) all Documents of such Grantor;

(n) all Supporting Obligations of such Grantor;

(o) all of such Grantor's right, title and interest in and to all Material Agreements specified in Schedule VI attached hereto, and each Rate Protection Agreement to which such Grantor is now or may hereafter become a party, in each case as such agreements may be amended or otherwise modified from time to time (collectively, the "Assigned Agreements"), including (i) all rights of such Grantor to receive moneys due and to become due under or pursuant to the Assigned Agreements; (ii) all rights of such Grantor to receive proceeds of any insurance, indemnity, warranty or guaranty with respect to the Assigned Agreements; (iii) claims of such Grantor for damages arising out of or for breach of or default under the Assigned

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Agreements; (iv) the right of such Grantor to terminate the Assigned Agreements, to perform thereunder and to compel performance and otherwise exercise all remedies thereunder; and (v) all collateral held by such Grantor with respect to such Assigned Agreements;

(p) all of such Grantor's books, records, writings, data bases, information and other property relating to, used or useful in connection with, evidencing, embodying, incorporating or referring to, any of the foregoing in this Section 2.1;

(q) the ESOP Pledged Shares, together with all Dividends, Distributions, interest, and other payments and rights with respect thereto;

(r) all of such Grantor's other property and rights of every kind and description and interests therein, including all moneys, securities and other property, now or hereafter held or received by, or in transit to, the Agent or any Lender Party from or for such Grantor, whether for safekeeping, pledge, custody, transmission, collection or otherwise; and

(s) all Proceeds of any and all of the foregoing Collateral.

SECTION 2.2 **Security for Obligations**. This Agreement secures the prompt payment in full of all Obligations, including all amounts payable by the Borrower and each other Obligor under or in connection with the Credit Agreement, the Notes and each other Loan Document, whether for principal, interest, costs, fees, expenses, indemnities or otherwise and whether now or hereafter existing (all of such obligations being the "Secured Obligations").

SECTION 2.3 **Continuing Security Interest; Transfer of Notes**. This Agreement shall create a continuing security interest in the Collateral and shall

(a) remain in full force and effect until payment in full in cash of all Secured Obligations and the irrevocable termination of all Commitments;

(b) be binding upon each Grantor, its successors, transferees and assigns; and

(c) inure, together with the rights and remedies of the Agent hereunder, to the benefit of the Agent and each other Lender Party.

Without limiting the generality of the foregoing clause (c), any Lender may assign or otherwise transfer (in whole or in part) any Credit Extension held by it to any other Person, and such other Person shall thereupon become vested with all the rights and benefits in respect thereof granted to such Lender under any Loan Document (including this Agreement) or otherwise, subject, however, to any contrary provisions in such assignment or transfer, and to the provisions of Section 10.11 and Article IX of the Credit Agreement. Upon the payment in full in cash of all Secured Obligations and the termination of all Commitments, the security interest granted herein shall terminate and all rights to the Collateral shall revert to the Grantors. Upon any such termination or release, the Agent will, at each Grantor's sole expense and without any representations, warranties or recourse of any kind whatsoever, execute and deliver to such Grantor such documents as such Grantor shall reasonably request to evidence such termination.

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SECTION 2.4 **Grantors Remains Liable**. Anything herein to the contrary notwithstanding

(a) each Grantor shall remain liable under the contracts and agreements included in the Collateral (including the Assigned Agreements) to the extent set forth therein, and shall perform all of its duties and obligations under such contracts and agreements to the same extent as if this Agreement had not been executed;

(b) each Grantor will comply in all material respects with all Laws relating to the ownership and operation of the Collateral, including, without limitation, all registration requirements under applicable Laws, and shall pay when due all taxes, fees and assessments imposed on or with respect to the Collateral, except to the extent the validity thereof is being contested in good faith by appropriate proceedings for which adequate reserves in accordance with GAAP have been set aside by such Grantor;

(c) the exercise by the Agent of any of its rights hereunder shall not release any Grantor from any of its duties or obligations under any such contracts or agreements included in the Collateral; and

(d) neither the Agent nor any other Lender Party shall have any obligation or liability under any such contracts or agreements included in the Collateral by reason of this Agreement, nor shall the Agent or any other Lender Party be obligated to perform any of the obligations or duties of any Grantor thereunder or to take any action to collect or enforce any claim for payment assigned hereunder.

SECTION 2.5 **Security Interest Absolute**. All rights of the Agent and the security interests granted to the Agent hereunder, and all obligations of each Grantor hereunder, shall be absolute and unconditional, irrespective of

(a) any lack of validity or enforceability of any Loan Document;

(b) the failure of any Lender Party

(i) to assert any claim or demand or to enforce any right or remedy against the Borrower, any Obligor or any other Person under the provisions of any Loan Document or otherwise; or

(ii) to exercise any right or remedy against any other guarantor of, or collateral securing, any Secured Obligation;

(c) any change in the time, manner or place of payment of, or in any other term of, all or any of the Secured Obligations or any other extension, compromise or renewal of any Secured Obligation, including any increase in the Secured Obligations resulting from the extension of additional credit to any Grantor or any other Obligor or otherwise;

(d) any reduction, limitation, impairment or termination of any Secured Obligation for any reason, including any claim of waiver, release, surrender, alteration or compromise, and shall not be subject to (and each Grantor hereby waives any right to or claim

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of) any defense or setoff, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality, nongenuineness, irregularity, compromise, unenforceability of, or any other event or occurrence affecting, any Secured Obligation or otherwise;

(e) any amendment to, rescission, waiver, or other modification of, or any consent to departure from, any of the terms of any Loan Document;

(f) any addition, exchange, release, surrender or non-perfection of any collateral (including the Collateral), or any amendment to or waiver or release of or addition to or consent to departure from any guaranty, for any of the Secured Obligations; or

(g) any other circumstances which might otherwise constitute a defense available to, or a legal or equitable discharge of, the Borrower, any other Obligor or otherwise.

SECTION 2.6 **Waiver of Subrogation**. Each Grantor hereby waives, to the extent permitted by applicable Law until such time as the Secured Obligations shall have been paid in full in cash and the Commitments have terminated any claim or other rights which it may now or hereafter acquire against any other Obligor that arises from the existence, payment, performance or enforcement of such Grantor's obligations under this Agreement, including any right of subrogation, reimbursement, exoneration or indemnification, any right to participate in any claim or remedy against any other Obligor or any collateral which the Agent now has or hereafter acquires, whether or not such claim, remedy or right arises in equity or under contract, statute or common law, including the right to take or receive from any other Obligor, directly or indirectly, in cash or other property or by set-off or in any manner, payment or security on account of such claim or other rights. If any amount shall be paid to any Grantor in violation of the preceding sentence, such amount shall be deemed to have been paid to the Lender Parties, and shall forthwith be paid to the Agent to be credited and applied upon the Secured Obligations, whether matured or unmatured. Each Grantor acknowledges that it will receive direct and indirect benefits for the financing arrangements contemplated by the Credit Agreement and that the waiver set forth in this Section is knowingly made in contemplation of such benefits.

ARTICLE III
REPRESENTATIONS AND WARRANTIES

Each Grantor represents and warrants unto each Lender Party as set forth in this Article.

SECTION 3.1 **Location of Grantors; Collateral, etc**. Item E of Schedule I hereto identifies for such Grantor the state in which it is organized and the relevant organizational identification number (or states that one does not exist). All of the Equipment and Inventory of such Grantor are located, as of the date hereof, at the places specified in Item A and Item B, respectively, of Schedule I hereto. The principal place of business and chief executive office of such Grantor and the office where such Grantor keeps its records concerning the Collateral, and the original copies of each Assigned Agreement and all originals of all Tangible Chattel Paper are located at the places specified in Item C of Schedule I hereto. Except as set forth in Item D of Schedule I hereto such Grantor has no trade names and has not been known by any legal name different from the one set forth on the signature page hereto. Except as notified by such Grantor

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to the Agent in writing, such Grantor is not a party to any one or more Federal, state or local government contracts.

SECTION 3.2 **Ownership, No Liens, etc.** Such Grantor owns its portion of the Collateral free and clear of any Lien, except for the security interest created by this Agreement and except as otherwise permitted by Section 7.2.3 of the Credit Agreement. Except as disclosed in Item F of Schedule II hereto, none of the Collateral is in the possession of any consignee, bailee, warehouseman, agent or processor, located on any leased property or subject to the Control of any Person, other than the Agent or such Grantor.

SECTION 3.3 **Negotiable Documents, Instruments, Chattel Paper and Assigned Agreements.** Such Grantor has delivered to the Agent possession of all originals of all negotiable documents, Instruments and Tangible Chattel Paper currently owned or held by such Grantor (duly endorsed in blank, if requested by the Agent), and true and correct copies of each Assigned Agreement.

SECTION 3.4 **Intellectual Property Collateral.** With respect to any Intellectual Property Collateral that is material to the operations of any Grantor:

(a) such Intellectual Property Collateral is subsisting and has not been adjudged invalid or unenforceable, in whole or in part, and is valid and enforceable;

(b) such Grantor has made all necessary filings and recordations to protect its interest in such Intellectual Property Collateral, including recordations of all of its interests in the Patent Collateral and Trademark Collateral in the United States Patent and Trademark Office and its claims to the Copyright Collateral in the United States Copyright Office;

(c) in the case of any such Intellectual Property Collateral that is owned by such Grantor, such Grantor is the exclusive owner of the entire and unencumbered right, title and interest in and to such Intellectual Property Collateral and no claim has been made that the use of such Intellectual Property Collateral does or may violate the asserted rights of any third party;

(d) in the case of any such Intellectual Property Collateral that is licensed by such Grantor, such Grantor is in compliance with all the material terms of such license; and

(e) each Grantor has performed and will continue to perform all acts and has paid and will continue to pay all required fees and taxes to maintain each and every item of such Intellectual Property Collateral in full force and effect.

Such Grantor owns directly or is entitled to use by license or otherwise, all patents, Trademarks, Trade Secrets, copyrights, licenses, technology, know-how, processes and rights with respect to any of the foregoing used in or necessary for the conduct of such Grantor's business.

SECTION 3.5 **Validity, etc.** This Agreement creates a valid, first priority security interest in the Collateral and the Proceeds thereof, subject to no other Liens other than Liens permitted under Section 7.2.3 of the Credit Agreement, securing the payment of the Secured Obligations, and all filings and other actions necessary or desirable to perfect and protect such

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security interest have been duly taken (or, in the case of the filings referred to in Section 3.7, have been delivered to the Agent pursuant to the Credit Agreement).

SECTION 3.6 **Authorization, Approval, etc**. No authorization approval or other action by, and no notice to or filing with, any Governmental Authority (other than the filing of financing statements in the U.C.C. filing offices of each jurisdiction referred to in Schedule I hereto, and, if there is any Intellectual Property Collateral, the filing of this Agreement with the United States Patent and Trademark Office and the United States Copyright Office, as the case may be) is required either

(a) for the grant by such Grantor of the security interest granted hereby or for the execution, delivery and performance of this Agreement by such Grantor; or

(b) for the perfection of or the exercise by the Agent of its rights and remedies hereunder.

SECTION 3.7 **Due Execution, Validity, Etc**. Such Grantor has full power and authority, and holds all requisite governmental licenses, permits and other approvals, to enter into and perform its obligations under this Agreement. The execution, delivery and performance by such Grantor of this Agreement does not contravene or result in a default under such Grantor's Organic Documents or contravene or result in a default under any material contractual restriction, Lien or Law binding on such Grantor. This Agreement has been duly executed and delivered on behalf of each Grantor and constitutes the legal, valid and binding obligation of each Grantor enforceable in accordance with its terms subject to the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar Law affecting creditor's right generally, and subject to the effect of general principles of equity (regardless of whether considered in a proceeding in equity or at law).

SECTION 3.8 **Assigned Agreements**. The Assigned Agreements of such Grantor, true and complete copies of which have been furnished to each Lender, have been duly authorized, executed and delivered by such Grantor and (to the best knowledge of such Grantor) each other party thereto, are in full force and effect and are binding upon and enforceable against such Grantor and (to the best knowledge of such Grantor) each other party thereto, in accordance with their terms, subject to the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar Law affecting creditor's right generally, and subject to the effect of general principles of equity (regardless of whether considered in a proceeding in equity or at law). To the knowledge of such Grantor, there exists no default under any Assigned Agreement by any party thereto. With respect to each Assigned Agreement for which the Agent has requested such Grantor to obtain a written consent to assignment, each party to such Assigned Agreement other than such Grantor has executed and delivered to such Grantor a consent, in substantially the form of Exhibit A, to the assignment of such Assigned Agreement to the Agent pursuant to this Agreement.

SECTION 3.9 **Commercial Tort Claims**. Except for matters disclosed in Item G of Schedule I hereto, no Grantor owns any Commercial Tort Claims.

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ARTICLE IV
COVENANTS

Each Grantor covenants and agrees that, so long as any portion of the Secured Obligations shall remain unpaid or any Lender shall have any outstanding Commitment, such Grantor will, unless the Required Lenders shall otherwise consent in writing, perform the obligations set forth in this Section.

SECTION 4.1 **As to Equipment and Inventory**. Each Grantor hereby agrees that it shall

(a) keep all the Equipment and Inventory (other than Inventory sold in the ordinary course of business) at the places therefor specified in Section 3.1. unless such Grantor has given at least 30 days' prior written notice to the Agent of another location, and all action, if any, necessary to maintain in accordance with the terms hereof the Agent's perfected first priority security interest therein shall have been taken with respect to the Equipment and Inventory;

(b) cause the Equipment to be maintained and preserved in the same condition, repair and working order as when new, ordinary wear and tear excepted, and make or cause to be made all repairs, replacements and other improvements in connection therewith which are necessary so that such Grantor may properly conduct its business;

(c) pay promptly when due all property and other taxes, assessments and governmental charges or levies imposed upon, and all claims (including claims for labor, materials and supplies) against, the Equipment and Inventory, except to the extent the validity thereof is being contested in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP have been set aside; and

(d) not sell any Inventory to any customer on approval or on any other basis which entitles the customer to return, or which may obligate such Grantor to repurchase, such Inventory.

SECTION 4.2 **As to Accounts, Chattel Paper, Documents and Instruments.**

(a) Each Grantor shall keep its principal place of business and chief executive office and the office where it keeps its records concerning the Receivables Collateral and all originals of all Tangible Chattel Paper, located at the places therefor specified in Section 3.1 unless the Grantor has given at least 30 days' prior written notice to the Agent, and all actions, if any, necessary to maintain the Agent's perfected first priority security interest shall have been taken with respect to such Collateral; not change its name except upon 30 days' prior written notice to the Agent; hold and preserve such records and Chattel Paper; and permit representatives of the Agent at any time during normal business hours, upon reasonable notice, to inspect and make abstracts from such records and Chattel Paper.

(b) Upon written notice by the Agent to any Grantor pursuant to this Section 4.2(b), all Proceeds of Collateral received by such Grantor shall be delivered in kind to the Agent for deposit to a deposit account (the "Collateral Account") of such Grantor maintained with the

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Agent or such other Person designated by the Agent, and such Grantor shall not commingle any such proceeds, and shall hold separate and apart from all other property, all such proceeds in express trust for the benefit of the Agent until delivery thereof is made to the Agent. The Agent will not give the notice referred to in the preceding sentence unless there shall have occurred and be continuing any Event of Default. No funds, other than proceeds of Collateral, will be deposited in the Collateral Account.

(c) The Agent shall have the right to apply any amount in the Collateral Account to the payment of any Secured Obligations which are due and payable or payable upon demand, or to the payment of any Secured Obligations at any time that any Event of Default shall exist. Subject to the rights of the Agent, each Grantor shall have the right on each Business Day, with respect to and to the extent of collected funds in the Collateral Account, to require the Agent to purchase any Cash Equivalent Investment, provided that, in the case of certificated securities, the Agent will retain possession thereof as Collateral and, in the case of other Investment Property, the Agent will take such actions, including registration of such Investment Property in its name, as it shall determine is necessary to perfect its security interest therein. The Agent may at any time and shall promptly following any Grantor's request therefor, so long as no Event of Default has occurred and is continuing, transfer to such Grantor's general demand deposit account at the Agent or its bank (if not the Agent) any or all of the collected funds in the Collateral Account; provided, however, that any such transfer shall not be deemed to be a waiver or modification of any of the Agent's rights under this Section. None of the Grantors will, without the Agent's prior written consent, grant any extension of the time of payment of any Receivables Collateral, compromise, compound or settle the same for less than the full amount thereof, release, wholly or partly, any Person liable for the payment thereof or allow any credit or discount whatsoever thereon, other than extensions, credits, discounts, compromises or settlements granted or made in the ordinary course of business and consistent with its current practices and in accordance with such prudent and standard practices used in industries that are the same as or similar to those in which such Grantor is engaged.

SECTION 4.3 As to Collateral.

(a) Until such time as the Agent shall notify the Grantors of the revocation of such power and authority after the occurrence and continuation of any Event of Default, each Grantor (i) may in the ordinary course of its business, at its own expense, sell, lease or furnish under the contracts of service any of the Inventory normally held by such Grantor for such purpose, and use and consume, in the ordinary course of its business, any raw materials, work in process or materials normally held by such Grantor for such purpose, and sell or otherwise dispose of any other Collateral to the extent permitted by Section 7.2.10 of the Credit Agreement, (ii) will, at its own expense, endeavor to collect, as and when due, all amounts due with respect to any of the Collateral, including the taking of such action with respect to such collection as the Agent may reasonably request or, in the absence of such request, as each Grantor may deem advisable; and (iii) may grant, in the ordinary course of business, to any party obligated on any of the Collateral, any rebate, refund or allowance to which such party may be lawfully entitled, and may accept, in connection therewith, the return of goods, the sale or lease of which shall have given rise to such Collateral. The Agent, however, may, at any time following the occurrence and during the continuance of any Event of Default, whether before or after any revocation of such power and authority or the maturity of any of the Secured

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Obligations, notify any parties obligated on any of the Collateral to make payment to the Agent of any amounts due or to become due thereunder and enforce collection of any of the Collateral by suit or otherwise and surrender, release, or exchange all or any part thereof, or compromise or extend or renew for any period (whether or not longer than the original period) any indebtedness thereunder or evidenced thereby. Upon request of the Agent after the occurrence and during the continuance of any Event of Default, each Grantor will, at its own expense, notify any parties obligated on any of the Collateral to make payment to the Agent of any amounts due or to become due thereunder.

(b) The Agent is authorized to endorse, in the name of each Grantor, any item, howsoever received by the Agent, representing any payment on or other proceeds of any of the Collateral.

SECTION 4.4 <u>As to Intellectual Property Collateral.</u>

(a) No Grantor shall, unless such Grantor shall either (i) reasonably and in good faith determine (and notice of such determination shall have been delivered to the Agent) that any of the Patent Collateral is of negligible economic value to such Grantor or (ii) have a valid business purpose (exercised in the ordinary course of business) to do otherwise, do any act, or omit to do any act, whereby any of the Patent Collateral may lapse or become abandoned or dedicated to the public or unenforceable.

(b) No Grantor shall, and no Grantor shall permit any of its licensees to, unless such Grantor shall either (i) reasonably and in good faith determine (and notice of such determination shall have been delivered to the Agent) that any of the Trademark Collateral is of negligible economic value to such Grantor or (ii) have a valid business purpose (exercised in the ordinary course of business) to do otherwise,

(A) fail to continue to use any of the Trademark Collateral in order to maintain all of the Trademark Collateral in full force free from any claim of abandonment for non-use;

(B) fail to maintain as in the past the quality of products and services offered under all of the Trademark Collateral;

(C) fail to employ all of the Trademark Collateral registered with any Federal or state or foreign authority with an appropriate notice of such registration; or

(D) do or permit any act or knowingly omit to do any act whereby any of the Trademark Collateral may lapse or become invalid or unenforceable.

(c) No Grantor shall, unless such Grantor shall either reasonably and in good faith determine (and notice of such determination shall have been delivered to the Agent) that any of the Copyright Collateral or any of the Trade Secrets Collateral is of negligible economic value to such Grantor or have a valid business purpose (exercised in the ordinary course of business) to do otherwise, do or permit any act or knowingly omit to do any act whereby any of the Copyright Collateral or any of the Trade Secrets Collateral may lapse or become invalid or

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unenforceable or placed in the public domain except upon expiration of the end of an unrenewable term of a registration thereof.

(d) Each Grantor shall notify the Agent immediately if it knows that any application or registration relating to any material item of the Intellectual Property Collateral may become abandoned or dedicated to the public or placed in the public domain or invalid or unenforceable, or of any adverse determination or development (including the institution of, or any such determination or development in, any proceeding in the United States Patent and Trademark Office, the United States Copyright Office or any foreign counterpart thereof or any court) regarding such Grantor's ownership of any of the Intellectual Property Collateral, its right to register the same or to keep and maintain and enforce the same.

(e) In no event shall any Grantor or any of its agents, employees, designees or licensees file an application for the registration of any Intellectual Property Collateral with the United States Patent and Trademark Office, the United States Copyright Office or any similar office or agency in any other country or any political subdivision thereof, unless it promptly informs the Agent and, upon request of the Agent, executes and delivers any and all agreements, instruments, documents and papers as the Agent may reasonably request to evidence the Agent's security interest in such Intellectual Property Collateral and the goodwill and general intangibles of such Grantor relating thereto or represented thereby.

(f) Each Grantor shall take all commercially reasonable steps, including in any proceeding before the United States Patent and Trademark Office, the United States Copyright Office or any similar office or agency in any other country or any political subdivision thereof, to maintain and pursue any application (and to obtain the relevant registration) filed with respect to, and to maintain any registration of, the Intellectual Property Collateral, including the filing of applications for renewal, affidavits of use, affidavits of incontestability and opposition, interference and cancellation proceedings and the payment of fees and taxes (except to the extent that dedication, abandonment or invalidation is permitted under the foregoing clauses (a), (b) and (c)).

SECTION 4.5 **Insurance**. Each Grantor will maintain or cause to be maintained insurance as provided in Section 7.1.4 of the Credit Agreement. All proceeds of insurance maintained by each Grantor so covering the Collateral shall be applied to the payment in full of the Secured Obligations under the circumstances provided for in the Credit Agreement. Each Grantor irrevocably makes, constitutes and appoints the Agent (and all officers, employees or agents designated by the Agent) as such Grantor's true and lawful agent (and attorney-in-fact) for the purpose, during the continuance of an Event of Default, of making, settling and adjusting claims in respect of Collateral under policies of insurance, endorsing the name of such Grantor on any check, draft, instrument or other item of payment for the proceeds of such policies of insurance and for making all determinations and decisions with respect thereto. In the event that any Grantor at any time or times shall fail to obtain or maintain any of the policies of insurance required by Section 7.1.4 of the Credit Agreement or to pay any premium in whole or part relating thereto, the Agent may, without waiving or releasing any obligation or liability of the Grantors hereunder or any Event of Default, in its sole discretion, obtain and maintain such policies of insurance and pay such premium and take any other actions with respect thereto as the Agent deems advisable. All sums disbursed by the Agent in connection with this Section

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including reasonable attorneys' fees, court costs, expenses and other charges relating thereto, shall be payable, upon demand, by the Grantors to the Agent and shall be additional Secured Obligations secured hereby.

SECTION 4.6 **Transfers and Other Liens**. No Grantor shall:

(a) sell, assign (by operation of law or otherwise) or otherwise dispose of any of the Collateral, except as permitted by Section 7.2.10 of the Credit Agreement; or

(b) create or suffer to exist any Lien upon or with respect to any of the Collateral, except for the security interest created by this Agreement and except those permitted by Section 7.2.3 of the Credit Agreement.

SECTION 4.7 **As to the Assigned Agreements.**

(a) Each Grantor shall at its expense:

(i) perform and observe in all material respects all the terms and provisions of the Assigned Agreements to be performed or observed by it, maintain the Assigned Agreements in full force and effect, enforce the Assigned Agreements in accordance with their terms and take all such action to such end as may be from time to time reasonably requested by the Agent; and

(ii) furnish to the Agent promptly upon receipt thereof copies of all material notices, requests and other documents received by such Grantor under or pursuant to the Assigned Agreements, and from time to time furnish to the Agent such information and reports regarding the Assigned Agreements as the Agent may reasonably request.

(b) Except as permitted by Section 7.2.11 of the Credit Agreement, no Grantor shall, without the prior written consent of the Agent:

(i) cancel or terminate any Assigned Agreement or consent to or accept any cancellation or termination thereof;

(ii) amend or otherwise modify any Assigned Agreement or give any consent, waiver or approval thereunder;

(iii) waive any default under or breach of any Assigned Agreement; or

(iv) take any other action in connection with any Assigned Agreement that would impair in any material respect the value of the interest or rights of such Grantor thereunder or that would impair in any material respect the interest or rights of any Lender Party.

SECTION 4.8 **Inspections and Verification**. The Agent shall have the right, at the Grantors' own cost and expense (subject to Section 7.1.5 of the Credit Agreement) to inspect the Collateral, all records related thereto (and to make extracts and copies from such records) and the premises upon which any of the other Collateral is located, to discuss the Grantors' affairs with the officers of the Grantors and their independent accountants and to verify under reasonable

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procedures the validity, amount, quality, quantity, value, condition and status of, or any other matter relating to, the Collateral, including, in the case of Accounts or other Collateral in the possession of any third Person, by contacting Account Debtors in the event of and during the continuance of an Event of Default or the third person possessing such other Collateral for the purpose of making such a verification.

SECTION 4.9 **Bailees, Warehouses and Leased Premises**. No Collateral shall at any time be in the possession or Control of any warehouse, bailee or any of any Grantor's agents or processors or located on any leased premises without the Agent's prior written consent and unless the Agent, if the Agent has so requested, has received warehouse receipts or bailee lien waivers satisfactory to the Agent prior to the commencement of such possession or Control. Each Grantor shall, upon the request of the Agent, notify any such warehouse, bailee, agent, processor or lessor of the Liens, shall instruct such Person to hold all such Collateral for the Agent's account subject to the Agent's instructions and shall obtain an acknowledgement from such Person that such Person holds the Collateral for the Agent's benefit.

SECTION 4.10 **Chattel Paper**. Each Grantor will deliver to the Agent all Tangible Chattel Paper duly endorsed and accompanied by duly executed instruments of transfer or assignment, all in form and substance satisfactory to the Agent. Each Grantor will provide the Agent with Control of all Electronic Chattel Paper, by having the Agent identified as the assignee of the records(s) pertaining to the single authoritative copy thereof and otherwise complying with the applicable elements of Control set forth in the U.C.C. Each Grantor will also deliver to the Agent all security agreements securing any Chattel Paper and authorizes the Agent to file U.C.C. financing statement amendments assigning to the Agent any U.C.C. financing statements filed by such Grantor in connection with such security agreements. Each Grantor will mark conspicuously all Chattel Paper with a legend, in form and substance satisfactory to the Agent, indicating that such Chattel Paper is subject to the Liens created hereunder.

SECTION 4.11 **Letters of Credit**. Each Grantor will deliver to the Agent all Letters of Credit in which it is the beneficiary thereof, duly endorsed and accompanied by duly executed instruments of transfer or assignment, all in form and substance satisfactory to the Agent. Each Grantor will take any and all actions necessary (or requested by the Agent), from time to time, to cause the Agent to obtain exclusive Control of any Letter-of-Credit Rights owned by such Grantor in a manner acceptable to the Agent.

SECTION 4.12 **Commercial Tort Claims**. Each Grantor shall advise the Agent promptly upon such Grantor becoming aware, after the date hereof, that it owns any additional Commercial Tort Claims. With respect to any such Commercial Tort Claims, such Grantor will execute and deliver such documents as the Agent deems necessary to create, perfect and protect the Agent's first priority security interest in such Commercial Tort Claim.

SECTION 4.13 **Bank Accounts; Collection of Accounts and Payments**. Upon request by the Agent, each Grantor shall enter into a Bank Agency and Control Agreement with each financial institution with which such Grantor maintains from time to time any Deposit Account. Each Grantor hereby grants to the Agent, for the benefit of the Agent and the Lenders Parties, a continuing security interest in all such Deposit Accounts and all funds at any time paid, deposited, credited or held in such Deposit Accounts (whether for collection, provisionally or

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otherwise) or otherwise in the possession of such financial institutions, and each such financial institution shall act as the Agent's agent in connection therewith.

SECTION 4.14 **Powers, etc.** Each Grantor agrees that all ESOP Pledged Shares delivered by such Grantor pursuant to this Agreement will be accompanied by duly executed undated blank powers or other equivalent instruments of transfer acceptable to the Agent. Each Grantor will, from time to time upon the request of the Agent, promptly deliver to the Agent such powers, instruments, and similar documents, satisfactory in form and substance to the Agent, with respect to the ESOP Pledged Shares as the Agent may reasonably request and will, from time to time upon the request of the Agent after the occurrence of any Event of Default, promptly transfer any ESOP Pledged Shares constituting Collateral into the name of any nominee designated by the Agent.

SECTION 4.15 **Voting Rights; Dividends, etc.** Each Grantor agrees:

(a) after any Event of Default shall have occurred and be continuing, promptly upon receipt thereof by such Grantor and without any request therefor by the Agent, to deliver (properly endorsed where required hereby or requested by the Agent) to the Agent all Dividends, Distributions and other payments with respect to the ESOP Pledged Shares to the extent such Grantor is entitled thereto pursuant to the ESOP Loan and Pledge Agreement and the ESOP, all of which shall be held by the Agent as additional Collateral; and

(b) after any Event of Default shall have occurred and be continuing and the Agent has notified such Grantor of the Agent's intention to exercise its voting power under this clause:

(i) the Agent may exercise (to the exclusion of such Grantor) the voting power and all other incidental rights of ownership of such Grantor with respect to any ESOP Pledged Shares and such Grantor hereby grants the Agent an irrevocable proxy, exercisable under such circumstances, to vote such ESOP Pledged Shares; and

(ii) such Grantor shall promptly deliver to the Agent such additional proxies and other documents as may be necessary to allow the Agent to exercise such voting power.

All Dividends, Distributions and other amounts which may at any time be held by any Grantor but which such Grantor is then obligated to deliver to the Agent shall, until delivery to the Agent, be held by each Grantor separate and apart from its or his other property in trust for the Agent.. Prior to the exercise by the Agent of the above rights no vote shall be cast, or consent, waiver, or ratification given, or action taken by any Grantor that would impair any Collateral or be inconsistent with or violate any provision of the Credit Agreement or any other Loan Document (including this Agreement).

SECTION 4.16 **Further Assurances, etc.** Each Grantor agrees that, from time to time at its own expense, such Grantor will promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary or desirable, or that the Agent may

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reasonably request, in order to perfect, preserve and protect any security interest granted or purported to be granted hereby or to enable the Agent to exercise and enforce its rights and remedies hereunder with respect to any Collateral (including the obtaining of written consents to assignment of the nature referred to in Section 3.1.9 with respect to material contracts of such Grantor). Without limiting the generality of the foregoing, each Grantor will

(a) mark conspicuously each document included in the Inventory, each Assigned Agreement, each Tangible Chattel Paper and each of its records pertaining to the Collateral with a legend, in form and substance satisfactory to the Agent, indicating that such document, Assigned Agreement, Chattel Paper, Related Contract or Collateral is subject to the security interest granted hereby;

(b) if any Account shall be evidenced by a promissory note or other instrument or negotiable document, deliver and pledge to the Agent hereunder such promissory note, instrument or negotiable document duly endorsed and accompanied by duly executed instruments of transfer or assignment, all in form and substance satisfactory to the Agent;

(c) execute and file such financing or continuation statements, or amendments thereto, and such other instruments or notices (including any assignment of claim form under or pursuant to the federal assignment of claims statute, 31 U.S.C. § 3726, any successor or amended version thereof or any regulation promulgated under or pursuant to any version thereof), as may be necessary, or as the Agent may reasonably request, in order to perfect and preserve the security interests and other rights granted or purported to be granted to the Agent hereby;

(d) furnish to the Agent, from time to time at the Agent's request, statements and schedules further identifying and describing the Collateral and such other reports in connection with the Collateral as the Agent may reasonably request, all in reasonable detail;

(e) take all actions that the Agent deems reasonably necessary or advisable to enforce collection of the Receivables Collateral;

(f) if requested by the Agent, each Grantor which owns or leases Equipment which is subject to a certificate of title statute that requires notation of a lien thereon to perfect a security interest therein shall deliver to the Agent all original certificates of title for such Equipment, shall take all necessary steps to cause the Agent's security interest be perfected in accordance with such statute and deliver to the Agent a schedule in reasonable detail describing such Equipment, registration number, license number and all other information required to comply with such statute; provided, however, that until the Agent makes such a request under this clause, the parties hereto acknowledge that the security interest of the Agent in such Collateral has not been perfected and all the representations and warranties, covenants and Events of Default contained herein and in the other Loan Documents which would otherwise be violated shall be deemed modified to reflect the foregoing and not be violated;

(g) if requested, if the Agent cause each Securities Intermediary with which any Grantor maintains a Securities Account to enter into a Control agreement with respect thereto in form and substance satisfactory to the Agent; and

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(h) from time to time, promptly following the Agent's reasonable request, execute and deliver confirmatory written instruments pledging to the Agent the Collateral, but any such Grantor's failure to do so shall not affect or limit the security interest granted hereby or the Agent's other rights in and to the Collateral.

With respect to the foregoing and the grant of the security interest hereunder, each Grantor hereby authorizes the Agent to Authenticate and to file one or more financing or continuation statements, and amendments thereto, and make filings with the United States Patent and Trademark Office or United States Copyright Office (or any successor office or any similar office in any other country), in each case for the purpose of perfecting, confining, continuing, enforcing or protecting the security interest granted by each Grantor, without the signature of any Grantor, and naming any Grantor or the Grantors as debtors and the Agent as secured party. A carbon, photographic, telecopied or other reproduction of this Agreement or any financing statement covering the Collateral or any part thereof shall be sufficient as a financing statement where permitted by Law.

ARTICLE V
THE AGENT

Each Grantor hereby irrevocably constitutes and appoints the Agent and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of such Grantor and in the name of such Grantor or in its own name, for the purpose of carrying out the terms of this Agreement, to take, upon the occurrence and during the continuance of any Event of Default, any and all appropriate action and to execute any and all documents and instruments that may be necessary or desirable to accomplish the purposes of this Agreement. Without limiting the generality of the foregoing, each Grantor hereby gives the Agent the power and right, on behalf of such Grantor, without notice to or assent by such Grantor, to do any or all of the following:

(a) demand payment of its Receivables Collateral; (ii) enforce payments of its Receivables Collateral by legal proceedings or otherwise; (iii) exercise all of its rights and remedies with respect to proceedings brought to collect its Receivables Collateral; (iv) sell or assign its Receivables Collateral upon such terms, for such amount and at such times as the Agent deems advisable; (v) settle, adjust, compromise, extend or renew any of its Receivables Collateral; (vi) discharge and release any of its Receivables Collateral; (vii) prepare, file and sign such Grantor's name on any proof of claim in bankruptcy or other similar document against any obligor of any of its Receivables Collateral; (viii) notify the post office authorities to change the address for delivery of the such Grantor's mail to an address designated by the Agent, and open and dispose of all mail addressed to the Grantor; and (ix) endorse such Grantor's name upon any Chattel Paper, document, instrument, invoice, or similar document or agreement relating to any Receivables Collateral or any goods pertaining thereto;

(b) in the case of any Intellectual Property Collateral, execute and deliver, and have recorded, any and all agreements, instruments, documents and papers as the Agent may request to evidence the Lender Parties' security interest in such Intellectual Property Collateral and the goodwill and general intangibles of such Grantor relating thereto or represented thereby;

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

(d) execute, in connection with any sale or other disposition provided for in Section 6.1, any endorsements, assignments or other instruments of conveyance or transfer with respect to the Collateral; and

(e) (i) 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 Agent or as the Agent shall direct; (ii) ask or demand for, collect, and receive payment of and give 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; (iii) 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; (iv) 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 portion thereof and to enforce any other right in respect of any Collateral; (v) defend any suit, action or proceeding brought against such Grantor with respect to any Collateral; (vi) settle, compromise or adjust any such suit, action or proceeding and, in connection therewith, give such discharges or releases as the Agent may deem appropriate; (vii) notify, or require any Grantor to notify, Account Debtors to make payment directly to the Agent and change the post office box number or other address to which the Account Debtors make payments; (viii) assign any Intellectual Property Collateral (along with the goodwill of the business to which any such Intellectual Property Collateral pertains), throughout the world for such term or terms, on such conditions, and in such manner, as the Agent shall in its sole discretion determine; and (ix) generally, 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 Agent were the absolute owner thereof for all purposes, and do, at the Agent's option and such Grantor's expense, at any time, or from time to time, all acts and things that the Agent deems necessary to protect, preserve or realize upon the Collateral and the Lender Parties' security interests therein and to effect the intent of this Agreement, all as fully and effectively as such Grantor might do.

Each Grantor hereby acknowledges, consents and agrees that the power of attorney granted pursuant to this Section is irrevocable and coupled with an interest.

SECTION 5.1 **Agent May Perform**. If any Grantor fails to perform any agreement contained herein, the Agent may itself perform, or cause performance of, such agreement, and the reasonable expenses of the Agent incurred in connection therewith shall be payable by such Grantor pursuant to Section 6.2.

SECTION 5.2 **Access and Examination**. The Agent may at all reasonable times have access to, examine, audit, make extracts from and inspect each Grantor's records, files and books of account and the Collateral, and may discuss each Grantor's affairs with such Grantor's officers and management. Each Grantor will deliver to the Agent promptly following its request therefor any instrument necessary for the Agent to obtain records from any service bureau maintaining records for such Grantor. The Agent may, at expense of the Grantors, use each

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Grantor's personnel, supplies and premises as may be reasonably necessary for maintaining or enforcing the security interest granted hereunder. The Agent shall have the right, at any time, in each Grantor's name to verify the validity, amount or any other matter relating to the Accounts, by mail, telephone or otherwise.

SECTION 5.3 **Agent Has No Duty**. (a) In addition to, and not in limitation of, Section 2.4, the powers conferred on the Agent hereunder are solely to protect its interest (on behalf of the Lender Parties) in the Collateral and shall not impose any duty on it to exercise any such powers. Neither the Agent nor any of its officers, directors, employees or agents shall be liable for failure to demand, collect or realize upon any 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 any Grantor or any other Person or to take any other action whatsoever with regard to the Collateral or any part thereof (including the taking of any necessary steps to preserve rights against prior parties or any other rights pertaining to any Collateral). Neither the Agent nor any of its officers, directors, employees or agents shall be responsible to any Grantor for any act or failure to act hereunder, except for their own gross negligence or willful misconduct.

(b) Each Grantor assumes all responsibility and liability arising from or relating to the use, sale or other disposition of the Collateral. The Obligations shall not be affected by any failure of the Agent to take any steps to perfect the security interest granted hereunder or to collect or realize upon the Collateral, nor shall loss of or damage to the Collateral release any Grantor from any of its Obligations.

ARTICLE VI
REMEDIES

SECTION 6.1 **Agent Appointed Attorney-in-Fact**.
If any Event of Default shall have occurred and be continuing:

(a) The Agent may exercise in respect of the Collateral, in addition to other rights and remedies provided for herein or otherwise available to it, all the rights and remedies of a secured party on default under the U.C.C. and also may

(i) require each Grantor to, and each Grantor hereby agrees that it will, at its expense and upon the request of the Agent forthwith, assemble all or part of the Collateral as directed by the Agent and make it available to the Agent at its premises or another place designated by the Agent (whether or not the U.C.C. applies to the affected Collateral);

(ii) 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 any Grantor or any other Person (all and each of which demands, defenses, advertisements and notices are hereby waived), 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, at any of the Agent's offices or elsewhere, for cash, on credit or for future delivery, and upon such other terms as the Agent may deem commercially reasonable. Each Grantor agrees that, to the extent notice of sale

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shall be required by law, at least ten days' prior notice to such Grantor of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification. The Agent shall not be obligated to make any sale of Collateral regardless of notice of sale having been given. The Agent may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned;

(iii) with respect to the Intellectual Property, on demand, to cause the security interest to become an assignment, transfer and conveyance of any of or all such Collateral by the applicable Grantors to the Agent, or to license or sublicense, whether general, special or otherwise, and whether on an exclusive or non-exclusive basis, any such Collateral throughout the world on such terms and conditions and in such manner as the Agent shall determine (other than in violation of any then existing licensing arrangements to the extent that waivers cannot be obtained); and

(iv) with or without legal process and with or without prior notice or demand for performance, to take possession of the Collateral and without liability for trespass to enter any premises where the Collateral may be located for the purpose of taking possession of or removing the Collateral.

(b) All cash proceeds received by the Agent in respect of any sale of, collection from, or other realization upon all or any part of the Collateral may, in the discretion of the Agent, be held, to the extent permitted under applicable Law, by the Agent as additional collateral security for all or any part of the Secured Obligations, and/or then or at any time thereafter shall be applied (after payment of any amounts payable to the Agent pursuant to Section 10.3 of the Credit Agreement and Section 6.2 below) in whole or in part by the Agent for the ratable benefit of the Lender Parties against all or any part of the Secured Obligations in accordance with Section 8.5 of the Credit Agreement. Any surplus of such cash or cash proceeds held by the Agent and remaining after payment in full of all the Secured Obligations, and the termination of all Commitments, shall be paid over to the Grantors or to whomsoever may be lawfully entitled to receive such surplus.

(c) The Agent may exercise any and all rights and remedies of each Grantor under or in connection with the Collateral, including the right to sue upon or otherwise collect, extend the time for payment of, modify or amend the terms of, compromise or settle for cash, credit, or otherwise upon any terms, grant other indulgences, extensions, renewals, compositions, or releases, and take or omit to take any other action with respect to the Collateral, any security therefor, any agreement relating thereto, any insurance applicable thereto, or any Person liable directly or indirectly in connection with any of the foregoing, without discharging or otherwise affecting the liability of any Grantor for the Obligations or under this Agreement or any other Loan Document and the Assigned Agreements or otherwise in respect of the Collateral, including any and all rights of such Grantor to demand or otherwise require payment of any amount under, or performance of any provision of, any Collateral.

The Agent shall give the Grantors 10 days' written notice (which each Grantor agrees is reasonable notice within the meaning of Section 9-610 of the U.C.C.) of the Agent's intention to make any sale of Collateral. Such notice, in the case of a public sale, shall state the

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time and place for such sale and, in the case of a sale at a broker's board or on a securities exchange, shall state the board or exchange at which such sale is to be made and the day on which the Collateral, or portion thereof, will first be offered for sale at such board or exchange. Any such public sale shall be held at such time or time within ordinary business hours and at such place or places as the Agent may fix and state in the notice (if any) of such sale. At any such sale, the Collateral, or portion thereof, to be sold may be sold in one lot as an entirety or in separate parcels, as the Agent may (in its sole and absolute discretion) determine. The Agent shall not be obligated to make any sale of any Collateral if it shall determine not to do so, regardless of the fact that notice of sale of such Collateral shall have been given. The Agent may, without notice or publication adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for sale, and such sale may, without further notice, be made at the time and place to which the same was so adjourned. In case any sale of all or any part of the Collateral is made on credit or for future delivery, the Collateral so sold may be retained by the Agent until the sale price is paid by the purchase or purchasers thereof, but the Agent shall not incur any liability in case any such purchaser or purchasers shall fail to take up and pay for the Collateral so sold and, in case of any such failure, such Collateral may be sold again upon like notice. At any public (or, to the extent permitted by Law, private) sale made pursuant to this Section, any Lender Party may bid for or purchase, free (to the extent permitted by Law) from any right of redemption, stay, valuation or appraisal on the part of any Grantor (all said rights being also hereby waived and released to the extent permitted by Law), the Collateral or any part thereof offered for sale and may make payment on account thereof by using any claim then due and payable to such Lender Party from any Grantor as a credit against the purchase price, and such Lender Party may upon compliance with the terms of sale, hold, retain and dispose of such property without further accountability to any Grantor therefor.

SECTION 6.2 Indemnity and Expenses. Each Grantor agrees to jointly and severally indemnify the Agent from and against any and all claims, losses and liabilities arising out of or resulting from this Agreement (including enforcement of this Agreement), except claims, losses or liabilities resulting from the Agent's gross negligence or willful misconduct as determined by a final judgment of a court of competent jurisdiction. Each Grantor will upon demand pay to the Agent the amount of any and all reasonable expenses, including the reasonable fees and disbursements of its counsel and of any experts and agents, which the Agent may incur in connection with;

(a) the administration of this Agreement;

(b) the custody, preservation, use or operation of, or the sale of, collection from, or other realization upon, any of the Collateral;

(c) the exercise or enforcement of any of the rights of the Agent or the Lender Parties hereunder; or

(d) the failure by any Grantor to perform or observe any of the provisions hereof.

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SECTION 6.3 **Securities Laws**. If the Agent shall determine to exercise its right to sell all or any of the Collateral pursuant to Section 6.1, each Grantor agrees that, upon request of the Agent, such Grantor will, at its or his own expense:

(a) execute and deliver, and cause each issuer of the Collateral contemplated to be sold and the directors and officers thereof to execute and deliver, all such instruments and documents, and do or cause to be done all such other acts and things, as may be necessary or, in the opinion of the Agent, advisable to register such Collateral under the provisions of the Securities Act of 1933, as from time to time amended (the "Securities Act"), and to cause the registration statement relating thereto to become effective and to remain effective for such period as prospectuses are required by law to be furnished, and to make all amendments and supplements thereto and to the related prospectus which, in the opinion of the Agent, are necessary or advisable, all in conformity with the requirements of the Securities Act and the rules and regulations of the Securities and Exchange Commission applicable thereto;

(b) use its or his best efforts to qualify the Collateral under the state securities or "Blue Sky" laws and to obtain all necessary governmental approvals for the sale of the Collateral, as requested by the Agent;

(c) cause each such issuer to make available to its or his security holders, as soon as practicable, an earnings statement that will satisfy the provisions of Section 11(a) of the Securities Act; and

(d) do or cause to be done all such other acts and things as may be necessary to make such sale of the Collateral or any part thereof valid and binding and in compliance with applicable law.

Each Grantor further acknowledges the impossibility of ascertaining the amount of damages that would be suffered by the Agent or the Lender Parties by reason of the failure by such Grantor to perform any of the covenants contained in this Section and, consequently, to the extent permitted under applicable Law, agrees that, if such Pledgor shall fail to perform any of such covenants, it shall pay, as liquidated damages and not as a penalty, an amount equal to the value (as determined by the Agent) of the Collateral on the date the Agent shall demand compliance with this Section.

ARTICLE VII
MISCELLANEOUS PROVISIONS

SECTION 7.1 **Loan Document**. This Agreement is a Loan Document executed pursuant to the Credit Agreement and shall (unless otherwise expressly indicated herein) be construed, administered and applied in accordance with the terms and provisions thereof, including Article X thereof.

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SECTION 7.2 **Amendments, etc.; Additional Grantors; Successors and Assigns.**

(a) No amendment to or waiver of any provision of this Agreement nor consent to any departure by any Grantor herefrom, shall in any event be effective unless the same shall be in writing and signed by the Agent and, with respect to any such amendment, by the Grantors, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

(b) Upon the execution and delivery by any Person of a security agreement supplement in substantially the form of Exhibit B hereto (each a "Security Agreement Supplement"), (i) such Person shall be referred to as an "Additional Collateral Grantor" and shall be and become a Grantor, and each reference in this Agreement to "Grantor" shall also mean and be a reference to such Additional Collateral Grantor and (ii) the schedule supplements attached to each Security Agreement Supplement shall be incorporated into and become a part of and supplement Schedules I through VII hereto, as appropriate, and the Agent may attach such schedule supplements to such Schedules, and each reference to such Schedules shall mean and be a reference to such Schedules, as supplemented pursuant hereto.

(c) Any Grantor that becomes an Excluded Foreign Subsidiary after the date hereof shall, following written request of such Grantor to the Agent and at the sole cost of such Grantor, be released from the terms hereof pursuant to documentation reasonably satisfactory to the Agent.

(d) This Agreement shall be binding upon each Grantor and its successors, transferees and assigns and shall inure to the benefit of and be enforceable by the Agent and each other Lender Party and their respective successors, transferees and assigns; provided, however, that no Grantor may assign its obligations hereunder without the prior written consent of the Agent.

SECTION 7.3 **Addresses for Notices**. All notices and other communications provided for hereunder shall be in writing and mailed, delivered or transmitted by facsimile to either party hereto at the address set forth in the Credit Agreement, or at such other address as shall be designated by such party in a written notice to each other party. Any notice, if mailed and properly addressed with postage prepaid, shall be deemed given three Business Days after posting; any notice sent by prepaid overnight express mail shall be deemed delivered on the next following Business Day; and any notice transmitted by facsimile shall be deemed given upon electronic confirmation of transmission by the sender thereof.

SECTION 7.4 **Section Captions**. Section captions used in this Agreement are for convenience of reference only, and shall not affect the construction of this Agreement.

SECTION 7.5 **Severability**. Wherever possible each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable Law, but if any provision of this Agreement shall be prohibited by or invalid under such Law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

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SECTION 7.6 **Counterparts**. This Agreement may be executed by the parties hereto in several counterparts, each of which shall be deemed to be an original and all of which shall constitute together but one and the same agreement.

SECTION 7.7 **Waivers**. Each Grantor hereby waives any right, to the extent permitted by applicable Law, to receive prior notice of a judicial or other hearing with respect to any action or prejudgment remedy or proceeding by the Agent to take possession, exercise control over or dispose of any item of Collateral where such action is permitted under the terms of this Agreement or any other Loan Document or by applicable Law or the time, place or terms of sale in connection with the exercise of the Agent's rights hereunder. Each Grantor waives, to the extent permitted by applicable Law, any bonds, security or sureties required by the Agent with respect to any of the Collateral. Each Grantor also waives any damages (direct, consequential or otherwise) occasioned by the enforcement of the Agent's rights under this Agreement or any other Loan Document, including, the taking of possession of any Collateral or the giving of notice to any Account Debtor or the collection of any Receivables Collateral, all to the extent that such waiver is permitted by Law. Each Grantor also consents that the Agent, in connection with the enforcement of the Agent's rights and remedies under this Agreement, may enter upon any premises owned by or leased to it without obligations to pay rent or for use and occupancy, through self-help, without judicial process and without having first obtained an order of any court. These waivers and all other waivers provided for in this Agreement and the other Loan Documents have been negotiated by the parties and each Borrower acknowledges that it has been represented by counsel of its own choice and has consulted such counsel with respect to its rights hereunder.

SECTION 7.8 **Governing Law, Entire Agreement, etc.** **THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW YORK, EXCEPT TO THE EXTENT THAT THE VALIDITY OR PERFECTION OF THE SECURITY INTEREST HEREUNDER, OR REMEDIES HEREUNDER, IN RESPECT OF ANY PARTICULAR COLLATERAL ARE GOVERNED BY THE LAWS OF A JURISDICTION OTHER THAN THE STATE OF NEW YORK. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS CONSTITUTE THE ENTIRE UNDERSTANDING AMONG THE PARTIES HERETO WITH RESPECT TO THE SUBJECT MATTER HEREOF AND SUPERSEDE ANY PRIOR AGREEMENTS, WRITTEN OR ORAL, WITH RESPECT THERETO.**

SECTION 7.9 **Forum Selection and Consent to Jurisdiction.** **ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF THE LENDER PARTIES OR ANY GRANTOR SHALL BE BROUGHT AND MAINTAINED IN THE FEDERAL AND STATE COURTS LOCATED IN THE BOROUGH OF MANHATTAN OF THE STATE OF NEW YORK; PROVIDED, HOWEVER, THAT ANY SUIT SEEKING ENFORCEMENT AGAINST ANY COLLATERAL OR OTHER PROPERTY SHALL BE BROUGHT, AT THE AGENT'S OPTION, IN THE COURTS OF ANY JURISDICTION WHERE SUCH COLLATERAL OR OTHER PROPERTY MAY BE FOUND. EACH GRANTOR HEREBY EXPRESSLY AND IRREVOCABLY SUBMITS**

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TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS FOR THE PURPOSE OF ANY SUCH LITIGATION AS SET FORTH ABOVE AND IRREVOCABLY AGREES TO BE BOUND BY ANY JUDGMENT RENDERED THEREBY IN CONNECTION WITH SUCH LITIGATION. EACH GRANTOR FURTHER IRREVOCABLY CONSENTS TO SERVICE OF PROCESS BY REGISTERED MAIL, POSTAGE PREPAID, OR BY PERSONAL SERVICE WITHIN OR WITHOUT THE STATE OF NEW YORK. EACH GRANTOR HEREBY EXPRESSLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY HAVE OR HEREAFTER MAY HAVE TO THE LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN ANY SUCH COURT REFERRED TO ABOVE AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. TO THE EXTENT THAT ANY GRANTOR HAS OR HEREAFTER MAY ACQUIRE ANY IMMUNITY FROM JURISDICTION OF ANY COURT OR FROM ANY LEGAL PROCESS (WHETHER THROUGH SERVICE OR NOTICE, ATTACHMENT PRIOR TO JUDGMENT, ATTACHMENT IN AID OF EXECUTION OR OTHERWISE) WITH RESPECT TO ITSELF OR ITS PROPERTY, SUCH GRANTOR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, HEREBY IRREVOCABLY WAIVES SUCH IMMUNITY IN RESPECT OF ITS OBLIGATIONS UNDER THIS AGREEMENT.

SECTION 7.10 **Waiver of Jury Trial. THE LENDER PARTIES AND EACH GRANTOR HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF THE LENDER PARTIES OR ANY GRANTOR. EACH GRANTOR ACKNOWLEDGES AND AGREES THAT IT HAS RECEIVED FULL AND SUFFICIENT CONSIDERATION FOR THIS PROVISION (AND EACH OTHER PROVISION OF EACH OTHER LOAN DOCUMENT TO WHICH IT IS A PARTY) AND THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE LENDERS ENTERING INTO THE CREDIT AGREEMENT AND EACH SUCH OTHER LOAN DOCUMENT. IN NO EVENT SHALL ANY LENDER PARTY BE LIABLE FOR ANY CONSEQUENTIAL DAMAGES WHICH MAY BE ALLEGED IN CONNECTION HEREWITH OR THE TRANSACTIONS CONTEMPLATED HEREBY.**

SECTION 7.11 **Release of ESOP Pledged Shares**. The Agent shall release the ESOP Pledged Shares from the security interests granted hereunder in accordance with the formula prescribed in Section 8.01 of the ESOP Loan and Pledge Agreement, and shall return the certificates and related stock powers evidencing the same to the Borrower.

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IN WITNESS WHEREOF, each Grantor has caused this Agreement to be duly executed and delivered by its officer thereunto duly authorized as of the date first above written.

JACQUES MORET, INC.

By:_____
Name:
Title:

ACKNOWLEDGED AND ACCEPTED:

JPMORGAN CHASE BANK,
as Agent

By: _____
Name: James Dawn
Title: VP

ACKNOWLEDGEMENT AND CONSENT

GREATbANC Trust Company, notin its corporate capacity, but solely in its capacity as Trustee of the Trust established pursuant to the Jacques Moret, Inc. Employees Stock Ownership Trust, hereby acknowledges and consents to the foregoing Agreement as it relates to the ESOP Pledged Shares, the ESOP Loan and Pledge Agreement and the ESOP Note.

GREATBANC TRUST COMPANY

By: Marilyn Marchetti
Name:
Title:

46140v3

SCHEDULE III
to
Security Agreement

Item A. Trademarks

Registered Trademarks

Grantor: Jacques Moret, Inc.

Country	Trademark	Registration No.	Registration Date
USA	JACQUES MORET	1,515,511	12/6/1988
USA	BODY MOTION	1,479,721	3/8/1988
USA	BODY MOVES	1,582,628	2/13/1990
USA	MORET ULTRA	1,865,864	12/6/1994
USA	ACTIV-8	1,753,079	2/16/1993
USA	IIM A PRINCESS	2,114,682	11/18/1997
USA	JUST IMAGINE	2,171,645	7/7/1998
USA	ULTRA	2,252,267	6/15/1999
USA	JACQUES MORET	1,051,920	11/2/1976
USA	ACTIVE AMERICA	2,239,255	4/13/1999
USA	CODE 18	2,276,531	9/7/1999
USA	LINEAR	2,222,755	2/9/1999
USA	COOL SYSTEM SUPPORT	2,356,128	6/6/2000
USA	SPEED DRI	2,414,630	12/19/2000
USA	MORET ULTRA (Design)	2,452,049	5/15/2001
USA	DRY FX	2,422,256	1/16/2001
USA	M (Design)	1,931,632	10/31/1995
Canada	ENERGY & MOTION	TMA 437,948	1/6/1995
Benelux	JACQUES MORET	502,491	8/20/1991
Canada	JACQUES MORET	445,096	7/14/1995
China	JACQUES MORET	727679	1/28/1995
Germany	JACQUES MORET	2,102,355	7/20/1990
France	JACQUES MORET	1,606,018	7/25/1990
Israel	JACQUES MORET	76,859	7/6/1990
Italy	JACQUES MORET	587,805	7/20/1990
Japan	JACQUES MORET	2,420,965	6/30/1992
Mexico	JACQUES MORET	520,239	7/20/1990
Singapore	JACQUES MORET	B767491	8/15/1991
Spain	JACQUES MORET	1,729,214	11/10/1992
Taiwan	JACQUES MORET	628,442	1/15/1994
U.K.	JACQUES MORET	B1,422,037	4/21/1990
U.K.	JACQUES MORET	B1,436,955	8/18/1990
Japan	JACQUES MORET	2,497,295	1/29/1993
China	MORET	727676	1/28/1995

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Country	Trademark	Registration No.	Registration Date
Chile	MORET ULTRA	443,860	4/21/1995
Mexico	MORET ULTRA	490,894	5/25/1994
China	Chinese Character Design	825,772	3/21/1996
Hong Kong	JACQUES MORET	10085/1996	11/5/1996
Panama	JACQUES MORET	72,293	1/30/1996
Poland	JACQUES MORET	78,756	6/11/1992
Turkey	JACQUES MORET	158,289	2/14/1995
Canada	ACTIV-8	462,353	8/30/1996
Taiwan	M (Design)	807,712	7/1/1998

Pending Trademark Applications

Grantor: Jacques Moret, Inc.

Country	Trademark	Serial No.	Filing Date
USA	COTTON SHIMMER	75-928,262	2/24/2000
USA	ENERGY & MOTION	76-279,943	7/2/2001
USA	M (Design)	78-124,452	4/26/2002
USA	BLUE FX	75-916,222	2/11/2000
USA	FLEXTEL	78-082,949	9/6/2001
USA	COOL SYSTEM TECHNOLOGY	78-103,038	1/16/2002
USA	CST COOL SYSTEM TECHNOLOGY	78-103,040	1/16/2002
Malaysia	JACQUES MORET	94-11955	12/21/1994

MORRISON COHEN SINGER & WEINSTEIN, LLP

750 LEXINGTON AVENUE, NEW YORK, N.Y. 10022

TELEPHONE: (212) 735-8600 FACSIMILE: (212) 735-8708

WRITER'S DIRECT DIAL NUMBER:
(212) 735-8765

WRITER'S E-MAIL ADDRESS:
rmulry@mcsw.com

August 9, 2002

BY FEDERAL EXPRESS

Commissioner of Patents and Trademarks
Box Assignments
Washington, DC 20231

Re: Assignment of Trademarks - Jacques Moret, Inc.

Dear Sir or Madam:

Enclosed please find a Recordation Form Cover Sheet ("Cover Sheet"), together with an executed Security Agreement to record a security interest in the trademarks listed in Schedule A to the Cover Sheet.

Enclosed also is this Firm's check in the amount of $615.00 payable to the Commissioner of Trademarks representing the prescribed filing fee for such assignment.

Please acknowledge receipt of the enclosed materials by date-stamping and returning the stamped self-addressed postcard provided herewith.

Should you have any questions or comments, please do not hesitate to contact me at the above telephone number.

Very truly yours,

Raymond P. Mulry

Enclosures

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