

# RECORDATION FORM COVER SHEET TRADEMARKS ONLY

Form PTO-1594 (Modified)  
(Rev. 9/93)  
OMB No. 0651-0011 (exp. 4/94)  
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TM05/REV03

Docket No.:  
299/35951

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

1. Name of conveying party(ies):  
DJF ENTERPRISES

Individual(s)                       Association  
 General Partnership             Limited Partnership  
 Corporation-State-California  
 Other \_\_\_\_\_

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

2. Name and address of receiving party(ies)  
Name: U.S. BANK NATIONAL ASSOCIATION

Internal Address: P.O. Box 14651

Street Address: 7<sup>th</sup> & Washington, 5<sup>th</sup> Fl.

City: St. Louis            State: MO            ZIP: 63178-4651

Individual(s) citizenship \_\_\_\_\_  
 Association \_\_\_\_\_  
 General Partnership \_\_\_\_\_  
 Limited Partnership \_\_\_\_\_  
 Corporation-State \_\_\_\_\_  
 Other National banking 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  
 Security Agreement             Change of Name  
 Other \_\_\_\_\_

Execution Date: November 5, 2002

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

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

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

Additional numbers attached?     Yes     No

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

Name: Kay R. Sherman

Internal Address: Thompson Coburn LLP

Street Address: One US Bank Plaza

City: St. Louis            State: MO            ZIP: 63101

6. Total number of application and registrations involved: ..... 13

7. Total fee (37 CFR 3.41): ..... \$ 340.00

Enclosed  
 Authorized to be charged to deposit account

8. Deposit account number:  
20-0823

DO NOT USE THIS SPACE

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

Kay R. Sherman                      Kay Sh                      11/14/02  
Name of Person Signing                      Signature                      Date

Total number of pages including cover sheet, attachments, and documents

TRADEMARK

**EXHIBIT A****UNITED STATES TRADEMARKS**

Trademark	Registration Number	Filing Date
SMASH BOX	2,392,373	10/03/2000
SMASH BOX (Stylized Letters)	2,299,041	12/07/1999
SMASH BOX (Stylized Letters)	2,124,001	12/23/1997
SMASH BY O.G. THE ORIGINATOR (and Design)	2,113,309	11/18/1997
SMASHBOX PRODUCTIONS	2,070,226	06/10/1997
SMASH	2,053,781	04/22/1997
SMASH BOX BEAUTY	1,939,488	12/05/1995
SMASH BY O.G.	1,817,980	01/25/1994
SMASH BOX	1,763,490	04/06/1993

**UNITED STATES TRADEMARK APPLICATIONS**

Trademark	Application Number	Filing Date
SPLIT SCREEN	76/451,988	09/23/2002
LIMITLESS	76/444,392	08/26/2002
SMASH BOX	75/976,134	08/16/1995
SMASH BOX	74/716,364	08/16/1995

## TRADEMARK SECURITY AGREEMENT

THIS TRADEMARK SECURITY AGREEMENT (this "Agreement") dated as of November 5, 2002 is made between U.S. BANK NATIONAL ASSOCIATION, a national banking association ("Bank"), having an office at 7<sup>th</sup> and Washington, 5<sup>th</sup> Floor, P.O. Box 14651, St. Louis, Missouri 63178-4651 and DJF ENTERPRISES, a California corporation, having an office at 8538 Warner Drive, Culver City, California 90232 ("Borrower").

### 1. DEFINITIONS.

1.1 Financing Agreement. Any capitalized term used, but not defined in, this Agreement will have the meaning given in the Financing Agreement among Bank, Borrower, SBX Holding Company, Smashbox Beauty Cosmetics, Inc., and Jerome Jay Enterprises dated as of the date of this Agreement (the "Financing Agreement").

### 1.2 Other Definitional Provisions; Construction. Unless otherwise specified,

(i) As used in this Agreement, accounting terms relating to Borrower not defined in this Agreement have the respective meanings given to them in accordance with GAAP.

(ii) References to the Uniform Commercial Code, or UCC, mean as enacted in the particular jurisdiction(s) encompassed by the reference.

(iii) The definition of any document, instrument or agreement includes all schedules, attachments and exhibits thereto and all renewals, extensions, supplements, restatements and amendments thereof. All Exhibits and Schedules attached to this Agreement are incorporated into, made and form an integral part of, this Agreement for all purposes.

(iv) "Hereunder," "herein," "hereto," "this Agreement" and words of similar import refer to this entire document; "including" is used by way of illustration and not by way of limitation, unless the context clearly indicates the contrary; the singular includes the plural and conversely; and any action required to be taken by Borrower is to be taken promptly, unless the context clearly indicates the contrary.

(v) All of the uncapitalized terms contained in this Agreement which are now or hereafter defined in the Code will, unless the context indicates otherwise, have the meanings provided for now or hereafter in the Code.

(vi) "material item of the Trademark Collateral" means each item of the Trademark Collateral unless, with respect to the applicable item of Trademark Collateral, the goodwill of the business connected with and symbolized by such application, registration, trademark or service mark is not necessary in the conduct of Borrower's business.

2. GRANT OF SECURITY. To secure the full, prompt and complete payment and performance of the Obligations, Borrower hereby grants to, and creates in favor of, Bank a continuing security interest in, and Lien on, all of the Trademark Collateral. As used in this Agreement, "Trademark Collateral" means, collectively, (i) all of Borrower's right, title and interest in and to all of its now or in the future owned or existing trademarks, service marks, trademark or service mark registrations, trade names, and trademark or service mark applications (exclusive, for purposes only of this Agreement, of any Intent to Use Applications as defined below), including each mark, registration, and application listed on Schedule I attached hereto and made a part hereof (the property in this item (i) being collectively, the "Trademarks"); (ii) all renewals of each of the Trademarks; (iii) all income, royalties, damages and payments now and in the future due or payable under with respect to any and all Trademarks, including damages and payments for past or future infringements of any and all Trademarks; (iv) all rights to sue for past, present and future infringements of any and all Trademarks; (v) all rights corresponding to each of the Trademarks throughout the world; (vi) all rights of Borrower as licensor or licensee under, and with respect to, trademarks, service marks, trade names, and trademark and service mark applications, including the licenses listed on Schedule I and the Trademark Licenses (as defined in Section 3.1) (Borrower's rights as licensor or licensee sometimes referred to in this Agreement collectively as "Trademark License Rights"); and (vii) together in each case with the goodwill of Borrower's business connected with the use of, and symbolized by, the Trademark Collateral. Notwithstanding anything to the contrary in this Agreement, nothing in this Agreement is intended to be, or may be construed to be, an assignment of any application to register any trademark or service mark based on any intent to use filed by, or on behalf of, Borrower ("Intent to Use Applications"), and any Intent to Use Applications are specifically excluded from Trademark Collateral for purposes of this Agreement.

3. LICENSES.

3.1 Licenses. Borrower expressly represents, warrants, covenants and agrees that Borrower shall not license, as licensor, any Trademarks (a "Trademark License") included in the Trademark Collateral without the prior written consent of Bank, which consent will not be unreasonably withheld by Bank, and each such Trademark License so granted shall be subject to the terms and conditions of this Agreement, including the termination provisions in Section 3.2. Bank shall not be under any obligation to consent to a Trademark License unless it is necessary or appropriate in the ordinary course of Borrower's business as presently conducted by it and so long as no Event of Default has occurred and is continuing.

3.2 Event of Default. If an Event of Default occurs, Bank shall have the right, immediately or at any time thereafter, in its sole discretion, to deliver to Borrower and to each licensee under a Trademark License notice terminating the Trademark Licenses, whereupon (i) the Trademark Licenses will automatically and immediately terminate without any further notice or demand (which Borrower expressly waives); (ii) all rights and interests of the licensees in and to and under the Trademark Licenses will revert to Borrower; and (iii) all rights of the licensees in the Trademark Collateral will cease to exist and be void. If the Event of Default is cured to Bank's satisfaction or is waived in writing by Bank, then, without any further action on the part of Bank, the Trademark Licenses will immediately revert with the licensees on the cessation of the Event of Default subject to the terms of this Agreement.

4. REPRESENTATIONS AND WARRANTIES. Borrower represents and warrants that:

(i) Borrower is the sole legal and beneficial owner of the entire right, title and interest in and to the Trademark Collateral, free and clear of any Lien, option, or license except as otherwise disclosed in Schedule I.

(ii) Set forth in Schedule I is a complete and accurate list of all Trademarks and the Trademark License Rights owned by Borrower or in which Borrower has any rights.

(iii) Each Trademark identified in Schedule I is subsisting and has not been adjudged invalid, unregistrable or unenforceable, in whole or in part, and each registered trademark and service mark and, to Borrower's knowledge, each application for trademark and service mark registration is valid, registered or registrable and enforceable. Borrower has notified Bank in writing of all prior uses of any material item of the Trademark Collateral of which Borrower is aware which could lead to such item becoming invalid or unenforceable, including prior unauthorized uses by third parties and uses which were not supported by the goodwill of the business connected with such item.

(iv) Borrower has not granted any license, release, covenant not to sue, or non-assertion assurance to any Person with respect to any part of the Trademark Collateral except as otherwise disclosed in Schedule I.

(v) Reasonable and proper statutory notice has been used in connection with the use of each registered trademark and service mark.

(vi) The Trademark License Rights are in full force and effect, and Borrower is not in default under any of the Trademark License Rights and, to Borrower's knowledge, no event has occurred which with notice, the passage of time, the satisfaction of any other condition, or all of them, might constitute a default by Borrower under the Trademark License Rights.

(vii) Except for the filing of UCC financing statements, no authorization, consent, approval or other action by, and no notice to or filing or recording with, any Governmental Authority is currently or is reasonably expected to be required either (a) for the grant by Borrower of the Liens granted hereby or for the execution, delivery or performance of this Agreement by Borrower, or (b) for the perfection of or the exercise by Bank of its rights and remedies hereunder.

5. FURTHER ASSURANCES.

5.1 Required Borrower Actions. Borrower will from time to time, at its expense, promptly execute and deliver all further instruments, documents and agreements take all further action, that may be necessary or desirable, or that Bank may reasonably request, in order to (i) continue, perfect and protect the security interests and Liens granted or purported to be granted by this Agreement or (ii) enable Bank to exercise and enforce its rights and remedies under this Agreement with respect to any part of the Trademark Collateral.

5.2 Financing Statements. Without limiting the generality of Section 5.1, Bank is authorized by Borrower (i) to file one or more financing statements disclosing Bank's security interest and Lien under this Agreement without Borrower's signature appearing thereon and to correct or complete, or to cause to be corrected or completed, any financing statements, continuation statements or other such documents as have been filed naming Borrower as debtor and Bank as secured party and (ii) to give notice to any creditor or landlord of Borrower or to any other Person to whom Bank may reasonably determine it is necessary or desirable under applicable law to give notice to perfect or preserve Bank's interests in the Trademark Collateral. A carbon, photographic or other reproduction of this Agreement or any financing statement covering the Trademark Collateral or any part thereof will be sufficient as a financing statement.

5.3 Further Information. Borrower will furnish to Bank from time to time statements and schedules further identifying and describing the Trademark Collateral, including any licensing of Trademark Collateral, and all other reports in connection with the Trademark Collateral as Bank may reasonably request, all in reasonable detail.

5.4 Additional Ownership Interests. Borrower agrees that, should it obtain an ownership interest in any Trademark License Rights or Trademarks, which is not now identified in Schedule I, (i) Borrower will give prompt written notice to Bank, (ii) the provisions of Section 2 shall automatically apply to the Trademark License Rights and Trademarks (exclusive of any Intent to Use Applications) acquired or obtained, and (iii) each of such Trademark License Rights and Trademarks (exclusive of any Intent to Use Applications), together with the goodwill of the business connected with the use of the mark and symbolized by it, shall automatically become part of the Trademark Collateral. Borrower authorizes Bank to modify this Agreement by amending Schedule I to include any of the Trademark License Rights or Trademarks which become part of the Trademark Collateral under this Section 5.4.

5.5 Maintenance of Rights. Borrower will take all necessary steps in any proceeding before the United States Patent and Trademark Office (or any similar office or agency in any other country or any political subdivision of that country) or in any court to maintain each registered Trademark and to pursue each material item of Trademark Collateral, including the filing of applications for renewal, the payment of maintenance fees, and the participation in opposition, interference and infringement proceedings. To the extent necessary to the conduct of its businesses, Borrower agrees to take corresponding steps with respect to the other items of Trademark Collateral (*i.e.*, exclusive of any material item of Trademark Collateral) and each new or other registered Trademark and application for Trademark registration to which Borrower is now or later becomes entitled. Any expenses incurred in connection with such activities shall be borne by Borrower. Borrower shall not (i) abandon any registration of or any material item of Trademark Collateral or (ii) abandon any right to file an application for Trademark registration, or, with respect to any other Trademark Collateral (*i.e.*, exclusive of any material item of Trademark Collateral), abandon any pending application, registration, or Trademark, unless the goodwill of the business connected with and symbolized by such application, registration, or Trademark is not necessary in the conduct of Borrower's business.

5.6 Notification. Borrower will notify Bank immediately when Borrower learns (i) that any material item of the Trademark Collateral may become abandoned or dedicated; (ii) of any adverse determination or any development (including the institution of any proceeding in the United States Patent and Trademark Office or any other U.S. or foreign court or tribunal of any kind) regarding any material item of the Trademark Collateral; or (iii) that Borrower is or potentially could be in default of any of the Trademark License Rights.

5.7 Infringement. If Borrower becomes aware that any material item of the Trademark Collateral is infringed or misappropriated by any Person, Borrower will promptly notify Bank and will, if necessary under the circumstances, promptly sue for infringement or misappropriation and for recovery of all damages caused by the infringement or misappropriation, and will take all other actions as Borrower deems appropriate under the circumstances to protect the Trademark Collateral. Any expense incurred in connection with the foregoing activities will be borne by Borrower.

5.8 Statutory Notice. Borrower will continue to use, and will cause the use of, reasonable and proper statutory notice in connection with its use of each registered trademark or service mark.

6. TRANSFERS AND OTHER LIENS. Borrower will not:

(i) sell, assign (by operation of law or otherwise), license or otherwise dispose of any of the Trademark Collateral, except (a) as expressly permitted by the Financing Agreement or (b) as expressly permitted by this Agreement;

(ii) create or suffer to exist any Liens on, or with respect to, any of the Trademark Collateral except as otherwise disclosed in Schedule I or as otherwise expressly permitted by the Financing Agreement; or

(iii) take any other action in connection with any of the material items of Trademark Collateral that could impair the value of the interests or rights of Borrower or Bank in, to or under such Trademark Collateral.

7. POWER OF ATTORNEY. Borrower hereby irrevocably appoints Bank as Borrower's attorney-in-fact, with full authority in Borrower's place, stead and on behalf of Borrower and in Borrower's name or otherwise, from time to time in Bank's sole and absolute discretion, to take any action and to execute any instrument that Bank may deem necessary or advisable on and after the occurrence of an Event of Default and during the continuance thereof to accomplish the purposes of this Agreement including:

(i) to ask, demand, collect, sue for, recover, compromise, receive and give acquittance and receipts for moneys due and to become due under, or in respect of, any and all of the Trademark Collateral;

(ii) to receive, indorse, and collect any drafts or other instruments, documents and chattel paper, in connection with clause (i) of this Section 7; and

(iii) (a) to file any claims or take any action or institute any proceedings that Bank may deem necessary or desirable for the collection of any of the Trademark Collateral, (b) to assign of record in the United States Patent and Trademark Office (and each other applicable Governmental Authority) any and all of the Trademark Collateral in Bank's name (or the name of any nominee), or (c) otherwise to enforce the rights of Bank with respect to any of the Trademark Collateral.

8. BANK MAY PERFORM.

8.1 Performance by Bank. If Borrower fails to perform any of its obligations contained in this Agreement after notice from Bank, Bank (solely at its option without any obligation to do so) may itself perform, or cause performance of, such obligations, and the expenses of Bank incurred in connection therewith shall be payable under the Financing Agreement.

8.2 Bank May Bring Suit. On, and at any time after, the occurrence of an Event of Default and during the continuance thereof, Bank will have the right, but in no way will be obligated, to bring suit in its own name or in the name of Borrower to enforce any part of the Trademark Collateral. Borrower will at the reasonable request of Bank do any and all lawful acts and sign any and all proper documents required by Bank in aid of Bank's enforcement actions. On Bank's demand, Borrower will promptly reimburse and indemnify Bank for all costs and expenses incurred by Bank in the exercise of its rights under this Section 8.

9. BANK'S DUTIES. The powers and rights conferred on Bank under this Agreement are solely to protect its interests in the Trademark Collateral and will not impose any duty on Bank to exercise any of the powers or rights. Except for the reasonable care of any Trademark Collateral in its custody and possession and the accounting for moneys actually received by it under this Agreement, Bank will have no duty as to any Trademark Collateral or as to the taking of any necessary steps to preserve rights against other Persons or any other rights pertaining to any Trademark Collateral. Bank will be deemed to have exercised reasonable care of the Trademark Collateral in its custody and possession if the Trademark Collateral is accorded treatment substantially equal to that which Bank accords its own property.

10. REMEDIES. If any Event of Default occurs and is continuing:

(i) Bank may exercise in respect of the Trademark Collateral, in addition to other rights and remedies provided for in this Agreement or otherwise available to Bank, all the rights and remedies of a secured party on default under the UCC (whether or not the UCC applies to the affected Trademark Collateral) and also may do any one or more of the following at Bank's option: (a) cause the assignment of record in the United States Patent and Trademark Office (and each other applicable Governmental Authority) of the Trademark Collateral in Bank's name or in the name of any nominee of Bank; (b) exercise any and all rights and remedies of Borrower under or otherwise in respect of the Trademark Collateral; (c) require Borrower to, and Borrower at its expense will, immediately on Bank's request assemble all or any part of the documents embodying the Trademark Collateral as directed by Bank and make the documents available to



Bank at a place to be designated by Bank which is reasonably convenient to both Bank and Borrower; (d) license the Trademark Collateral or any part thereof, or assign its rights to the Trademark License Rights to any Person and exercise any and all rights and remedies of Borrower under or in connection with the Trademark Licenses or otherwise in respect of the Trademark Collateral; and (e) with 10 days advance notice (unless no notice is required under applicable law), sell the Trademark Collateral or any part thereof in one or more parcels at public or private sale, at any of Bank's offices or elsewhere, for cash, on credit or for future delivery, and upon such other terms as Bank may deem commercially reasonable. In the event of any sale, assignment, or other disposition of any of the Trademark Collateral, (1) the goodwill of the business connected with and symbolized by any Trademark Collateral subject to such disposition shall be included, and (2) Borrower will supply to Bank or its designee Borrower's (A) know-how and expertise relating to the manufacture and sale of products or the provision of services relating to any Trademark Collateral subject to such disposition and (B) customer lists and other records relating to such Trademark Collateral and to the distribution of such products and services. Borrower agrees that, to the extent notice of sale shall be required by law, at least 10 days' notice to Borrower 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. Bank shall not be obligated to make any sale of any Trademark Collateral regardless of notice of sale having been given. Bank 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.

(ii) All payments received by Borrower under or in connection with any of the Trademark Collateral will be received in trust for the benefit of Bank, will be segregated from other funds of Borrower and will be immediately paid over to Bank in the same form as so received (with any necessary indorsements) in accordance with the Financing Agreement.

(iii) All payments made under, in connection with or otherwise in respect of, the Trademark Collateral and all cash proceeds received by Bank in respect of any sale of, collection from, or other realization on all or any part of the Trademark Collateral may, in the discretion of Bank, be held by Bank as collateral for, and then or at any time thereafter applied (after payment of any costs or expenses payable to Bank pursuant to the Financing Agreement) in whole or in part by Bank against, all or any part of the Obligations, in any order as Bank may elect. Any surplus of any cash or cash proceeds held by Bank and remaining after the indefeasible payment and performance in full of all Obligations will be paid over to Borrower or to whomsoever may be lawfully entitled to receive the surplus, if any.

11. NOTICE. Any notice, certificate, request, notification and other communication required, permitted or contemplated hereunder must be in writing and given in accordance with the Financing Agreement.

12. GENERAL.

12.1 Severability. If any term of this Agreement is found invalid under Missouri law or other laws of mandatory application by a court of competent jurisdiction, the invalid term will

be considered excluded from this Agreement and will not invalidate the remaining terms of this Agreement.

12.2 GOVERNING LAW. THIS AGREEMENT HAS BEEN DELIVERED AND ACCEPTED AT AND SHALL BE DEEMED TO HAVE BEEN MADE AT ST. LOUIS, MISSOURI. THIS AGREEMENT SHALL BE DEEMED TO BE A CONTRACT MADE UNDER AND GOVERNED BY THE INTERNAL LAWS OF THE STATE OF MISSOURI (WITHOUT REGARD TO MISSOURI CONFLICTS OF LAW PRINCIPLES); PROVIDED THAT BANK SHALL RETAIN ALL RIGHTS ARISING UNDER FEDERAL LAW.

12.3 WAIVER OF JURISDICTION. AS A SPECIFICALLY BARGAINED INDUCEMENT FOR BANK TO ENTER INTO THIS AGREEMENT AND EXTEND CREDIT TO BORROWER, BORROWER AND BANK AGREE THAT ANY ACTION, SUIT OR PROCEEDING IN RESPECT OF OR ARISING OUT OF THIS AGREEMENT, ITS VALIDITY OR PERFORMANCE, AND WITHOUT LIMITATION ON THE ABILITY OF BANK, ITS SUCCESSORS AND ASSIGNS, TO EXERCISE ALL RIGHTS AS TO THE TRADEMARK COLLATERAL AND INITIATE AND PROSECUTE IN ANY APPLICABLE JURISDICTION ACTIONS RELATED TO REPAYMENT OF THE OBLIGATIONS, SHALL BE INITIATED AND PROSECUTED AS TO ALL PARTIES AND THEIR SUCCESSORS AND ASSIGNS AT ST. LOUIS, MISSOURI. BANK AND BORROWER EACH CONSENTS TO AND SUBMITS TO THE EXERCISE OF JURISDICTION OVER ITS PERSON BY ANY MISSOURI STATE COURT SITTING IN THE CITY OR COUNTY OF ST. LOUIS, MISSOURI OR ANY UNITED STATES OF AMERICA COURT SITTING IN THE EASTERN DISTRICT OF MISSOURI, EASTERN DIVISION HAVING JURISDICTION OVER THE SUBJECT MATTER, AND CONSENTS THAT ALL SERVICE OF PROCESS BE MADE BY CERTIFIED MAIL DIRECTED TO BORROWER AND BANK AT THEIR RESPECTIVE ADDRESSES SET FORTH IN THE FINANCING AGREEMENT OR AS OTHERWISE PROVIDED UNDER THE LAWS OF THE STATE OF MISSOURI. BORROWER WAIVES ANY OBJECTION BASED ON FORUM NON CONVENIENS, AND ANY OBJECTION TO VENUE OF ANY ACTION INSTITUTED HEREUNDER, AND CONSENTS TO THE GRANTING OF SUCH LEGAL OR EQUITABLE RELIEF AS IS DEEMED APPROPRIATE BY THE COURT.

12.4 Survival and Continuation of Representations and Warranties. All of Borrower's representations and warranties contained in this Agreement shall (i) survive the execution, delivery and acceptance hereof by the parties hereto and the closing of the transactions described herein or related hereto, and (ii) remain true until the Obligations are fully performed, paid and satisfied, made by Borrower with the same effect as though the representations and warranties had been made again on, and as of, each day of the term of this Agreement, subject to such changes as may not be prohibited hereby, do not constitute Events of Default, and have been consented to by Bank in writing.

12.5 Bank's Additional Rights Regarding Collateral. All of the Obligations shall constitute one obligation secured by all of the Trademark Collateral. In addition to Bank's other rights and remedies under the Loan Documents, Bank may, in its discretion exercised in good faith, following the occurrence and during the continuance of any Event of Default: (i) exchange,

enforce, waive or release any of the Trademark Collateral or portion thereof, (ii) apply the proceeds of the Trademark Collateral against the Obligations and direct the order or manner of the liquidation thereof (including any sale or other disposition), as Bank may, from time to time, in each instance determine, and (iii) settle, compromise, collect or otherwise liquidate any such security in any manner without affecting or impairing its right to take any other further action with respect to any security or any part thereof.

12.6 Application of Payments; Revival of Obligations. Bank shall have the continuing right to apply or reverse and reapply any payments to any portion of the Obligations. To the extent Borrower makes a payment or payments to Bank or Bank receives any payment or proceeds of the Trademark Collateral or any other security for Borrower's benefit, which payment(s) or proceeds or any part thereof are subsequently voided, invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party under any bankruptcy act, state or federal law, common law or equitable cause, then, to the extent of such payment(s) or proceeds received, the Obligations or part thereof intended to be satisfied shall be revived and shall continue in full force and effect, as if such payment(s) or proceeds had not been received by Bank.

12.7 Additional Waivers by Borrower. Borrower waives presentment and protest of any instrument and notice thereof, and, except as expressly provided in the Loan Documents, demand, notice of default and all other notices to which Borrower might otherwise be entitled. Borrower shall also assert no claim against Bank on any theory of liability for consequential, special, indirect or punitive damages.

12.8 Equitable Relief. Borrower recognizes that, in the event Borrower fails to perform, observe or discharge any of its obligations or liabilities under this Agreement, any remedy of law may prove to be inadequate relief to Bank; therefore, Borrower agrees that Bank, if Bank so requests, shall be entitled to temporary and permanent injunctive relief in any such case without the necessity of proving actual damages.

12.9 Entire Agreement; Counterparts; Fax Signatures. This Agreement and the other Loan Documents set forth the entire agreement of the parties with respect to subject matter of this Agreement and supersede all previous understandings, written or oral, in respect thereof. Any request from time to time by Borrower for Bank's consent under any provision in the Loan Documents must be in writing, and any consent to be provided by Bank under the Loan Documents from time to time must be in writing in order to be binding on Bank; *however*, Bank will have no obligation to provide any consent requested by Borrower, and Bank may, for any reason in its discretion exercised in good faith, elect to withhold the requested consent. Two or more duplicate originals of this Agreement may be signed by the parties, each of which shall be an original but all of which together shall constitute one and the same instrument. Any documents delivered by, or on behalf of, Borrower by fax transmission (i) may be relied on by Bank as if the document were a manually signed original and (ii) will be binding on Borrower for all purposes of the Loan Documents.

12.10 Headings. Section headings in this Agreement are included for convenience of reference only and shall not relate to the interpretation or construction of this Agreement.

12.11 Cumulative Remedies. The remedies provided in this Agreement and the other Loan Documents are cumulative and not exclusive of any remedies provided by law. Exercise of one or more remedy(ies) by Bank does not require that all or any other remedy(ies) be exercised and does not preclude later exercise of the same remedy. If there is any conflict, ambiguity, or inconsistency, in Bank's judgment, between the terms of this Agreement or any of the other Loan Documents, then the applicable terms and provisions, in Bank's judgment, providing Bank with greater rights, remedies, powers, privileges, or benefits will control. Without limiting the generality of the foregoing, the description of the Trademark Collateral in this Agreement does not in any way limit the description of, or Bank's Lien on, the "Collateral" as defined in the Security Agreement, or Bank's remedies respecting the "Collateral."

12.12 Waivers and Amendments in Writing. Failure by Bank to exercise any right, remedy or option under this Agreement or in any Loan Documents or delay by Bank in exercising the same shall not operate as a waiver by Bank of its right to exercise any such right, remedy or option. No waiver by Bank shall be effective unless it is in writing and then only to the extent specifically stated. This Agreement cannot be amended, modified, changed or terminated orally.

12.13 Recourse to Directors or Officers. The obligations of Bank under this Agreement are solely the corporate obligations of Bank. No recourse shall be had for the payment of any amount owing in respect to this Agreement or for the payment of any fee hereunder or for any other obligation or claim arising out of or based upon this Agreement against any stockholder, employee, officer, or director of Bank.

12.14 Assignment. Bank shall have the right to assign this Agreement and the other Loan Documents. Borrower may not assign, transfer or otherwise dispose of any of its rights or obligations hereunder, by operation of law or otherwise, and any such assignment, transfer or other disposition without Bank's written consent shall be void. All of the rights, privileges, remedies and options given to Bank under the Loan Documents shall inure to the benefit of Bank's successors and assigns, and all the terms, conditions, covenants, provisions and warranties in this Agreement shall inure to the benefit of and bind the permitted successors and assigns of Borrower and Bank, respectively.

12.15 Continuing Rights. This Agreement creates a continuing Lien on the Trademark Collateral and will (i) remain in full force and effect until the full and final payment of all the Obligations, (ii) be binding on Borrower, its successors and assigns, and (iii) inure, together with the rights and remedies of Bank under this Agreement, to the benefit of Bank and Bank's successors, transferees and assigns.

12.16 Term: Trademark Collateral Reversion. Subject to Section 12.6, this Agreement will terminate on the later to occur of (i) the full, indefeasible performance, payment and satisfaction of the Obligations and (ii) the termination of the Financing Agreement, at which time the Lien granted by this Agreement will terminate and all rights to the Trademark Collateral will revert to Borrower (without representation, warranty or recourse). On any such termination,

Bank will, at Borrower's expense, sign and deliver to Borrower such documents as Borrower reasonably requests to evidence such termination (without representation, warranty or recourse).

12.17 Conflict. If there is any conflict, ambiguity, or inconsistency, in Bank's judgment, between the terms of this Agreement and any of the other Loan Documents, then the applicable terms and provisions, in Bank's judgment, providing Bank with greater rights, remedies, powers, privileges, or benefits will control. Without limiting the generality of the foregoing, the description of the Trademark Collateral in this Agreement does not in any way limit the description of, or Bank's Lien on, the "Collateral" as defined in the Security Agreement, or Bank's remedies respecting the "Collateral."

12.18 WAIVER OF JURY TRIAL. AS A SPECIFICALLY BARGAINED INDUCEMENT FOR BANK TO ENTER INTO THIS AGREEMENT AND EXTEND CREDIT TO BORROWER, BORROWER AND BANK EACH WAIVES TRIAL BY JURY WITH RESPECT TO ANY ACTION, CLAIM, SUIT OR PROCEEDING IN RESPECT OF OR ARISING OUT OF THIS AGREEMENT OR THE CONDUCT OF THE RELATIONSHIP BETWEEN BANK AND BORROWER.

IN WITNESS WHEREOF, this Agreement has been duly executed by Borrower as of November 5, 2002.

DJF ENTERPRISES

By: *Dean Factor*  
Name: Dean Factor  
Title: president

STATE OF California  
COUNTY OF Los Angeles SS:

The foregoing instrument was acknowledged before me this 5<sup>th</sup> day of November, 2002, by Dean Factor, President of and on behalf of DJF Enterprises, a California corporation.

*Barbara Rabenowitz*  
Notary Public



**IFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

County of Los Angeles

On November 5, 2002 before me, Barbara Rabenowitz  
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Mark D. Cleland  
Name(s) of Signer(s)

personally known to me - OR -  proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Barbara Rabenowitz  
Signature of Notary Public

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer  
Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

RIGHT THUMBPRINT OF SIGNER  
Top of thumb here

Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

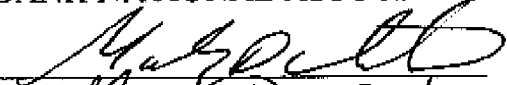
- Individual
- Corporate Officer  
Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

RIGHT THUMBPRINT OF SIGNER  
Top of thumb here

Signer Is Representing: \_\_\_\_\_

Accepted as of November 5, 2002.

U.S. BANK NATIONAL ASSOCIATION

By:   
Name: Mark D. O'Connell  
Title: SVP

SCHEDULE I

## UNITED STATES TRADEMARKS

Trademark	Registration Number	Issue Date
SMASH BOX	2,392,373	10/03/2000
SMASH BOX (Stylized Letters)	2,299,041	12/07/1999
SMASH BOX (Stylized Letters)	2,124,001	12/23/1997
SMASH BY O.G. THE ORIGINATOR (and Design)	2,113,309	11/18/1997
SMASHBOX PRODUCTIONS	2,070,226	06/10/1997
SMASH	2,053,781	04/22/1997
SMASH BOX BEAUTY	1,939,488	12/05/1995
SMASH BY O.G.	1,817,980	01/25/1994
SMASH BOX	1,763,490	04/06/1993

## UNITED STATES TRADEMARK APPLICATIONS

Trademark	Application Number	Filing Date
SPLIT SCREEN	76/451,988	09/23/2002
LIMITLESS	76/444,392	08/26/2002
SMASH BOX	75/976,134	08/16/1995
SMASH BOX	74/716,364	08/16/1995

## STATE AND FOREIGN COUNTRY TRADEMARKS

Trademark	Jurisdiction	Registration Number	Issue Date
SMASH	California	99079	06/30/1994
SMASH	Mexico	482211	09/27/1994
SMASH	New York	R27633	05/13/1994
SMASH BOX	British Virgin Islands	1594	02/11/1998
SMASH BOX	Canada	TMA487,664	01/06/1998
SMASH BOX	France	95,603,465	12/28/1995
SMASH BOX	Italy	744,111	01/25/1996
SMASH BOX	Japan		
SMASH BOX	Japan	4,117,472	02/20/1998



SMASH BOX	Japan	4,096,290	12/19/1997
SMASH BOX	Japan	4,065,257	10/03/1997
SMASH BOX	United Kingdom	2032870A	01/17/1997
SMASH BOX (Stylized)	Australia	749,937	07/17/1998
SMASH BOX (Stylized)	Bermuda	29,464	02/02/1998
SMASH BOX (Stylized)	Hong Kong	1298/1997	11/25/1997
SMASH BOX (Stylized)	Korea	430,530	11/21/1998
SMASH BOX (Stylized)	Mexico		11/30/1999
SMASH BOX (Stylized)	New Zealand	285,144	05/05/1998
SMASH BOX (Stylized)	Saudi Arabia	484/90	01/10/1998
SMASH BOX (Stylized)	Taiwan	807,061	07/01/1998
SMASH BOX	Canada		
SMASH BOX (Stylized Letters)	Dominican Republic	96,338	04/15/1998
SMASH BOX (Stylized Letters)	France	95,603,466	12/28/1995
SMASH BOX (Stylized Letters)	Italy	744,112	03/30/1998
SMASH BOX (Stylized Letters)	Japan	4,062,291	12/19/1997
SMASH BOX (Stylized Letters)	Japan	4,172,656	07/31/1998
SMASH BOX (Stylized Letters)	Singapore	T97/04046E	04/07/1997
SMASH BOX (Stylized Letters)	United Kingdom	22032789A	01/03/1997
SMASH by O.G.	Mexico	482210	09/27/1994