

10-25-2002

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

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



102261157

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

1. Name of conveying party(ies): NCI Building Systems, Inc.; NCI Holding Corp.; NCI Operating Corp.; Metal Coaters of California, Inc.; A&S Building Systems, L.P. Individual(s) Association General Partnership Limited Partnership Corporation-State Other

2. Name and address of receiving party(ies) Name: Bank of America, N.A. Internal Address: Street Address: 901 Main Street, 67th Floor City: Dallas State: Texas Zip: 75202 Individual(s) citizenship Association National Banking Association General Partnership Limited Partnership Corporation-State Other

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

3. Nature of conveyance: Assignment Merger Security Agreement Change of Name Other

Execution Date: September 13, 2002

4. Application number(s) or registration number(s): A. Trademark Application No.(s) see attached

B. Trademark Registration No.(s) see attached

Additional number(s) attached Yes No

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

Internal Address: Street Address: 1201 Main Street, P.O. Box 50784

City: Dallas State: Texas Zip: 75250

6. Total number of applications and registrations involved: 81

7. Total fee (37 CFR 3.41): \$ 2,040.00 Enclosed Authorized to be charged to deposit account

8. Deposit account number: Winstead: 23-2426 (Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

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

S. Roxanne Edwards Name of Person Signing Signature Date 10/17/02

Total number of pages including cover sheet, attachments, and document: 36

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

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TRADEMARK REEL: 002601 FRAME: 0853

OFFICE OF PATENT RECORDS 2002 OCT 22 PM 3:46 TRADEMARK SECTION

10/24/2002 13062296 40.00 2000.00 01 FC-8521 02 FC-8522

ADDITIONAL NAMES OF CONVEYING PARTIES

NCI Building Systems, L.P.

Metal Building Components, L.P.

Metal Coaters Operating, L.P.

U.S. Trademark Registrations

<u>Trademark</u>	<u>Registration Number</u>
Retro-R	1,906,296
Royal K-70	2,025,884
Dura 20	2,037,498
Nationwide Homes	1,744,545
Metallic Building Company	2,110,344
Metallic and design	623,865
Metallic and design	515,413
Metallic and design	556,035
Metallic Building Company	546,893
NCI & design	2,028,845
AAS (miscellaneous design)	2,035,454
A & S Building Systems	2,028,846
Mid-West Steel Building Company	2,040,247
Design logo for Midwest Steel	2,030,148
ARS & design	2,030,149
Steel Systems Incorporated & Design	2,066,598
Value Express & design	2,054,529
NCI Express & design	2,052,295
NCI Building Components	2,028,844
NCI	2,079,167
DBC1	2,071,877
NCI & design	2,119,192
A & S and design	2,030,362
Metallic	2,119,193
Verti-Loc	2,085,914
Vistasheen	2,335,371
Vistacolor	2,335,370
VistaShadow	2,335,369
Architectural Loc	2,202,364
SS216	2,169,345
Mesco & design	1,055,914
Mesco and design	1,069,517
Classic Steel Frame Homes	2,183,547
ECI and design	2,296,476
IPS & design	2,196,662
Battenlok	1,686,016
Signature	1,750,427
Ultra-Dek 124	1,310,768
Double-Lok 124	1,613,519
Lokseam	1,684,278
MBCI and design	1,424,579
NuRoof	1,917,593
FlexLoc	1,950,005

Imperial Rib	1,980,366
ABC American Building Components	1,926,989
Monarch Rib	1,905,298
MBCI (and design)	1,206,560
Regal Rib	1,082,255
Rugged Rib	1,171,944
Ajax	0,236,307
NuWall	2,281,230
SuperLok	2,161,830
StormProof	2,277,089
Rain Guard	2,192,159
Classic	2,256,416
Perma-Clad	2,193,540
Artisan	2,262,021
LiteFrame	2,266,112
Traditional	2,286,987
SlimLine	2,192,160
Ameri-Drain	2,264,507
7/8" Wide Rib	2,478,821
3/4" High Rib	2,450,419
S-36	2,262,735
BI-36	2,266,746
B-36	2,259,247
Metal Coaters and design	1,675,343
DOUBLECOTE	2,005,583
Long Bay System	2,485,858
SL-16	2,359,209
Millennium	2,458,977
WeatherSafe	2,489,812
Metal-Prep and design	1,663,644
MBCI and design	1,422,844
Speedy Steel Garages	2,581,159

TRADEMARK

Tuff-Shield
Classic Steel Frame Homes and design
ECI Building Components
Royal Lock
Supra-Rib
Single Source

SERIAL NUMBER

App. No. 76/332089 (pending)
App. No. 76/420403 (pending)
App. No. 75/705743 (pending)
App. No. 75/430040 (pending)
App. No. 75/365614 (pending)
App. No. 75/670396 (pending)

SECURITY AGREEMENT

Among

THE GRANTORS NAMED HEREIN

and

BANK OF AMERICA, N.A.

as Administrative Agent

September 13, 2002

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SECURITY AGREEMENT

SECURITY AGREEMENT (this "*Agreement*"), dated as of September 13, 2002, made by each of the signatories party hereto (collectively, the "*Grantors*" and each a "*Grantor*"), in favor of Bank of America, N.A., as Administrative Agent ("*Administrative Agent*"), for the ratable benefit of each Secured Lender (as hereinafter defined) (the Administrative Agent in said capacity, herein sometimes also referred to as the "*Secured Party*").

BACKGROUND.

A. Bank of America, N.A., as the Administrative Agent, Swing Line Lender and L/C Issuer, the Lenders party thereto, Wachovia Bank, N.A., as Syndication Agent, and NCI Building Systems, Inc. ("*Borrower*") entered into the Credit Agreement dated as of September 13, 2002 (said Credit Agreement, as it may be amended, restated, extended, supplemented or otherwise modified in writing from time to time, being the "*Credit Agreement*"). Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed thereto in the Credit Agreement.

B. It is the intention of the parties hereto that this Agreement create a first priority security interest (subject only to Permitted Liens) in the Collateral in favor of the Secured Party for the ratable benefit of the Secured Lenders securing the payment and performance of the Obligations.

C. It is a condition precedent to effectiveness of the Credit Agreement that the Grantors shall have executed and delivered this Agreement.

AGREEMENT.

NOW, THEREFORE, in consideration of the premises set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to induce certain of the Secured Lenders to make the Loans, the Swing Line Lender to make Swing Line Loans and L/C Issuer to issue Letters of Credit under the Credit Agreement, each Grantor hereby agrees with Administrative Agent, for its benefit and the ratable benefit of Secured Parties, as follows:

ARTICLE I.

DEFINITIONS

Section 1.1 *Definitions.* For purposes of this Agreement:

"*Account*" means an account (as defined in the UCC), and (whether or not included in such definition), a right to payment of a monetary obligation, whether or not earned by performance for property that has been or is to be sold, leased, licensed, assigned, or otherwise

disposed of, and for service rendered or to be rendered, and all right, title, and interest in any returned property, together with all rights, titles, securities, and guarantees with respect thereto, including any rights to stoppage in transit, replevin, reclamation, and resales, and all related Liens whether voluntary or involuntary.

"*Account Debtor*" means any Person who is or who may become obligated to each Grantor under, with respect to or on account of an Account.

"*Chattel Paper*" means chattel paper (as defined in the UCC, and shall include Electronic Chattel Paper and Tangible Chattel Paper), and (whether or not included in such definition), 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, or a lease of specific Goods.

"*Collateral*" means all (a) Accounts and all Software used in the management thereof, (b) Chattel Paper and Instruments related to or arising out of the disposition of Accounts or Inventory, (c) Inventory, (d) Equipment, (e) all contract rights relating to the lease, sale or other disposition of Accounts and Inventory, (f) all General Intangibles related to or arising out of the disposition of Accounts or Inventory, (g) Pledged Equity Interests, (h) the Intercompany Note and (i) Proceeds of the foregoing, provided, however, that with respect to Equipment and Fixtures, "Collateral" shall include only trade fixtures and shall not include or be deemed to include heating, ventilating and air conditioning systems and fixtures, electrical systems and fixtures, plumbing systems and fixtures, building mechanical systems and fixtures, or any other base building systems and fixtures constituting fixtures under the UCC and necessary to, or primarily utilized in connection with, the operation of the real property and improvements on or to which any such systems and fixtures are affixed or attached.

"*Electronic Chattel Paper*" means electronic chattel paper (as defined in the UCC), and (whether or not included in such definition), chattel paper evidenced by a record or records consisting of information stored in electronic medium.

"*Equipment*" means equipment (as defined in the UCC), and (whether or not included in such definition), all Goods other than Inventory or consumer goods, and all improvements, accessions, or appurtenances thereto. The term Equipment shall include Fixtures.

"*Fixtures*" means fixtures (as defined in the UCC), and (whether or not included in such definition), all Goods that have become so related to particular real property that an interest in them arises under the real property Law of the state in which the real property is situated.

"*General Intangible*" means all right, title, and interest of each Grantor (in each case whether now or hereafter existing, owned, arising, or acquired) in and to a general intangible (as defined in the UCC (whether or not included in such definition), all personal property, including things in action, 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, gas or other minerals before extraction.

"Goods" means goods (as defined in the UCC), and (whether or not included in such definition), all things that are movable when the security interest granted hereby attaches.

"Instrument" means an instrument (as defined in the UCC), and (whether or not included in such definition), 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 indorsement or assignment.

"Intercompany Promissory Note" means that certain promissory note in the original principal amount of \$550,000,000, dated May 5, 1998, payable by NCI Holding Corp. to the Borrower on demand or on May 5, 2018, as amended, modified, renewed or extended.

"Intellectual Property" means with respect to each Grantor, such Grantor's copyrights, trademarks, trademark registrations and applications for registration, trade names, corporate names, trade styles, service marks, logos, other source and business identifying marks, together with goodwill associated therewith, such Grantor's Software, any written agreement granting such Grantor any right to use any copyright, trademark, trademark application or registration (other than such rights that cannot be licensed by such Grantor), any written agreement granting such Grantor any right to use any Software (other than such rights that cannot be licensed by such Grantor), and books and records used in connection with any of the foregoing, but in each case limited solely to the extent necessary for the disposition of any Inventory pursuant to the terms of this Agreement.

"Inventory" means inventory (as defined in the UCC), and (whether or not included in such definition), Goods that (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, including packaging materials, scrap material, manufacturing supplies and spare parts, and all such Goods that have been returned to or repossessed by or on behalf of such Person, provided, that with respect to each Grantor, Inventory shall not include Goods owned by customers of such Grantor and delivered by such customers to such Grantor for processing by such Grantor at such Grantor's location in the ordinary course of business.

"Permitted Liens" means Liens permitted under Section 7.01 of the Credit Agreement.

"Pledged Equity Interests" shall mean all Pledged Stock, Pledged LLC Interests, Pledged Partnership Interests and Pledged Trust Interests.

"Pledged LLC Interests" shall mean, with respect to each Grantor, all interests of such Grantor in any limited liability company that is a Subsidiary of the Borrower and listed on Schedule 1 as owned by such Grantor and the certificates, if any, representing such limited liability company interests and any interest of such Grantor on the books and records of such limited liability company or on the books and records of any securities intermediary pertaining to each such limited liability company interest, and all dividends, distributions, cash, warrants, rights, options, instruments, securities and other property or proceeds from time to time received,

receivable or otherwise distributed in respect of or in exchange for any or all of such limited liability company interests.

"Pledged Partnership Interests" shall mean, with respect to each Grantor, all interests of such Grantor in any general partnership, limited partnership, limited liability partnership or other partnership that is a Subsidiary of the Borrower and listed on Schedule 1 as owned by such Grantor, and the certificates, if any, representing such partnership interests and any interest of such Grantor on the books and records of each such partnership or on the books and records of any securities intermediary pertaining to such partnership interests and all dividends, distributions, cash, warrants, rights, options, instruments, securities and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such partnership interests.

"Pledged Stock" shall mean, with respect to each Grantor, all shares of Capital Stock listed of Schedule 1 as owned by such Grantor and the certificates, if any, representing such shares and any interest of such Grantor on the books of the issuer of such shares identified on Schedule 1 or on the books of any securities intermediary pertaining to such shares, and all dividends, distributions, cash, warrants, rights, options, instruments, securities and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such shares.

"Pledged Trust Interests" shall mean, with respect to each Grantor, all interests of such Grantor in a business trust or other trust that is a Subsidiary of the Borrower and listed on Schedule 1 as owned by such Grantor, and the certificates, if any, representing such trust interests and any interest of such Grantor on the books and records of such trust or on the books and records of any securities intermediary pertaining to such interest and all dividends, distributions, cash, warrants, rights, options, instruments, securities and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such trust interests.

"Proceeds" means proceeds (as defined in the UCC), and (whether or not included in such definition), (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, (d) claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to the Collateral, and (e) insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to the Collateral.

"Secured Lender" or *"Secured Lenders"* means (a) Administrative Agent, (b) Lenders, (c) L/C Issuer, (d) Swing Line Lender, and (e) any Affiliate of any Lender that is a party to any Swap Contract (provided that such Lender was a Lender at the time such Swap Contract was entered into) with any Grantor or any other Subsidiary of the Borrower.

"Software" means Grantor's rights in and to software (as defined in the UCC), and (whether or not included in such definition), Grantor's rights in computer programs in each case

subject to the terms of applicable licenses and only to the extent used in the management of Accounts.

"*Tangible Chattel Paper*" means all right, title, and interest of each Grantor (in each case whether now or hereafter existing, owned, arising, or acquired) in and to tangible chattel paper (as defined in the UCC); and (whether or not included in such definition), chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.

"*UCC*" means Chapters 8 and 9 of the Uniform Commercial Code as in effect from time to time in the State of Texas.

Section 1.2 *Other Definitional Provisions.* Capitalized terms not otherwise defined herein have the meaning specified in the Credit Agreement, and, to the extent of any conflict, terms as defined in the Credit Agreement shall control (provided, that a more expansive or explanatory definition shall not be deemed a conflict).

Section 1.3 *Construction.* Unless otherwise expressly provided in this Agreement or the context requires otherwise, (a) the singular shall include the plural, and *vice versa*, (b) words of a gender include the other gender, (c) monetary references are to Dollars, (d) time references are to Dallas time, (e) references to "Articles," "Sections," "Exhibits," and "Schedules" are to the Articles, Sections, Exhibits, and Schedules of and to this Agreement, (f) headings used in this Agreement are for convenience only and shall not be used in connection with the interpretation of any provision hereof, (g) references to any Person include that Person's heirs, personal representatives, successors, trustees, receivers, and permitted assigns, that Person as a debtor-in possession, and any receiver, trustee, liquidator, conservator, custodian, or similar party appointed for such Person or all or substantially all of its assets, (h) references to any Law include every amendment or restatement to it, rule and regulation adopted under it, and successor or replacement for it, (i) references to a particular Loan Document include each amendment or restatement to it made in accordance with the Credit Agreement and such Loan Document, and (j) the inclusion of Proceeds in the definition of "Collateral" shall not be deemed a consent by Secured Parties to any sale or other disposition of any Collateral not otherwise specifically permitted by the terms of the Credit Agreement or this Agreement. This Agreement is a Loan Document.

ARTICLE II.

GRANT OF SECURITY INTEREST AND LICENSE

Section 2.1 *Assignment and Grant of Security Interest; Grant of License.* As security for the payment and performance, as the case may be, in full of the Obligations, (excluding obligations arising under any Swap Contract to which an Affiliate of any Lender is a party that was entered into prior to the time such Lender became a Lender):

(a) each Grantor hereby assigns to, and pledges and grants to Secured Party, for the ratable benefit of Secured Lenders, a security interest in the entire right, title, and interest of

Grantor in and to all Collateral of such Grantor, whether now or hereafter existing, owned, arising or acquired (provided, the amount of equity interests of any Foreign Subsidiary pledged in the aggregate by the Grantors hereunder shall be limited to 65% of the issued and outstanding equity interests of such Foreign Subsidiary, and the Collateral shall not include any of the equity interests of any of the Grantors in Building Systems de Mexico, S.A. de C.V.); and

(b) each Grantor hereby grants to Secured Party for the ratable benefit of Secured Lenders, an irrevocable royalty-free right and license to use, upon the occurrence and during continuance of an Event of Default, the Intellectual Property worldwide including, without limitation, the Intellectual Property identified in Schedule 2, and to enable Administrative Agent to exercise its rights and remedies with respect to Collateral, including, without limitation, the right to use the Intellectual Property on or in connection with the disposition, maintenance or further production, manufacturing or processing of the Inventory, the operation and maintenance of the Equipment and the collection of Accounts as Administrative Agent reasonably deems necessary or appropriate in the exercise of its rights and remedies with respect to Inventory, Equipment and Accounts.

Section 2.2 *Grantor Remains Liable.* Anything herein to the contrary notwithstanding, (a) each Grantor shall remain liable with respect to and under all Collateral, (b) the exercise by Secured Party of any of the rights hereunder shall not release any Grantor from any of its duties or obligations with respect to or under any Collateral, and (c) Secured Party shall have no obligation or liability with respect to or under any Collateral by reason of this Agreement, nor shall Secured 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 2.3 *Delivery of Security and Instrument Collateral.* All certificates or other instruments constituting or evidencing the Collateral shall be delivered to and held by or on behalf of Administrative Agent pursuant hereto and shall be in suitable form for transfer by delivery, or shall be accompanied by undated and duly executed instruments of transfer or assignment in blank, all in form and substance reasonably satisfactory to Administrative Agent. If an Event of Default exists, Administrative Agent has the right, without notice to any Grantor, to transfer to or to register in the name of Administrative Agent or any of its nominees any or all of the Pledged Equity Interests. In addition, after the occurrence and during the continuance of an Event of Default, Administrative Agent has the right at any time to exchange certificates or instruments representing or evidencing Pledged Equity Interests for certificates or instruments of smaller or larger denominations.

ARTICLE III.

REPRESENTATIONS AND WARRANTIES

Section 3.1 *Representations and Warranties.* Each Grantor represents and warrants to Secured Party severally with respect to itself and the Collateral owned by it that:

(a)

(i) Each Grantor is duly organized, validly existing or formed, and in good standing (to the extent applicable) under the Laws of its jurisdiction of incorporation or organization. Each Grantor has all requisite power and authority to own its properties and to carry on its business as now being conducted. Each Grantor is duly qualified, in good standing, and authorized to do business in each jurisdiction in which the character of its properties or the nature of its business requires such qualification or authorization, except to the extent that failure to so qualify or be authorized could not reasonably be expected to have a Material Adverse Effect.

(ii) Each Grantor has all legal power and has taken all necessary corporate or other organizational action to authorize it to execute and perform this Agreement and each other Loan Document to which it is a party. Each Loan Document to which each Grantor is a party is a legal, valid, and binding obligation of such Grantor, enforceable against such Grantor in accordance with its terms, subject as to enforcement of remedies to any Debtor Relief Laws and to general equitable principles (regardless of whether enforcement is sought in a proceeding in equity or at law) and an implied covenant of good faith and fair dealing.

(iii) The execution, delivery, and performance by each Grantor of each Loan Document to which it is a party, and the consummation of the transactions contemplated thereby, do not and will not (A) require any consent or approval not already obtained, except consents which, if not obtained, could not reasonably be expected to have a Material Adverse Effect, (B) violate any Applicable Law, (C) conflict with, result in a breach of, or constitute a default under the organizational and governance documents of such Grantor, or under any Contractual Obligation to which such Person is a party, the result of, which could reasonably be expected to have a Material Adverse Effect, or (D) result in or require the creation or imposition of any Lien upon or with respect to any property now owned or hereafter acquired by each Grantor, except Liens in favor of or for the benefit of Secured Lenders. There are no conditions precedent to the effectiveness of this Agreement that have not been satisfied or waived.

(iv) This Agreement and the grant of the security interest pursuant to this Agreement in the Collateral create a valid first priority security interest in the Collateral (subject to Permitted Liens), securing the payment and performance of the Obligations, and, upon the filing of all UCC-1 financing statements listed for such Grantor on Schedule 3 hereto, in the form delivered by such Grantor to the Administrative Agent on or prior to the Closing Date and in the filing offices listed on such Schedule 3, and delivery to and continuing possession by the Administrative Agent of all Instruments, Chattel Paper and the certificates evidencing the Pledged Equity Interests (together with executed stock powers), all filings and other actions necessary or desirable to perfect and protect such security interest and such priority have been duly taken (or will be taken upon any Grantor obtaining rights in Collateral after the date hereof), subject, however, with respect to Proceeds, to the provisions of Section 3.15 of the UCC and, with respect to Goods included within the Collateral that are covered by a certificate of title (as

defined in the UCC), to the provisions of, and further actions referenced in, Sections 9.102(a)(10) and 9.303 of the UCC.

(v) Each Grantor has good and indefeasible title to, or a valid leasehold interest in, all of the Collateral owned by it free and clear of any Lien, except for Permitted Liens and except as set forth in Schedule 5, Section (g). No Grantor has granted a security interest or other Lien in or made an assignment of any of the Collateral (except for Permitted Liens or in connection with a Disposition permitted under the Credit Agreement). Except with respect to Permitted Liens, no Grantor has entered into nor is it or any of its property subject to any agreement limiting the ability of such Grantor to grant a Lien in any Collateral owned by it of such Grantor, or the ability of such Grantor to agree to grant or not grant a Lien in any Collateral owned by it. None of the Collateral is consigned Goods, except as set forth in Schedule 5, Section (g), or is subject to any agreement of repurchase, or subject to any dispute, defense, or counterclaim which, if determined adversely to the Borrower, could reasonably be expected to have a Material Adverse Effect. No effective financing statement or other similar document used to perfect and preserve a security interest or other Lien under the Laws of any jurisdiction covering all or any part of the Collateral is on file in any recording office, except such as may have been filed (A) pursuant to this Agreement or other Loan Document, (B) relating to Permitted Liens, or (C) relating to the consignments referenced in Schedule 5, Section (g). Except as permitted under the Credit Agreement, each Grantor has not sold any interest in any of its Accounts, or, except as set forth in Schedule 5, Section (e), consigned any of its Inventory.

(b) All of the Pledged Equity Interests have been duly and validly issued, and the Pledged Stock is fully paid and nonassessable. All of the Pledged Equity Interests consisting of certificated securities have been delivered to the Administrative Agent. Other than Pledged Partnership Interests and Pledged LLC Interests constituting General Intangibles, there are no Pledged Equity Interests other than that represented by certificated securities in the possession of the Administrative Agent. There are no restrictions in any Organization Document governing any Pledged Equity Interest or any other document related thereto which would limit or restrict (i) the grant of a Lien in the Pledged Equity Interests, (ii) the perfection of such Lien or (iii) the exercise of remedies in respect of such perfected Lien in the Pledged Equity Interests as contemplated by this Agreement.

(c) Schedule 4, Section (a) states the jurisdiction of organization, type of entity, entity identification number, if any, issued by the appropriate authority of the jurisdiction of each Grantor's organization, and exact name of each Grantor, as such name appears in its currently effective organizational documents as filed with the appropriate authority of the jurisdiction of each Grantor's organization. Schedule 4, Section (b) sets forth as of the Closing Date each other name each Grantor has had in the past five years preceding the Closing Date, together with the date of the relevant change. Except as set forth in Schedule 4, Section (c), each Grantor has not changed its identity or type of entity in any way within the past five years preceding the Closing Date. Changes in identity or type of entity include changes resulting from mergers, consolidations, acquisitions (including both equity and asset acquisitions), and any change in the type or jurisdiction of organization. Schedules 4 and 5 contain the information as of the Closing

Date required by this Section as to each acquiree or constituent party to a merger, consolidation, or acquisition. Schedule 4, Section (d) states all other names (including trade, assumed, and similar names) used by each Grantor or any of its divisions or other business units at any time during the past five years preceding the Closing Date. Schedule 4, Section (e) states the Federal Taxpayer Identification Number of each Grantor.

(d) As of the Closing Date, the chief executive office of each Grantor is located at the address stated on Schedule 5, Section (a). Schedule 5, Section (b) states all locations where each Grantor maintains any books or records relating to all Accounts as of the Closing Date. All Instruments evidencing the Accounts have been delivered and pledged to Administrative Agent duly endorsed and accompanied by such duly executed instruments of transfer or assignment as are necessary for such pledge, to be held as pledged collateral. Schedule 5, Section (c) states all locations where each Grantor regularly maintains any Inventory as of the Closing Date. Schedule 5, Section (d) states all the places of business of each Grantor or other locations of Collateral not identified in Schedule 5, Sections (a), (b), or (c) as of the Closing Date. Schedule 5, Section (e) states the names and addresses of all Persons other than each Grantor who have possession of any of the Collateral of each such Grantor as of the Closing Date. Schedule 5, Section (f) is a complete and correct list as of the Closing Date of, as to any property subject to a lease, license, or other right to use on which Collateral is located, the lease, license, or other agreement (and all amendments thereto) pursuant to which each Grantor has use of such property (complete and correct copies of which have been provided to Administrative Agent), the lessor, licensor, or other party pursuant to such agreement. Schedule 5, Section (g) identifies for each Grantor, the types of Goods consigned to such Grantor by third-party vendors and the third party vendors consigning the same.

(e) All Accounts have been originated by each Grantor and all Inventory has been acquired by each Grantor in the ordinary course of business. All Inventory produced in the United States of America has been produced in compliance with the Fair Labor Standards Act, except to the extent that failure to so comply could not reasonably be expected to have a Material Adverse Effect.

(f) Each Grantor has exclusive possession and control of the Inventory pledged by it hereunder, except Inventory subject to the consignments set forth in Schedule 5, Section (e).

(g) Schedule 6 is a complete and correct list of all insurance policies owned by each Grantor insuring the value of the Collateral.

(h) Each Grantor represents and warrants that it is the owner of the Intellectual Property identified in Schedule 2 and has the right to grant the rights and license granted herein.

ARTICLE IV.

COVENANTS

Section 4.1 *Further Assurances.*

(a) Each Grantor will, from time to time and at each Grantor's expense, promptly execute and deliver all further instruments and documents (including supplements to all schedules), execute and file such financing or continuation statements, or amendments thereto, and such other instruments or notices, as Administrative Agent may request, in order to perfect and preserve the pledge, assignment, and security interest granted or purported to be granted hereby, and take all further action that Administrative Agent may reasonably request, in order to perfect and protect any pledge, assignment, or security interest granted or purported to be granted hereby, and the priority thereof, or to enable Administrative Agent to exercise and enforce Secured Party's or Secured Lenders' rights and remedies hereunder with respect to any Collateral.

(b) In addition to such other information as shall be specifically provided for herein, during the continuance of an Event of Default, and subject to the provisions of Section 10.08 of the Credit Agreement, each Grantor shall furnish to Administrative Agent such other information with respect to the Collateral as Administrative Agent may reasonably request including, without limitation, all documents and things in each Grantor's possession, or subject to its demand for possession, related to the production, sale, and lease by each Grantor, or any Subsidiary of each Grantor, licensee, or subcontractor thereof, of products or services sold or leased by or under the authority of each Grantor, including by way of example, without limiting the interest granted by this Agreement: (i) all lists and ancillary documents which identify and describe any of Grantor's customers or advertisers, or those of its Subsidiaries, licensees, or subcontractors for products sold or leased or services rendered, including without limitation, statements and schedules further identifying and describing the Collateral, such lists and ancillary documents which contain each customer's full name and address, the identity of the Person or Persons having the principal responsibility on each customer's behalf for ordering products or services of the kind supplied by each Grantor, the credit, payment, discount, delivery, and other sale or lease terms applicable to such customer, together with detailed information setting forth the total purchases and leases and the patterns of such purchases and leases; (ii) all product and service specification documents and production and quality of services sold or leased; (iii) all documents which reveal the names and addresses of all sources of supply, and all terms of purchase and delivery, for all materials and components used in the production of products or provision of services sold or leased; (iv) all documents constituting or concerning the then current or proposed advertising and promotion by each Grantor or its Subsidiaries, licensees, or subcontractors of products or services sold or leased, including, all documents which reveal the media used or to be used and the cost for all such advertising conducted within the described period or planned for such products or services; and (v) a description of all Software used in the management of any of the foregoing. In connection with its realization on Collateral, Administrative Agent may use such information as is related to such Collateral or transfer it to any assignee, licensee, or sublicensee permitted hereunder for such assignee's, licensee's, or sublicensee's use, provided that such information shall constitute Information for purposes of Section 10.08 of the Credit Agreement.

(c) Each Grantor authorizes Administrative Agent to file one or more financing or continuation statements, and amendments thereto, relating to all or any part of the Collateral without the authentication of any Grantor where permitted by Law. A photocopy 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. Each Grantor ratifies its execution and delivery of, and the filing of, any financing statement describing any of the Collateral which was filed prior to the date of this Agreement.

(d) Each Grantor shall pay promptly when due all taxes, assessments, and governmental charges or levies imposed upon, and all claims (including claims for labor, materials, and supplies) against, the Collateral except such taxes, assessments, and governmental charges or levies, and such claims, as are being contested in good faith by appropriate proceedings for which adequate reserves have been established in accordance with GAAP.

(e) Each Grantor will not, and will not permit any Person to, revise, modify, amend, or restate the articles of incorporation of any corporation the stock or other interest in which is Pledged Equity Interests or the partnership, joint venture, or other organizational document of any partnership or joint venture any interest in which is Pledged Equity Interests in a manner that adversely affects the security interest of the Secured Party therein except as permitted by the Credit Agreement, or terminate, cancel, or dissolve any such Person except as permitted by the Credit Agreement.

(f) Each Grantor shall cooperate with and as requested by Administrative Agent to determine what may or shall be required to satisfy the Laws or regulations in each applicable jurisdiction throughout the world with respect to the recordation and validation of the license of Intellectual Property granted pursuant to Section 2.1(b), or otherwise to render this Agreement and the license of Intellectual Property granted pursuant to Section 2.1(b) effective for the purposes granted, and shall execute all documents which may be necessary or desirable to implement this subsection, including registered user statements or other documents suitable for filing with the appropriate Governmental Authorities.

Section 4.2 Place of Perfection; Records; Collection of Accounts, Chattel Paper and Instruments.

(a) Without the prior written consent of the Administrative Agent, no Grantor shall change the jurisdiction of its organization from the jurisdiction specified in Schedule 4, Section (a), its type of entity from the type of entity specified in Schedule 4, Section (b), or its name from the name specified in Schedule 4. Each Grantor shall notify Administrative Agent, not later than thirty days after the effect date of such change, of each change in the location and address of its chief executive office and each change in the location and address of the office where it keeps its records concerning the Accounts, and the originals of all Chattel Paper and Instruments. Each Grantor will hold and preserve such records and Chattel Paper and Instruments and will permit representatives of Administrative Agent at any time during any visitation and inspection conducted pursuant to Section 6.10 of the Credit Agreement to inspect and make abstracts from and copies of such records and Chattel Paper and Instruments.

(b) Except as otherwise provided in this Section 4.2(b), each Grantor shall continue to collect, at its own expense, all amounts due or to become due each Grantor under the Accounts, Chattel Paper, and Instruments, and, with respect to any Chattel Paper or Instrument in the possession of the Administrative Agent that is paid in full, the Administrative Agent shall, promptly after receipt of request by a Grantor stating that such Chattel Paper or Instrument has been paid in full, deliver the original of such Chattel Paper or Instrument to such Grantor. In connection with such collections, each Grantor may take (and, if an Event of Default exists, at Administrative Agent's direction, shall take) such action as each such Grantor or Administrative Agent may deem necessary or advisable to enforce collection of the Accounts, Chattel Paper, and Instruments; provided, however, that Administrative Agent shall have the right, if an Event of Default exists, without notice to any Grantor, to notify the Account Debtors or obligors under any Accounts, Chattel Paper, and Instruments of the assignment of such Accounts, Chattel Paper, and Instruments to Administrative Agent and to direct such Account Debtors or obligors to make payment of all amounts due or to become due to each Grantor thereunder directly to Administrative Agent and, at the expense of each Grantor, to enforce collection of any such Accounts, Chattel Paper, and Instruments, and to adjust, settle or compromise the amount or payment thereof, in the same manner and to the same extent as each Grantor might have done or as Administrative Agent deems appropriate. All amounts and proceeds (including Instruments) received by each Grantor in respect of the Accounts, Chattel Paper, and Instruments during the continuance of an Event of Default shall be paid or delivered over to Administrative Agent on demand in the same form as so received (with any necessary indorsement) to be applied as provided in the Credit Agreement.

Section 4.3 *Chattel Paper and Instruments.*

(a) Upon written request by Administrative Agent, Grantor will: (i) mark conspicuously each Tangible Chattel Paper and Instruments included in Collateral, and each of its records pertaining to the Chattel Paper and Instruments included in the Collateral, with the following legend:

THIS *[INSTRUMENT]*[OTHER RECORD]* IS SUBJECT TO THE SECURITY INTEREST AND LIEN PURSUANT TO THE SECURITY AGREEMENT DATED SEPTEMBER 13, 2002 (AS THE SAME MAY BE AMENDED, MODIFIED OR RESTATED) MADE BY *[GRANTOR]*, IN FAVOR OF BANK OF AMERICA, N.A., AS ADMINISTRATIVE AGENT FOR CERTAIN LENDERS, AND PURSUANT TO THE CREDIT AGREEMENT DATED AS OF SEPTEMBER 13, 2002 (AS THE SAME MAY BE AMENDED, MODIFIED OR RESTATED).

or such other legend, in form and substance satisfactory to and as specified by Administrative Agent, indicating that such Tangible Chattel Paper or Instrument is subject to the pledge, assignment, and security interest granted hereby; and (ii) if any Collateral shall be or be evidenced by a promissory note or other Instrument or be Tangible Chattel Paper, deliver and pledge to Administrative Agent hereunder such note, Instrument, or Chattel Paper duly indorsed and accompanied by duly executed instruments of transfer or assignment, all in form and substance satisfactory to Administrative Agent.

(b) Upon written request of Administrative Agent, each Grantor will take all actions necessary to establish in Administrative Agent control (as that term is defined in the UCC) with respect to all Electronic Chattel Paper.

Section 4.4 *Equipment and Inventory.*

(a) Each Grantor shall keep substantially all of its Equipment and Inventory (other than Equipment and Inventory subject to Dispositions permitted under Section 7.05 of the Credit Agreement, being utilized elsewhere in the ordinary course of business, temporarily in transit, or temporarily absent by reason of maintenance or repair) at the addresses specified in Schedule 5 or at such other places if all action required by Section 4.1(a) shall have been taken with respect to the Equipment and Inventory so located at any new location and if the Administrative Agent is notified of such new location not more than thirty days after any such Equipment or Inventory first becomes located at such new location.

(b) Each Grantor shall cause its material Equipment to be maintained and preserved in accordance with provisions of Section 6.06 of the Credit Agreement.

(c) Each Grantor shall comply with, and shall use commercially reasonable best efforts to require its licensees and subcontractors to comply with, all requirements of the Fair Labor Standards Act, except where failure to do so could not reasonably be expected to have a Material Adverse Effect.

Section 4.5 *Rights to Dividends and Distributions.* With respect to any Pledged Equity Interests, Administrative Agent shall have authority if an Event of Default exists, without notice to any Grantor, either to have the same registered in Administrative Agent's name or in the name of a nominee, and, with or without such registration, to demand of the issuer thereof, and to receive and receipt for, any and all Dividends (including any stock or similar dividend or distribution) payable in respect thereof, whether they be ordinary or extraordinary. If each Grantor shall become entitled to receive or shall receive any Stock of any issuer identified on Schedule 1 (including, without limitation, Stock representing a Dividend or a distribution in connection with any reclassification, increase, or reduction of capital, or issued in connection with any reorganization), or any option or rights arising from or relating to any of the Pledged Equity Interests, whether as an addition to, in substitution of, as a conversion of, or in exchange for any of the Pledged Equity Interests, or otherwise, each Grantor agrees to accept the same as Administrative Agent's agent and to hold the same in trust on behalf of and for the benefit of Administrative Agent, and to deliver the same immediately to Administrative Agent in the exact form received, with appropriate undated stock or similar powers, duly executed in blank, to be held by Administrative Agent, subject to the terms hereof, as Pledged Equity Interests. Unless an Event of Default exists, each Grantor shall be entitled to receive all Dividends paid or distributed with respect to the Pledged Equity Interests, other than Dividends or interests payable in equity interests of the issuer of such Pledged Equity Interests (which, if evidenced by certificated securities, shall be delivered to the Administrative Agent as set forth in the immediately preceding sentence, whether or not an Event of Default has occurred (subject to the restrictions, if any, set forth in the Credit Agreement)). Administrative Agent shall be entitled to all Dividends, and to any sums paid upon or in respect of any Pledged Equity Interests, upon the

liquidation, dissolution, or reorganization of the issuer thereof (except if such liquidation, dissolution, or reorganization of the issuer thereof is permitted under the Credit Agreement), which shall be paid to Administrative Agent to be held by it as additional collateral security for and application to the Obligations at the discretion of Administrative Agent. All Dividends paid or distributed in respect of the Pledged Equity Interests which are received by any Grantor in violation of this Agreement shall, until paid or delivered to Administrative Agent, be held by such Grantor in trust as additional collateral for the Obligations.

Section 4.6 *Right of Administrative Agent to Notify Issuers.* If an Event of Default exists and at such other times as Administrative Agent is entitled to receive dividends and other property in respect of or consisting of any Pledged Equity Interests, Administrative Agent may notify issuers of the Pledged Equity Interests to make payments of all Dividends directly to Administrative Agent and Administrative Agent may take control of all proceeds of any Pledged Equity Interests.

Section 4.7 *Insurance.* Each Grantor shall, at its own expense, maintain insurance in accordance with the terms set forth in the Credit Agreement. All such policies of insurance covering Collateral shall be endorsed to name the Administrative Agent, for itself and the Secured Lenders, as loss payee with respect to the Collateral, as their interests may appear, and shall provide for at least thirty Business Days' prior written notice of cancellation to Administrative Agent. Each Grantor shall promptly furnish to Administrative Agent evidence of such insurance in form and content satisfactory to Administrative Agent. If each Grantor fails to perform or observe any material covenants as to insurance of Collateral within the time for performance permitted under the Loan Documents, Administrative Agent may at its option obtain insurance on only Secured Parties' interest in the Collateral, any premium thereby paid by Administrative Agent to become part of the Obligations, bear interest prior to the existence of an Event of Default, at the then applicable Base Rate, and during the existence of an Event of Default, at the Default Rate. If Administrative Agent maintains such substitute insurance, the premium for such insurance shall be due on demand and payable by each Grantor to Administrative Agent. Each Grantor grants and appoints Administrative Agent its attorney-in-fact to endorse any check or draft that may be payable to each such Grantor in order to collect any payments in respect of insurance, including any refunds of unearned premiums in connection with any cancellation, adjustment, or termination of any policy of insurance. Any such sums collected by Administrative Agent shall be credited, except to the extent applied to the purchase by Administrative Agent of similar insurance, to any amounts then owing on the Obligations in accordance with the Credit Agreement. So long as no Event of Default exists, each Grantor shall be entitled to receive all proceeds payable with respect to any insurance maintained by it, provided, that with respect to proceeds of property insurance payable by reason of damage or destruction, if an amount equivalent to the amount of such proceeds is not reinvested within 180 days of receipt by such Grantor to purchase assets (including assets acquired by way of an Acquisition) useful in the business of the Borrower and its Subsidiaries, such Grantor shall pay over to the Administrative Agent, on the first Business Day after the expiration of such 180-day period, for application by the Administrative Agent to the prepayment of the outstanding principal amount of the Term B Loans, an amount equal to 100% of the amount by which the full amount of such proceeds of insurance exceeds the aggregate of the amounts so reinvested by the Borrower or any of its Subsidiaries during such 180-day period.

At such time, if any, as the Term Loans are paid in full, such excess amount (or remaining portion thereof) shall be applied to prepay outstanding Revolving Loans, and to the extent required to prepay Revolving Loans, reduce the Aggregate Revolving Commitments in an equivalent amount.

Section 4.8 *Transfers and Other Liens.* Each Grantor shall not (a) sell, assign (by operation of Law or otherwise) or otherwise dispose of, or grant any option with respect to, any of the Collateral, except as permitted under the Credit Agreement and the other Loan Documents, or (b) create or permit to exist any Lien, option, or other charge or encumbrance upon or with respect to any of the Collateral, except for the security interest under this Agreement (and except for Permitted Liens as provided for in the Credit Agreement).

Section 4.9 *Administrative Agent Appointed Attorney-in-Fact.* Each Grantor hereby irrevocably appoints Administrative Agent Grantor's attorney-in-fact, with full authority in the place and stead of each Grantor and in the name of each Grantor or otherwise to take any action and to execute any instrument which Administrative Agent may deem necessary or advisable to accomplish the purposes of this Agreement, including, without limitation (provided that the actions listed in each clause below other than the obtainment and adjustment of insurance may only be taken or exercised if an Event of Default exists):

(a) to obtain and adjust insurance required to be paid to Administrative Agent pursuant to Section 4.8;

(b) to ask, demand, collect, sue for, recover, compromise, receive, and give acquittance and receipts for moneys due and to become due under or in connection with the Collateral;

(c) to receive, indorse, and collect any drafts or other Instruments, documents, and Chattel Paper, in connection therewith; and

(d) to file any claims or take any action or institute any proceedings which Administrative Agent may deem necessary or desirable for the collection of any of the Collateral or otherwise to enforce compliance with the terms and conditions of any Collateral or the rights of Administrative Agent with respect to any of the Collateral. **EACH GRANTOR HEREBY IRREVOCABLY GRANTS TO ADMINISTRATIVE AGENT EACH SUCH GRANTOR'S PROXY (EXERCISABLE IF AN EVENT OF DEFAULT EXISTS) TO VOTE ANY PLEDGED EQUITY INTERESTS AND APPOINTS ADMINISTRATIVE AGENT EACH SUCH GRANTOR'S ATTORNEY-IN-FACT TO PERFORM ALL OBLIGATIONS OF GRANTOR UNDER THIS AGREEMENT AND TO EXERCISE ALL OF ADMINISTRATIVE AGENT'S AND EACH OTHER SECURED PARTY'S RIGHTS HEREUNDER. THE PROXY AND EACH POWER OF ATTORNEY HEREIN GRANTED, AND EACH STOCK POWER AND SIMILAR POWER NOW OR HEREAFTER GRANTED (INCLUDING ANY EVIDENCED BY A SEPARATE WRITING), ARE COUPLED WITH AN INTEREST AND ARE IRREVOCABLE PRIOR TO FINAL PAYMENT IN FULL OF THE OBLIGATIONS.**

Section 4.10 *Intellectual Property.*

(a) The parties acknowledge and agree that the Intellectual Property is the sole and exclusive property of Grantor, subject to the terms and conditions stated in this Agreement. Other than in connection with any security interest in the Intellectual Property that Grantor has granted to Secured Party, or any rights and remedies of Administrative Agent and Secured Lenders under Laws, Administrative Agent shall not challenge Grantor's ownership of the Intellectual Property. Grantor expressly retains all rights, prior to the occurrence of an Event of Default, to license third parties to use the Intellectual Property for any purpose whatsoever not in violation of the Loan Documents and which are not exclusive as to prevent Administrative Agent from using any of the Intellectual Property.

(b) The license granted to Administrative Agent hereunder shall include the right of Administrative Agent to grant sublicenses to others to use the Intellectual Property if an Event of Default exists, and to enable such sublicensees to exercise any rights and remedies of Administrative Agent and other Secured Lenders with respect to the Collateral, including, without limitation, the right to grant sublicenses to others to use the Intellectual Property on or in connection with the disposition, maintenance or further production, manufacturing or processing of Inventory, the operation and maintenance of the Equipment and the collection of Accounts as Administrative Agent reasonably deems necessary or appropriate in the exercise of the rights and remedies of Administrative Agent and other Secured Lenders. In any country where sublicenses are incapable of registration or where registration of a sublicense will not satisfactorily protect the rights of Grantor and Administrative Agent, Administrative Agent shall also have the right to designate other parties as direct licensees of Grantor to use the Intellectual Property if an Event of Default exists and to enable such direct licensees to exercise any rights and remedies of Administrative Agent and other Secured Lenders including, without limitation, the right to use the Intellectual Property on or in connection with the disposition, maintenance or further production, manufacturing or processing of Inventory, the operation and maintenance of the Equipment and the collection of Accounts as such licensees reasonably deem necessary or appropriate and Grantor agrees to enter into direct written licenses with the parties as designated on the same terms as would be applicable to a sublicense, and any such direct license may, depending on the relevant local requirements, be either (a) *in lieu* of a sublicense or (b) supplemental to a sublicense. In either case, the parties hereto shall cooperate to determine what shall be necessary or appropriate in the circumstances. For each sublicense to a sublicensee and direct license to a licensee, Grantor appoints Administrative Agent its agent for the purpose of exercising quality control over the sublicensee. Grantor shall execute this Agreement in any form, content and language suitable for recordation, notice and/or registration in all available and appropriate agencies of foreign countries as Administrative Agent may require.

(c) In connection with the assignment or other transfer (in whole or in part) of its obligations to any other Person, Administrative Agent may assign the license granted herein without Grantor's consent and upon such assignment or transfer such other Person shall thereupon become vested with all rights and benefits in respect thereof granted to Administrative Agent under this Agreement (to the extent of such assignment or transfer).

(d) The parties hereto shall take reasonable action to preserve the confidentiality of the Intellectual Property; provided, that Administrative Agent shall not have any liability to any Person for any disclosure of the Intellectual Property related to Collateral upon and after any realization upon such Collateral.

ARTICLE V.

RIGHTS AND POWERS OF SECURED PARTY.

Section 5.1 *Administrative Agent May Perform.* If any Grantor fails to perform any agreement contained herein within the time for performance permitted under the Loan Documents, Administrative Agent may itself perform, or cause performance of, such agreement, and the expenses of Administrative Agent incurred in connection therewith shall be payable by each such Grantor under Section 5.5.

Section 5.2 *Administrative Agent's Duties.* The powers conferred on Administrative Agent hereunder are solely to protect Secured Lenders' interest in the Collateral and shall not impose any duty upon it to exercise any such powers. Except for the safe custody of any Collateral in its possession and the accounting for moneys actually received by Secured Party hereunder, neither Administrative Agent nor any other Secured Lender shall have any duty as to any Collateral, as to ascertaining or taking action with respect to calls, conversions, exchanges, maturities, tenders, or other matters relative to any Collateral, whether or not Administrative Agent or any other Secured Lender has or is deemed to have knowledge of such matters, or as to the taking of any necessary steps to preserve rights against prior parties or any other rights pertaining to any reasonable care in the custody and preservation of any Collateral in its possession if such Collateral is accorded treatment substantially equal to that which Administrative Agent accords its own property. Except as provided in this Section 5.2, neither Administrative Agent nor any other Secured Lender shall have any duty or liability to protect or preserve any Collateral or to preserve rights pertaining thereto. Nothing contained in this Agreement shall be construed as requiring or obligating Administrative Agent or any other Secured Lender, and neither Administrative Agent nor any other Secured Lender shall be required or obligated, to (a) present or file any claim or notice or take any action, with respect to any Collateral or in connection therewith or (b) notify any Grantor of any decline in the value of any Collateral.

Section 5.3 *Remedies.* If an Event of Default exists:

(a) Administrative Agent may exercise in respect of the Collateral, in addition to other rights and remedies provided for herein or otherwise available to it or any other Secured Lender pursuant to any applicable Law, all the rights and remedies of a secured party on default under the Uniform Commercial Code in effect in the State of Texas at that time (whether or not the Uniform Commercial Code applies to the affected Collateral), and also may require each Grantor to, and each Grantor will at its expense and upon request of Administrative Agent forthwith, assemble all or part of the Collateral as directed by Administrative Agent and make it available to Administrative Agent at a place to be designated by Administrative Agent which is reasonably convenient to both parties at public or private sale, at any of Administrative Agent's

offices or elsewhere, for cash, on credit or for future delivery, and upon such other terms as Administrative Agent may deem commercially reasonable. Each Grantor agrees that, to the extent notice of sale shall be required by Law, ten days' notice to each 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. Administrative Agent shall not be obligated to make any sale of Collateral regardless of notice of sale having been given. Administrative 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.

(b) All cash proceeds received by Administrative Agent upon any sale of, collection of, or other realization upon, all or any part of the Collateral shall be applied as set forth in Section 8.03 of the Credit Agreement.

(c) All payments received by each Grantor under or in connection with any Collateral shall be received in trust for the benefit of Administrative Agent, shall be segregated from other funds of each such Grantor, and shall be paid or delivered over to Administrative Agent on demand in the same form as so received (with any necessary indorsement) to be applied as provided in the Credit Agreement.

(d) Because of the Securities Act of 1933, as amended ("*Securities Act*"), and other Laws, including without limitation state "blue sky" Laws, or contractual restrictions or agreements, there may be legal restrictions or limitations affecting Administrative Agent in any attempts to dispose of the Pledged Equity Interests and the enforcement of rights under this Agreement. For these reasons, Administrative Agent is authorized by each Grantor, but not obligated, if any Event of Default exists, to sell or otherwise dispose of any of the Pledged Equity Interests at private sale, subject to an investment letter, or in any other manner which will not require the Pledged Equity Interests, or any part thereof, to be registered in accordance with the Securities Act, or any other Law. Administrative Agent is also hereby authorized by each Grantor, but not obligated, to take such actions, give such notices, obtain such consents, and do such other things as Administrative Agent may deem required or appropriate under the Securities Act or other securities Laws or other Laws or contractual restrictions or agreements in the event of a sale or disposition of any Pledged Equity Interests. Each Grantor understands that Administrative Agent may in its discretion approach a restricted number of potential purchasers and that a sale under such circumstances may yield a lower price for the Pledged Equity Interests than would otherwise be obtainable if same were registered and/or sold in the open market. No sale so made in good faith by Administrative Agent shall be deemed to be not "commercially reasonable" because so made. Each Grantor agrees that if an Event of Default exists, and Administrative Agent sells the Pledged Equity Interests or any portion thereof at any private sale or sales, Administrative Agent shall have the right to rely upon the advice and opinion of appraisers and other Persons, which appraisers and other Persons are acceptable to Administrative Agent, as to the best price reasonably obtainable upon such a private sale thereof. In the absence of actual fraud, such reliance shall be conclusive evidence that Administrative Agent and the other Secured Parties handled such matter in a commercially reasonable manner under applicable Law.

(e) If Administrative Agent shall determine to exercise its right to sell any or all of the Pledged Equity Interests, and if in the opinion of counsel for Administrative Agent it is necessary, or if in the reasonable opinion of Administrative Agent it is advisable, to have the Pledged Equity Interests or that portion thereof to be sold, registered under the provisions of the Securities Act, each Grantor will, to the fullest extent it has the capability to do so, cause the issuers of the Pledged Equity Interests contemplated to be sold to execute and deliver, and cause the directors and officers of each thereof to execute and deliver, all at Grantor's expense, all such instruments and documents, and to do or cause to be done all such other acts and things, as may be necessary or, in the opinion of Administrative Agent, advisable to register the Pledged Equity Interests or that portion thereof to be sold, under the provisions of the Securities Act and to cause the registration statement relating thereto to become effective and to remain effective for such period as Administrative Agent may deem appropriate to facilitate the sale or other disposition of such Pledged Equity Interests from the date of the first public offering of the Pledged Equity Interests or that portion thereof to be sold, and to make all amendments thereto and/or to the related prospectus which, in the opinion of Administrative Agent, are necessary or advisable, all in conformity with the requirements of the Securities Act. Each Grantor shall use its best efforts to cause each issuer of Pledged Equity Interests to comply with the provisions of the securities or "blue sky" Laws of any jurisdiction which Administrative Agent shall designate and to cause each Issuer to make available to its security holders, as soon as practicable, an earnings statement which will satisfy the provisions of the Securities Act and applicable "blue sky" Laws.

(f) Administrative Agent and such Persons as Administrative Agent may reasonably designate shall have the right, at Grantor's own cost and expense, 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 Collateral is located, to discuss Grantor's affairs with the officers of each Grantor, and to verify under reasonable 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 Collateral in the possession of any third person, by contacting Account Debtors or the third person possessing such Collateral for the purpose of making such a verification. Administrative Agent shall have the absolute right to share any information it gains from such inspection or verification with any Secured Party.

(g) For purposes of enabling Secured Party to exercise rights and remedies under this Agreement, to the extent permitted by existing licenses, each Grantor grants to Administrative Agent an irrevocable, nonexclusive license (exercisable without payment of royalty or other compensation to any Grantor or any other Person, provided, that if the license granted to Administrative Agent is a sublicense, each Grantor shall be solely responsible for, and indemnify Administrative Agent against, any royalty or other compensation payable to Grantor's licensor or other Person) to use all of Grantor's Software, and including in such license reasonable access to all media in which any of the licensed items may be recorded and all related manuals.

(h) Administrative Agent may use the Intellectual Property licensed hereby in such form and manner as previously used by Grantor, and shall need not notify Grantor of any change in the form or substance of the display of any item of Intellectual Property licensed hereby. Administrative Agent shall take reasonable action to apply notice or other marking as may be required under applicable Law of each territory and country where each item of Intellectual

Property is used, or as otherwise appropriate, in connection with use of each item of Intellectual Property licensed hereunder. Administrative Agent shall have the right to register its rights as licensee of any and all items of Intellectual Property licensed hereby in any and all countries on and after the Closing Date.

(i) Administrative Agent may dispose of any Inventory and any other manufactured products under any of the Intellectual Property licensed hereby, provided the Inventory and any other manufactured products so disposed of by it or any other Person acting on behalf of Licensee shall comply in any material respect with (i) quality standards and specifications, including labeling specifications, employed by Grantor in commerce prior to the occurrence of the relevant Event of Default, or, where no such standards and specifications exist, a level of quality comparable to the quality standards generally accepted for other leading competitive brands of the same item of Inventory in the same markets from time to time; or (ii) a level of quality comparable to that which may be adopted by Grantor for its or its other licensees' products.

(j) The license granted with respect to any Intellectual Property may be terminated only upon the event that the Obligations which are secured in part by the Collateral of Grantor and by the license granted herein, are finally and fully satisfied and paid in accordance with all terms and conditions of the Loan Documents at the time of such termination. If after termination of this Agreement, there occurs a rescission of payment of any of the Obligations or the restoration of such payments by Administrative Agent, any Lender or any other Person upon the insolvency, bankruptcy or reorganization of Grantor or any other Person, this Agreement shall be reinstated as though such payment had not been made and remain in full force and effect in accordance with the terms of the preceding sentence.

Section 5.4 Further Approvals Required. In connection with the exercise by Administrative Agent of rights under this Agreement that affects the disposition of or use of any Collateral, it may be necessary to obtain the prior consent or approval of Governmental Authorities and other Persons to a transfer or assignment of Collateral. If an Event of Default exists, each Grantor shall execute, deliver, and file, and hereby appoints (to the extent not prohibited by Applicable Law) Administrative Agent as its attorney, to execute, deliver, and file on Grantor's behalf and in Grantor's name, all applications, certificates, filings, instruments, and other documents (including without limitation any application for an assignment or transfer of control or ownership) that may be necessary or appropriate, in Administrative Agent's opinion, to obtain such consents or approvals. Each Grantor shall use its commercially reasonable efforts to obtain such consents or approvals as may be requested by the Administrative Agent if an Event of Default exists. Each Grantor acknowledges that there is no adequate remedy at law for failure by it to comply with the provisions of this Section 5.4 and that such failure would not be adequately compensable in damages, and therefore agrees that this Section 5.4 may be specifically enforced.

Section 5.5 INDEMNITY AND EXPENSES.

(a) THE BORROWER SHALL INDEMNIFY (WHICH SHALL BE PAYABLE FROM TIME TO TIME ON DEMAND) SECURED PARTY, ITS RESPECTIVE

AFFILIATES, DIRECTORS, OFFICERS, EMPLOYEES, COUNSEL, AGENTS AND ATTORNEYS-IN-FACT (COLLECTIVELY THE "INDEMNITEES") FROM AND AGAINST ANY AND ALL LIABILITIES, OBLIGATIONS, LOSSES, DAMAGES, PENALTIES, CLAIMS, DEMANDS, ACTIONS, JUDGMENTS, SUITS, COSTS, EXPENSES AND DISBURSEMENTS (INCLUDING ATTORNEY COSTS) OF ANY KIND OR NATURE WHATSOEVER WHICH MAY AT ANY TIME BE IMPOSED ON, INCURRED BY OR ASSERTED AGAINST ANY SUCH INDEMNITEE IN ANY WAY RELATING TO OR ARISING OUT OF OR IN CONNECTION WITH (1) THE EXECUTION, DELIVERY, ENFORCEMENT, PERFORMANCE OR ADMINISTRATION OF ANY LOAN DOCUMENT OR ANY OTHER AGREEMENT, LETTER OR INSTRUMENT DELIVERED IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED THEREBY OR THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED THEREBY, (2) ANY COMMITMENT, LOAN OR LETTER OF CREDIT OR THE USE OR PROPOSED USE OF THE PROCEEDS THEREFROM (INCLUDING ANY REFUSAL BY THE L/C ISSUER TO HONOR A DEMAND FOR PAYMENT UNDER A LETTER OF CREDIT IF THE DOCUMENTS PRESENTED IN CONNECTION WITH SUCH DEMAND DO NOT STRICTLY COMPLY WITH THE TERMS OF SUCH LETTER OF CREDIT), OR (3) ANY ACTUAL OR ALLEGED PRESENCE OR RELEASE OF HAZARDOUS MATERIALS ON OR FROM ANY PROPERTY CURRENTLY OR FORMERLY OWNED OR OPERATED BY THE BORROWER, ANY SUBSIDIARY OR ANY OTHER LOAN PARTY, OR ANY ENVIRONMENTAL LIABILITY RELATED IN ANY WAY TO THE BORROWER, ANY SUBSIDIARY OR ANY OTHER LOAN PARTY, OR (4) ANY ACTUAL OR PROSPECTIVE CLAIM, LITIGATION, INVESTIGATION OR PROCEEDING RELATING TO ANY OF THE FOREGOING, WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY (INCLUDING ANY INVESTIGATION OF, PREPARATION FOR, OR DEFENSE OF ANY PENDING OR THREATENED CLAIM, INVESTIGATION, LITIGATION OR PROCEEDING) AND REGARDLESS OF WHETHER ANY INDEMNITEE IS A PARTY THERETO (ALL THE FOREGOING, COLLECTIVELY, THE "INDEMNIFIED LIABILITIES"), IN ALL CASES, WHETHER OR NOT CAUSED BY OR ARISING, IN WHOLE OR IN PART, OUT OF THE NEGLIGENCE OF THE INDEMNITEE; PROVIDED THAT SUCH INDEMNITY SHALL NOT, AS TO ANY INDEMNITEE, BE AVAILABLE TO THE EXTENT THAT SUCH LIABILITIES, OBLIGATIONS, LOSSES, DAMAGES, PENALTIES, CLAIMS, DEMANDS, ACTIONS, JUDGMENTS, SUITS, COSTS, EXPENSES OR DISBURSEMENTS ARE DETERMINED BY A COURT OF COMPETENT JURISDICTION BY FINAL AND NONAPPEALABLE JUDGMENT TO HAVE RESULTED FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF SUCH INDEMNITEE. NO INDEMNITEE SHALL BE LIABLE FOR ANY DAMAGES ARISING FROM THE USE BY OTHERS OF ANY INFORMATION OR OTHER MATERIALS OBTAINED THROUGH INTRALINKS OR OTHER SIMILAR INFORMATION TRANSMISSION SYSTEMS IN CONNECTION WITH THIS AGREEMENT, NOR SHALL ANY INDEMNITEE HAVE ANY LIABILITY FOR ANY INDIRECT OR CONSEQUENTIAL DAMAGES RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR ARISING OUT OF ITS ACTIVITIES IN CONNECTION HERewith OR THEREWITH (WHETHER BEFORE OR AFTER THE CLOSING DATE). ALL AMOUNTS DUE UNDER THIS SECTION 5.5 SHALL BE PAYABLE WITHIN TEN BUSINESS DAYS AFTER DEMAND THEREFOR. THE AGREEMENTS IN THIS SECTION SHALL SURVIVE THE

RESIGNATION OF THE ADMINISTRATIVE AGENT, THE REPLACEMENT OF ANY LENDER, THE TERMINATION OF THE AGGREGATE COMMITMENTS AND THE REPAYMENT, SATISFACTION OR DISCHARGE OF ALL THE OTHER OBLIGATIONS.

(b) EACH GRANTOR WILL UPON DEMAND PAY TO EACH SECURED PARTY THE AMOUNT OF ANY AND ALL REASONABLE EXPENSES, INCLUDING THE REASONABLE FEES AND EXPENSES OF ITS COUNSEL AND OF ANY EXPERTS AND AGENTS, WHICH SUCH SECURED PARTY MAY INCUR IN CONNECTION WITH (1) THE ADMINISTRATION OF THIS AGREEMENT, (2) THE CUSTODY, PRESERVATION, USE OR OPERATION OF, OR THE SALE OF, COLLECTION FROM, OR OTHER REALIZATION UPON, ANY OF THE COLLATERAL, (3) THE EXERCISE OR ENFORCEMENT OF ANY OF THE RIGHTS OF ANY SECURED PARTY HEREUNDER, OR (4) THE FAILURE BY GRANTOR TO PERFORM OR OBSERVE ANY OF THE PROVISIONS HEREOF.

ARTICLE VI.

MISCELLANEOUS

Section 6.1 *Maximum Liability.* Anything in this Agreement to the contrary notwithstanding, the obligations of each Grantor (other than Borrower) hereunder shall be limited to a maximum aggregate amount equal to the largest amount that would not render its obligations hereunder subject to avoidance as a fraudulent transfer or conveyance under Section 548 of Title 11 of the United States Code or any applicable provisions of comparable Law (collectively, the "*Fraudulent Transfer Laws*"), in each case after giving effect to all other liabilities of each Grantor, contingent or otherwise, that are relevant under the Fraudulent Transfer Laws (specifically excluding, however, any liabilities of each Grantor in respect of intercompany indebtedness to other Loan Parties or Affiliates of other Loan Parties to the extent that such indebtedness would be discharged in an amount equal to the amount paid or property conveyed by each Grantor under the Loan Documents) and after giving effect as assets, subject to Section 6.2, to the value (as determined under the applicable provisions of the Fraudulent Transfer Laws) of any rights to subrogation or contribution of each Grantor pursuant to (a) Applicable Law or (b) any agreement providing for an equitable allocation among each Grantor and other Loan Parties of obligations arising under the Loan Documents.

Section 6.2 *Waiver of Subrogation.* Until the Release Date, each Grantor shall not assert, enforce, or otherwise exercise (a) any right of subrogation to any of the rights or Liens of any Secured Party or any other beneficiary against any other Loan Party or any Collateral, or (b) any right of recourse, reimbursement, contribution, indemnification, or similar right against any other Loan Party on all or any part of the Obligations or any other Loan Party, and each Grantor hereby waives any and all of the foregoing rights and the benefit of, and any right to participate in, any Collateral or other security given to any Secured Party or any other beneficiary to secure payment of the Obligations. This Section 6.2 shall survive the termination of this Agreement, and any satisfaction and discharge of each Grantor by virtue of any payment, court order, or Law.

Section 6.3 *Cumulative Rights.* All rights of Administrative Agent and each other Secured Party under the Loan Documents are cumulative of each other and of every other right which Administrative Agent and each other Secured Party may otherwise have at Law or in equity or under any other agreement. The exercise of one or more rights shall not prejudice or impair the concurrent or subsequent exercise of other rights.

Section 6.4 *Amendments; Waivers.* Any term, covenant, agreement, or condition of this Agreement may be amended, and any right under this Agreement may be waived, if, but only if, such amendment or waiver is in writing and is signed by Administrative Agent and, in the case of an amendment, by each Grantor. Unless otherwise specified in such waiver, a waiver of any right under this Agreement shall be effective only in the specific instance and for the specific purpose for which given. No election not to exercise, failure to exercise or delay in exercising any right, nor any course of dealing or performance, shall operate as a waiver of any right of any Secured Party under this Agreement or Applicable Law, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right of any Secured Party under this Agreement or Applicable Law.

Section 6.5 *Continuing Security Interest.*

(a) This Agreement creates a continuing security interest in the Collateral and shall (x) remain in full force and effect until the later of (i) the final payment in full of the Loans, Unreimbursed Amounts and any other Obligations then due and owing and (ii) the expiration or termination of the obligation of all Secured Parties to extend credit to each Grantor under the Credit Agreement or any other Loan Documents and the expiration of all Letters of Credit, (y) be binding upon each Grantor, its successors and assigns, and (z) inure to the benefit of, and be enforceable by, Administrative Agent and its successors, permitted transferees and permitted assigns. Upon any such termination, all Collateral shall be released from the Liens created hereby, and this Agreement and all obligations (other than those expressly stated to survive such termination) of Administrative Agent and each Grantor hereunder shall terminate, all without delivery of any instrument or performance of any act by any party, and all rights to the Collateral shall revert to the granting parties and Administrative Agent will, at Grantor's expense, execute and deliver to each Grantor such documents as each such Grantor shall reasonably request to evidence such termination and shall deliver to such Grantor any Collateral held by Administrative Agent hereunder. Each Grantor agrees that to the extent that Administrative Agent or any Secured Party receives any payment or benefit and such payment or benefit, or any part thereof, is subsequently invalidated, declared to be fraudulent or preferential, set aside or is required to be repaid to a trustee, receiver, or any other party under any Debtor Relief Law, common law or equitable cause, then to the extent of such payment or benefit, the Obligations or part thereof intended to be satisfied shall be revived and continued in full force and effect as if such payment or benefit had not been made and, further, any such repayment by Administrative Agent or any Secured Party, to the extent that Administrative Agent or any Secured Party did not directly receive a corresponding cash payment, shall be added to and be additional Obligations payable upon demand by Administrative Agent or any Secured Party and secured hereby, and, if the lien and security interest hereof shall have been released, such lien and security interest shall be reinstated with the same effect and priority as on the date of execution hereof all as if no release of such lien or security interest had ever occurred.

(b) In connection with any sale or other disposition of Collateral permitted by the Credit Agreement, the Lien pursuant to this Agreement on such sold or disposed of Collateral shall be automatically released. In connection with the sale or other disposition of Collateral permitted under the Credit Agreement, Administrative Agent shall, upon receipt from the Borrower of a written request for the release of such Collateral subject to such sale or other disposition, identifying such Collateral, deliver to such Grantor, as the case may be, such Collateral held by Administrative Agent hereunder and execute and deliver to the relevant Grantor (at the sole cost and expense of such Grantor) all releases or other documents (including without limitation UCC termination statements) necessary or reasonably desirable for the release of Liens created hereby on such Collateral as such Grantor may reasonably request.

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Section 6.6 *GOVERNING LAW; WAIVER OF JURY TRIAL; CONSENT TO JURISDICTION AND SERVICE OF PROCESS.*

(a) THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF TEXAS APPLICABLE TO AGREEMENTS MADE AND TO BE PERFORMED ENTIRELY WITHIN SUCH STATE; PROVIDED THAT THE ADMINISTRATIVE AGENT AND EACH LENDER SHALL RETAIN ALL RIGHTS ARISING UNDER FEDERAL LAW.

(b) The parties hereto agree that Chapter 346 (other than Section 346.004) of the Texas Finance Code (which regulates certain revolving credit accounts and revolving tri-party accounts) shall not apply to the Loans or the other Obligations.

(c) ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT MAY BE BROUGHT IN THE COURTS OF THE STATE OF TEXAS SITTING IN DALLAS COUNTY, TEXAS OR OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS (DALLAS DIVISION), AND BY EXECUTION AND DELIVERY OF THIS AGREEMENT, THE BORROWER, EACH GRANTOR, THE ADMINISTRATIVE AGENT AND EACH LENDER CONSENTS, FOR ITSELF AND IN RESPECT OF ITS PROPERTY, TO THE NON-EXCLUSIVE JURISDICTION OF THOSE COURTS. THE BORROWER, EACH GRANTOR, THE ADMINISTRATIVE AGENT AND EACH LENDER IRREVOCABLY WAIVES ANY OBJECTION, INCLUDING ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF *FORUM NON CONVENIENS*, WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY ACTION OR PROCEEDING IN SUCH JURISDICTION IN RESPECT OF ANY LOAN DOCUMENT OR OTHER DOCUMENT RELATED THERETO. THE BORROWER, EACH GRANTOR, THE ADMINISTRATIVE AGENT AND EACH LENDER WAIVES PERSONAL SERVICE OF ANY SUMMONS, COMPLAINT OR OTHER PROCESS, WHICH MAY BE MADE BY ANY OTHER MEANS PERMITTED BY THE LAW OF SUCH STATE.

(d) Waiver of Jury Trial. EACH PARTY TO THIS AGREEMENT AND EACH SECURED LENDER, BY ACCEPTANCE HEREOF, HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER ANY LOAN DOCUMENT OR IN ANY WAY CONNECTED

WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO ANY LOAN DOCUMENT, OR THE TRANSACTIONS RELATED THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER FOUNDED IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HERETO, AND EACH SECURED LENDER BY ACCEPTANCE HEREOF, HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY PARTY TO THIS AGREEMENT AND ANY SECURED LENDER MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE SIGNATORIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

Section 6.7 *Administrative Agent's Right to Use Agents.* Administrative Agent may exercise its rights under this Agreement through an agent or other designee.

Section 6.8 *No Interference, Compensation or Expense.* Administrative Agent may exercise its rights under this Agreement (a) without resistance or interference by any Grantor and (b) without payment of any rent, license fee, or compensation of any kind to any Grantor.

Section 6.9 *Waivers of Rights Inhibiting Enforcement.* Each Grantor waives (a) any claim that, as to any part of the Collateral, a public sale, should Administrative Agent elect so to proceed, is, in and of itself, not a commercially reasonable method of sale for such Collateral, (b) except as otherwise provided in this Agreement, **TO THE FULLEST EXTENT NOT PROHIBITED BY APPLICABLE LAW, NOTICE OR JUDICIAL HEARING IN CONNECTION WITH ADMINISTRATIVE AGENT'S DISPOSITION OF ANY OF THE COLLATERAL INCLUDING ANY AND ALL PRIOR NOTICE AND HEARING FOR ANY PREJUDGMENT REMEDY OR REMEDIES AND ANY SUCH RIGHT THAT EACH GRANTOR WOULD OTHERWISE HAVE UNDER THE CONSTITUTION OR ANY STATUTE OF THE UNITED STATES OR OF ANY STATE, AND ALL OTHER REQUIREMENTS AS TO THE TIME, PLACE AND TERMS OF SALE OR OTHER REQUIREMENTS WITH RESPECT TO THE ENFORCEMENT OF SECURED PARTIES' RIGHTS HEREUNDER** and (c) all rights of redemption, appraisalment or valuation.

Section 6.10 *Obligations Not Affected.* To the fullest extent not prohibited by Applicable Law, or otherwise expressly provided in this Agreement, the obligations of each Grantor under this Agreement shall remain in full force and effect without regard to, and shall not be impaired or affected by:

(a) any amendment, addition, or supplement to, or restatement of any Loan Document or any instrument delivered in connection therewith or any assignment or transfer thereof;

(b) any exercise, non-exercise, or waiver by any Secured Party of any right, remedy, power, or privilege under or in respect of, or any release of any guaranty, any collateral, or the Collateral or any part thereof provided pursuant to, this Agreement or any Loan Document;

(c) any waiver, consent, extension, indulgence, or other action or inaction in respect of this Agreement or any Loan Document or any assignment or transfer of any thereof;

(d) any bankruptcy, insolvency, reorganization, arrangement, readjustment, composition, liquidation, or the like of any Loan Party or any other Person, whether or not each Grantor shall have notice or knowledge of any of the foregoing; or

(e) any other event which may give a Grantor or any other Loan Party a defense to, or a discharge of, any of its obligations under any Loan Document.

Section 6.11 *Notices and Deliveries.* All notices and other communications provided for hereunder shall be effectuated in the manner provided for in Section 10.02 of the Credit Agreement, provided that if a notice or communication hereunder is to Guarantor, said notice shall be addressed to such Guarantor, in care of the Borrower at the Borrower's then current address (or facsimile number) for notice under the Credit Agreement.

Section 6.12 *Severability.* If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future Laws during the term thereof, (a) such provision shall be fully severable, this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part hereof, and the remaining provisions hereof shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance herefrom and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid, or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid, or unenforceable provisions.

Section 6.13 *Successors and Assigns.* All of the provisions of this Agreement shall be binding and inure to the benefit of the parties hereto and their respective successors and assigns (including, as to each Grantor, all Persons who may become bound as a debtor or a new debtor to this Agreement); provided, each Grantor may not assign any of its rights or obligations under this Agreement, except as a result of the consummation of a transaction permitted under Section 7.04(a) of the Credit Agreement.

Section 6.14 *Counterparts.* This Agreement may be executed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto were upon the same instrument.

Section 6.15 ***ENTIRE AGREEMENT.*** THIS WRITTEN AGREEMENT, TOGETHER WITH THE OTHER LOAN DOCUMENTS, REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS AMONG THE PARTIES.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective duly authorized officers as of the date first above written.

GRANTORS:

**NCI BUILDING SYSTEMS, INC.
NCI HOLDING CORP.
NCI OPERATING CORP.
METAL COATERS OF CALIFORNIA, INC.**

By: 
Robert J. Medlock
Executive Vice President and
Chief Financial Officer

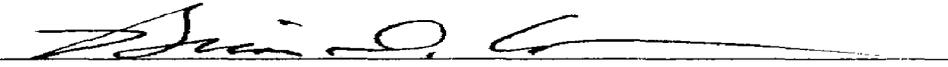
**A & S BUILDING SYSTEMS, L.P.
NCI BUILDING SYSTEMS, L.P.
METAL BUILDING COMPONENTS, L.P.
METAL COATERS OPERATING, L.P.**

By: NCI OPERATING CORP.,
as General Partner

By: 
Robert J. Medlock
Executive Vice President and
Chief Financial Officer

SECURED PARTY:

BANK OF AMERICA, N.A., AS
ADMINISTRATIVE AGENT

By: 

Name: Brian D. Corum

Title: Managing Director

SCHEDULE 2

Intellectual Property

- (i) All Intellectual Property, including but not limited to the copyrights, trademarks and patents listed below, (ii) any renewal, reissue, re-examination certificate, extension or the like with respect to the Intellectual Property, and (iii) all proceeds and products of the foregoing together with any license in favor of or from Grantor of any of the foregoing in whatever form.

1. Owned Intellectual Property:

<u>Registered Trademarks</u>	<u>Registration Number</u>
Retro-R	1,906,296
Royal K-70	2,025,884
Dura 20	2,037,498
Nationwide Homes	1,744,545
Metallic Building Company	2,110,344
Metallic and design	623,865
Metallic and design	515,413
Metallic and design	556,035
Metallic Building Company	546,893
NCI & design	2,028,845
AAS (miscellaneous design)	2,035,454
A & S Building Systems	2,028,846
Mid-West Steel Building Company	2,040,247
Design logo for Midwest Steel	2,030,148
ARS & design	2,030,149
Steel Systems Incorporated & Design	2,066,598
Value Express & design	2,054,529
NCI Express & design	2,052,295
NCI Building Components	2,028,844
NCI	2,079,167
DBCI	2,071,877
NCI & design	2,119,192
A & S and design	2,030,362
Metallic	2,119,193
Verti-Loc	2,085,914
Vistasheen	2,335,371
Vistacolor	2,335,370
VistaShadow	2,335,369
Architectural Loc	2,202,364
SS216	2,169,345
Mesco & design	1,055,914
Mesco and design	1,069,517

Classic Steel Frame Homes	2,183,547
ECI and design	2,296,476
IPS & design	2,196,662
Battenlok	1,686,016
Signature	1,750,427
Ultra-Dek 124	1,310,768
Ultra-Dek 124	41713 (Texas)
Double-Lok 124	1,613,519
Lokseam	1,684,278
MBCI and design	1,424,579
NuRoof	1,917,593
FlexLoc	1,950,005
Imperial Rib	1,980,366
ABC American Building Components	1,926,989
Monarch Rib	1,905,298
MBCI (and design)	1,206,560
Regal Rib	1,082,255
Rugged Rib	1,171,944
Ajax	0,236,307
NuWall	2,281,230
SuperLok	2,161,830
StormProof	2,277,089
Rain Guard	2,192,159
Classic	2,256,416
Perma-Clad	2,193,540
Artisan	2,262,021
LiteFrame	2,266,112
Traditional	2,286,987
SlimLine	2,192,160
Royal Lock	App. No. 75/430040 (pending)
Ameri-Drain	2,264,507
Supra-Rib	App. No. 75/365614 (pending)
7/8" Wide Rib	2,478,821
3/4" High Rib	2,450,419
S-36	2,262,735
BI-36	2,266,746
B-36	2,259,247
Metal Coaters and design	1,675,343
DOUBLECOTE	2,005,583
ECI Building Components	App. No. 75/705743 (pending)
Long Bay System	2,485,858
SL-16	2,359,209
Millennium	2,458,977
WeatherSafe	2,489,812
Single Source	App. No. 75/670396 (pending)
Metal-Prep and design	1,663,644

MBCI and design	1,422,844
Speedy Steel Garages	2,581,159
Tuff-Shield	App. No. 76/332089 (pending)
Classic Steel Frame Homes and design	App. No. 76/420403 (pending)

Patents

Apparatus and Method for Retrofitting a Metal Roof	5402572
Vented Closure	5605022
Apparatus for Retrofitting a Metal Roof	5855101
Cinch Strap and Backup Plate for Metal Roof Endlap Joint	4655020
Articulating Roofing Panel Clip	4796403
Structural Member for Use in the Construction of Buildings	US01/41167 (published)
Structural Member for Use in the Construction of Buildings	App. No. 09/604485 (pending)

WINSTEAD

October 17, 2002

direct dial: 214.745.5797
redwards@winstead.com

Commissioner of Patent and Trademarks
Box Assignments
Washington, D.C. 20231

Re: Trademark Registration Numbers:
1,906,296, et al.
From: NCI Building Systems, Inc.
To: Bank of America., N.A.
Our File No.: 25690-676

CERTIFICATE OF FIRST CLASS MAIL

This correspondence is being deposited with the United States Postal Service with sufficient postage as First Class Mail in an envelope addressed to the Commissioner of Patent and Trademarks, Box Assignments, Washington, D.C. 20231, on the date indicated below.

Terese Cozad
Name (Signature)
Terese Cozad
Name (Printed)
10/17/02
Date

Dear Sir:

Enclosed are the following:

1. Recordation Form Cover Sheet, recording a Security Agreement from NCI Building Systems, Inc. to Bank of America, N.A. of Trademarks with Trademark Registration Sheet and copy of the fully executed Security Agreement;
2. Recordal of Security Agreement fees in the amount of \$2,040.00;
3. Transmittal letter with First-Class Mail Certificate of Mailing; and
3. Postal Receipt Card.

It is believed that no additional fees are due. However, the Commissioner is hereby authorized to deposit any overpayment or charge any other fees which may be required by this paper, to Winstead Sechrest & Minick P.C. Deposit Account No. 23-2426.

Sincerely,

WINSTEAD SECHREST & MINICK P.C.



S. Roxanne Edwards
Attorney for Applicant

SRE/tac
Enclosures

5400 RENAISSANCE TOWER
BOULEVARD, SUITE 2261
DALLAS, TEXAS 75270
25690-676 For 10/17/2002

PH 214.745.5400
FAX 214.745.5390
WINSTEAD.COM

WINSTEAD SECHREST & MINICK
Attorneys and Counselors
A Professional Corporation

Austin, Dallas, Fort Worth,
Houston, Mexico City,
The Woodlands, Washington DC

TRADEMARK

RECORDED: 10/22/2002

REEL: 002601 FRAME: 0892