

MORTGAGE OF INTELLECTUAL PROPERTY AND LICENSES

THIS MORTGAGE OF INTELLECTUAL PROPERTY AND LICENSES (the "Mortgage") is made effective as of the 23rd day of September, 2002, by and between **HICKMAN, WILLIAMS & COMPANY OF KENTUCKY**, a Kentucky corporation having its principal office and place of business at 250 E. Fifth Street, Suite ~~1110~~⁶⁰⁰, Cincinnati, Ohio 45202 ("Mortgagor"), and **U.S. BANK NATIONAL ASSOCIATION**, a national banking association (formerly known as Firststar Bank, National Association) whose address is 425 Walnut Street, Cincinnati, Ohio 45202 ("Mortgagee").

W I T N E S S E T H:

WHEREAS, Mortgagor and Mortgagee are parties to certain loan and financing arrangements (herein called the "Financing Agreement"), which Financing Agreement provides (i) for the Mortgagee to, from time to time, extend credit to or for the account of Mortgagor and (ii) for the grant by Mortgagor to Mortgagee of a security interest in Mortgagor's business as a going concern, including, without limitation, its intangible assets such as its patents, patent applications, trademarks (which term as used herein shall be construed as including service marks), trademark applications, trademark registrations, trade names, copyrights, copyright registrations, copyright applications, trade secrets, goodwill and licenses, and its tangible assets such as would be necessary to permit a transferee effectively to utilize any of its intangible assets and the business or products with which they are associated.

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, Mortgagor agrees as follows:

1. **Incorporation of Financing Agreement.** The Financing Agreement and the terms and provisions thereof are hereby incorporated herein in their entirety by this reference thereto. For purposes of this Mortgage, "Obligations" shall mean any and all debts, liabilities or obligations, owing to Lenders from Mortgagor of any kind, present or future, whether or not evidenced by or arising out of the Financing Agreement or any of the Financing Documents (as defined in the Financing Agreement), or any other agreement or in any other manner, whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, and including, without limitation, all interest, charges, expenses, fees, and any other sums chargeable to Mortgagor in connection with any of the foregoing. For purposes of this Mortgage, satisfaction of Mortgagor's Obligations shall occur when said Obligations have been paid in full without risk of disgorgement due to receivership or bankruptcy proceedings instituted by or on behalf of the

creditors of Mortgagor.

2. **Mortgage of Patents, Trademarks, Copyrights, Trade Secrets and Licenses.** To secure the complete and timely satisfaction of all of the Obligations, Mortgagor hereby grants, bargains, assigns, mortgages, pledges, sells, and creates security interests in, transfers, and conveys to Mortgagee, as and by way of a first mortgage and security interest having priority over all other security interests, all of the Mortgagor's right, title and interest in and to all of its now owned or existing and hereafter created or acquired:

(i) patents and patent applications, in the United States and elsewhere, including, without limitation, the inventions and improvements described and claimed therein, and those patents listed on Exhibit A, attached hereto and made a part hereof, and (a) the reissues, divisions, continuations, renewals, extensions and continuations in-part thereof, (b) all income, royalties, damages and payments now and hereafter due and/or payable under and with respect thereto, including, without limitation, damages and payments for past or future infringements thereof, (c) the right to sue for past, present and future infringements thereof, and (d) all rights corresponding thereto throughout the world (all of the foregoing patents and applications, together with the items described in clauses (a)-(d), are sometimes hereinafter individually and/or collectively referred to as the "Patents");

(ii) trademarks, trademark registrations, trade names, trade name registrations and trademark and trade name applications, used in the United States and elsewhere, including, without limitation, the trademarks, trademark registrations, trade names, trade name registrations and trade name and trademark applications listed on Amended Exhibit B, attached hereto and made a part hereof and (a) renewals or extensions thereof, (b) all income, royalties, damages and payments now and hereafter due and/or payable with respect thereto, including, without limitation, damages and payment for past or future infringements thereof, (c) the right to sue for past, present and future infringements thereof, and (d) all rights corresponding thereto throughout the world (all of the foregoing trademarks, trademark registrations, trade names and applications, together with the items described in clauses (a)-(d), are sometimes hereinafter individually and/or collectively referred to as the "Trademarks");

(iii) copyrights, copyright registrations and copyright applications, including, without limitation, the copyrights, copyright registrations, and copyright applications listed on Exhibit C, attached hereto and made a part hereof, and (a) renewals or extensions thereof, (b) all income, royalties, damages and payments now and hereafter due and/or payable with

respect thereto, including, without limitation, damages and payment or past or future infringements thereof, (c) the right to sue for past, present and future infringements thereof, and (d) all rights corresponding thereto throughout the world (all of the foregoing copyrights, copyright registrations, and copyright applications, together with the items described in clauses (a)-(d), are sometimes hereinafter individually and/or collectively referred to as the "Copyrights");

(iv) all trade secrets, formulas, processes, devices, know-how, or compilations of information (including technical information and non-technical information such as customer lists and marketing plans), collectively referred to as trade secrets, which are not available to others and which are maintained as confidential by Mortgagor, including without limitation, the trade secrets generally described on Exhibit D, attached hereto and made a part hereof, and the right to prevent misappropriation and unauthorized disclosures thereof and all rights corresponding thereto throughout the world (all of the foregoing trade secrets and associated rights are sometimes hereinafter individually and/or collectively referred to as the "Trade Secrets");

(v) all license agreements with respect to any of the Patents, the Trademarks, the Copyrights, the Trade Secrets, or any other patent, trademark, trade name, copyright or trade secret, or any application or registration thereof, between Mortgagor and any other party, whether Mortgagor is a licensor or licensee under any such license agreement, including, without limitation, such license agreements granting the right to prepare for sale, sell and advertise for sale, all inventory now or hereafter owned by Mortgagor and now or hereafter covered by such license agreements, and the licenses listed on Exhibit E attached hereto and made a part hereof, and (a) renewals, extensions or amendments thereof, (b) all income, damages, and payments for past or future infringements thereof, (c) the right to sue for past, present, and future infringements thereof, and (d) all rights corresponding thereto throughout the world (all of the foregoing, together with items described in clauses (a)-(d), are sometimes hereinafter individually and/or collectively referred to as the "Licenses"); and

(vi) the goodwill of Mortgagor's business including but not by way of limitation such goodwill connected with and symbolized by the Trademarks.

3. **Restrictions on Future Assignments, Grants or Conveyances.** Mortgagor agrees that until the Obligations shall have been fully satisfied and the Financing Agreement shall have been terminated, Mortgagor will not, without Mortgagee's prior written consent, assign, by sale, mortgage or other types of conveyances, any of its interest in, or grant any license under,

the Patents, Trademarks, Copyrights, Trade Secrets or Licenses (for example, a license or a sub-license agreement) or enter into any other agreements with respect to the Patents, Trademarks, Copyrights, Trade Secrets and Licenses which is inconsistent with Mortgagor's obligations under the other provisions of this Mortgage, and Mortgagor further agrees that it will not take any action, or permit any action to be taken by others subject to its control, including licensees, or fail to take any action, which would affect the validity or enforcement of the rights transferred to Mortgagee under this Mortgage. Notwithstanding the foregoing, until any Event of Default occurs under the Loan Agreement, Mortgagor may continue to grant licenses in the ordinary course of business.

4. **New Patents, Trademarks, Copyrights, Trade Secrets and Licenses.** Mortgagor represents and warrants that the Patents, Trademarks, Copyrights, Trade Secrets and Licenses listed on Exhibits A-E, respectively, constitute all of the Patents, Trademarks, Copyrights and Trade Secrets now owned by Mortgagor and all License Agreements to which Mortgagor is a party. If, before the Obligations shall have been fully satisfied, Mortgagor shall (i) become aware of any existing Patents, Trademarks, Copyrights, Trade Secrets or Licenses of which Mortgagor has not previously informed Mortgagee; (ii) obtain rights to any new patentable inventions, trademarks, trademark registrations, trademark applications, trade names, trade name registrations, trade name applications, copyrights, copyright registrations, copyright applications or trade secrets; (iii) become a party to any other license agreement with respect to any patents, trademarks, copyrights or trade secrets; (iv) become entitled to the benefit of any patent, trademark or copyright application, trademark, trademark registration, copyrights, copyright registrations, trade names, trade name registrations, trade secrets or license renewal, or patent for any reissue, division, continuation, renewal, extension, or continuation-in-part of any Patent or any improvement on any Patent, the provisions of this Mortgage shall automatically apply thereto and Mortgagor shall give to Mortgagee prompt written notice thereof. Mortgagor hereby authorizes Mortgagee as its irrevocable attorney-in-fact to modify this Mortgage by amending Exhibit A, B, C, D and/or E, as applicable, to include any future patents, patent applications, trademarks, trademark registrations, trademark applications, trade names, copyrights, trade name registrations, trade name applications, copyright registrations, copyright applications, trade secrets and licenses which are Patents, Trademarks, Copyrights, Trade Secrets or Licenses, as applicable, under paragraph 2 above or under this paragraph 4, and to file or refile this Mortgage with the United States Patent and Trademark Office, the United States Copyright Office, or other appropriate agency.

5. Representations and Warranties. Mortgagor represents and warrants to and agrees with Mortgagee that:

(i) The Patents, Trademarks, Copyrights, Trade Secrets and Licenses are subsisting and have not been adjudged invalid or unenforceable, in whole or in part;

(ii) To the best of Mortgagor's knowledge, each of the Patents, Trademarks, Copyrights, Trade Secrets and Licenses is valid and enforceable, and Mortgagor's use thereof does not infringe the intellectual property rights of any third person;

(iii) Mortgagor is the owner of an unencumbered right, title and interest in and to each of the Patents, Trademarks, Copyrights, Trade Secrets and Licenses, free and clear of any liens, charges, and encumbrances including, without limitation, exclusive and non-exclusive licenses (except for such licenses which are Licenses), consent-to-use agreements, shop rights and covenants by Mortgagor not to sue third persons, and Mortgagor has the power and authority to make, and will continue to have authority to perform, the Mortgage according to its terms;

(iv) The Mortgage does not violate and is not in contravention of any other agreement to which Mortgagor is a party or any judgment or decree by which Mortgagor is bound and does not require any consent under any other agreement to which Mortgagor is a party or by which Mortgagor is bound.

(v) Mortgagor has adopted all of the Trademarks and all of such Trademarks have been used and are currently being used in connection with Mortgagor's business.

(vi) Mortgagor has no notice of any suits or actions commenced or threatened with reference to the Patents, Trademarks, Copyrights, Trade Secrets or Licenses.

(vii) Mortgagor has adopted adequate precautions to protect its Trade Secrets from unauthorized or accidental disclosure;

(viii) The Licenses, complete copies of each of which have been provided to Mortgagee, are valid and binding agreements enforceable according to their terms (subject, as to the enforcement of remedies, to applicable bankruptcy, reorganization, insolvency and similar laws and to moratorium laws from time to time in effect). Each of the Licenses is in full force and effect and has not been amended or abrogated and there is no default under any of the Licenses.

6. **Events of Default; Royalties; Terms.** Upon the occurrence of any "Event of Default" (as defined in the Financing Agreement), Mortgagor hereby authorizes: (a) the Commissioner of Patents and Trademarks, United States Patent and Trademark Office (or as appropriate, such equivalent agency in foreign countries), to issue any and all patents on said inventions to Mortgagee as assignee of Mortgagor's entire interest therein; (b) the Commissioner of Patents and Trademarks, United States Patent and Trademark Office (or as appropriate, such equivalent agency in foreign countries), to issue any and all certificates of registration or renewal on all of the Trademarks to Mortgagee as assignee of Mortgagor's entire interest therein and in the goodwill of Mortgagor's business connected therewith and symbolized thereby; and (c) the Register of Copyrights, United States Copyright Office (or as appropriate, such equivalent agency in foreign countries), to issue any and all certificates of registration or renewal on all of the Copyrights to Mortgagee as assignee of Mortgagor's entire interest therein. Upon the occurrence of an Event of Default and enforcement of Mortgagee's rights hereunder, Mortgagee will be entitled to use all Patents, Trademarks, Copyrights, Trade Secrets and Licenses on a worldwide basis and without any liability for royalties or other related charges from Mortgagee to the Mortgagor. The term of the Mortgage granted herein shall extend until the Mortgagor's Obligations have been fully satisfied and the Financing Agreement has been terminated.

7. **Use Prior to Default.** Prior to the occurrence of any Event of Default and enforcement of Mortgagee's rights under paragraph 6, Mortgagor shall have the right to use the Patents, Trademarks, Copyrights, Trade Secrets and Licenses in the ordinary course of its business, subject to the terms and covenants of the Financing Agreement and this Mortgage.

8. **Trademark Quality Control.** Mortgagor agrees to maintain the quality of any and all products in connection with which the Trademarks are used, consistent with the quality of said products as of the date hereof. Upon the occurrence of any Event of Default and enforcement of Mortgagee's rights under paragraph 6 of this Mortgage, Mortgagor agrees that Mortgagee, or a conservator appointed by Mortgagee, shall have the right to establish such additional product quality controls as Mortgagee, or said conservator, in its sole judgment, may deem necessary to assure maintenance of the quality of products sold by Mortgagor under the Trademarks.

9. **Duties of Mortgagor.** Mortgagor shall have the duty (i) to prosecute diligently any patent, trademark or copyright registration application pending as of the date hereof or thereafter, and promptly to notify Mortgagee of the ultimate outcome of such application, until the Obligations shall have been fully satisfied; (ii) to make application with the United

States or in other jurisdictions as appropriate, on unpatented but patentable inventions and on trademarks and trade names; (iii) to affix copyright notices to all published and unpublished copyrightable works of authorship, and to apply promptly to register any unregistered work with the United States Copyright Office; iv) to preserve all rights in the Patents, Trademarks, Copyrights, Trade Secrets and Licenses used by Mortgagor in the ordinary course of Mortgagor's business; and (v) to ensure that the Patents, Trademarks, Copyrights and Licenses used by Mortgagor in the ordinary course of Mortgagor's business are and remain valid and enforceable, including the payment of necessary fees and the filing of such documents with the appropriate agencies to maintain the Patents, Trademarks and Copyrights in full force and effect. Any expenses incurred in connection with Mortgagor's obligations under this paragraph shall be borne by Mortgagor. Mortgagor shall not abandon any right to file a patent, trademark, trade name or copyright application, or abandon any pending patent, trademark, trade name or copyright application, without the consent of Mortgagee.

10. **Financing Statements; Documents.** At the request of Mortgagee, Mortgagor will join with Mortgagee in executing one or more financing statements pursuant to the version of the Uniform Commercial Code enacted in the State of Ohio, in form satisfactory to Mortgagee, and will pay the costs of filing and/or recording this Mortgage and all financing, continuation and termination statements in all public offices where filing or recording is reasonably deemed necessary or desirable by Mortgagee. Mortgagor will execute and deliver to Mortgagee from time to time such supplemental collateral assignments or mortgages or other instruments, including, but not by way of limitation, additional collateral assignments to be filed with the United States Patent and Trademark Office, or United States Copyright Offices, as Mortgagee may require for the purpose of confirming Mortgagee's interest in the Patents, Trademarks, Copyrights, Trade Secrets and Licenses.

11. **Mortgagee's Right to Sue.** After the occurrence and during the continuance of an Event of Default, Mortgagee shall have the right, but shall in no way be obligated, to bring suit in its own name and, in Mortgagee's discretion, to join Mortgagor as a party plaintiff, to enforce the Patents, Trademarks, Copyrights, Trade Secrets and Licenses. If Mortgagee shall commence any such suit, Mortgagor shall, at the request of Mortgagee, do any and all lawful acts and execute any and all proper documents required by Mortgagee in aid of such enforcement and Mortgagor shall promptly upon demand, reimburse and indemnify Mortgagee for all reasonable costs and expenses incurred by Mortgagee in the exercise of its rights under this paragraph 11.

12. **Waivers.** No course of dealing between Mortgagor and Mortgagee nor any failure to exercise nor any delay in

exercising, on the part of Mortgagee any right, power or privilege hereunder or under the Financing Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or thereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

13. **Severability.** The provisions of this Mortgage are severable, and if any clause or provision shall be held invalid and unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, in such jurisdiction, and shall not in any manner affect such clause or provision in any other jurisdiction, or any other clause or provision of this Agreement in any jurisdiction.

14. **Modification.** This Mortgage cannot be altered, amended or modified in any way, except as specifically provided in paragraph 4 hereof or by a writing signed by the parties hereto.

15. **Cumulative Remedies; Power of Attorney; Effect on Financing Agreement.** All of the Mortgagee's rights and remedies with respect to the Patents, Trademarks, Copyrights, Trade Secrets and Licenses, whether established hereby or by the Financing Agreement, or by any other agreements or by law shall be cumulative and may be exercised singularly or concurrently. Upon the occurrence of an Event of Default, Mortgagor hereby authorizes Mortgagee to make, constitute and appoint any officer or agent of Mortgagee as Mortgagee may select, in its sole discretion, as Mortgagor's true and lawful attorney-in-fact, with power to: (i) endorse Mortgagor's name on all applications, documents, papers and instruments necessary or desirable for Mortgagee in the use of the Patents, Trademarks, Copyrights, Trade Secrets and Licenses; (ii) take any other actions with respect to the Patents, Trademarks, Copyrights, Trade Secrets and Licenses as Mortgagee deems to be in the best interest of Mortgagee; (iii) grant or issue any exclusive or non-exclusive license under the Patents, Trademarks, Copyrights, Trade Secrets or Licenses to anyone; and/or (iv) assign, pledge, convey or otherwise transfer title in or dispose of the Patents, Trademarks, Copyrights, Trade Secrets or Licenses, and the goodwill and business assets associated therewith or symbolized thereby, to anyone. Mortgagee hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof. This power of attorney shall be irrevocable until Mortgagor's Obligations shall have been fully satisfied and the Financing Agreement has been terminated. Mortgagor acknowledges and agrees that Mortgagee shall, upon the occurrence of any Event of Default, have and be entitled to exercise of all Mortgagee's rights under the Patents, Trademarks, Copyrights, Trade Secrets and Licenses (including the right to receive any payments owing

to or to become due to Mortgagor thereunder). Mortgagor acknowledges and agrees that this Mortgage is not intended to limit or restrict in any way the rights and remedies of Mortgagee under the Financing Agreement but rather is intended to facilitate the exercise of such rights and remedies. Mortgagee shall have, in addition to all other rights and remedies given it by the terms of this Mortgage and the Financing Agreement, all rights and remedies allowed by law and the rights and remedies of a secured party under the Uniform Commercial Code as enacted in any jurisdiction in which the Patents, Trademarks, Copyrights, Trade Secrets or Licenses may be located. All rights and remedies available to Mortgagee shall be available whether or not the Obligations or any portion thereof are or become due and payable.

16. **Binding Effect; Benefits.** This Mortgage shall be binding upon the Mortgagor and its successors and assigns, and shall inure to the benefit of Mortgagee, its successors and assigns.

17. **Governing Law.** This Mortgage has been delivered and accepted in Cincinnati, Ohio, and shall be governed by and construed in accordance with the laws of the State of Ohio.

18. **Expenses.** All expenses incurred in connection with the performance of any of the agreements set forth herein shall be borne by Mortgagor. All fees, costs and expenses, of whatever kind or nature, including reasonable attorneys' fees and legal expenses, incurred by Mortgagee in connection with the filing or recording of any documents (including all taxes in connection therewith) in public offices, the payment or discharge of any taxes, counsel fees, maintenance fees, encumbrances or otherwise in protecting, maintaining or preserving the Patents, Trademarks, Copyrights, Trade Secrets and Licenses, or in defending or prosecuting any actions or proceedings arising out of or related to the Patents, Trademarks, Copyrights, Trade Secrets and Licenses, shall be borne by and paid by Mortgagor on demand by Mortgagee and until so paid shall be added to the principal amount of Mortgagor's Obligations and shall bear interest at the rate then applicable to the loans to Mortgagor under the Financing Agreement. Notwithstanding the foregoing, Mortgagor will not be obligated to reimburse Mortgagee for fees, expenses and out-of-pocket costs incurred by Mortgagee to the extent that such amounts are incurred due to Mortgagee's gross negligence or willful misconduct.

19. **Headings.** Paragraph headings used herein are for convenience only and shall not modify the provisions which they precede.

20. **Further Assurances.** Mortgagor agrees to execute and deliver such further agreements, instruments and documents,

and to perform such further acts, as Mortgagee shall reasonably request from time to time in order to carry out the purpose of this Mortgage and agreements set forth herein.

21. **Survival of Representations.** All representations and warranties of Mortgagor contained in this Mortgage shall survive the execution and delivery of this Mortgage and shall be remade on the date of each borrowing under the Financing Agreement.

22. **Release of Mortgage.** This Mortgage is made for collateral purposes only. Upon full satisfaction of Mortgagor's Obligations and termination of the Financing Agreement, Mortgagee shall execute and deliver to Mortgagor all deeds, assignments and other instruments, and shall take such other actions, as may be necessary and proper to re-vest in Mortgagor full title to the Patents, Trademarks, Copyrights, Trade Secrets and Licenses, subject to any disposition thereof which may have been made by Mortgagee pursuant hereto or pursuant to this Mortgage or the Financing Agreement.

23. **Counterparts.** This Mortgage may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute one instrument.

IN WITNESS WHEREOF, Hickman, Williams & Company of Kentucky, by James E. Sander, its duly authorized officer, has executed this Mortgage this 15th, day of October, 2002.

HICKMAN, WILLIAMS & COMPANY OF KENTUCKY

By: James E. Sander
James E. Sander
Vice President, Chief
Financial Officer and
Secretary

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

The foregoing Mortgage of Intellectual Property and Licenses was executed and acknowledged before me this 15th day of OCTOBER, 2002, by the Vice President, Chief Financial Officer and Secretary of Hickman, Williams & Company of Kentucky, a Kentucky corporation, on behalf of the corporation.

Rick Frey
Notary Public

RICK FREY
Notary Public, State of Ohio
My Commission Expires Nov. 24, 2003

Accepted at Cincinnati, Ohio
on 10/15, 2002

U.S. BANK NATIONAL ASSOCIATION

By: [Signature]
Name: DEREK BOWDERBUSIA
Title: VP

EXHIBIT A

PATENTS

As previously specified in prior
gages of Intellectual Property and Licenses

AMENDED EXHIBIT B

Hickman, Williams & Company of Kentucky

Caloy	636,316	U.S. Federal	Renewed 10/30/1996	10/30/2006
CAMACO	TMA 273,272	Canada Federal File 483589	5/1/1998	10/29/2012