

11-05-2002

11.5.02

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



102271583

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

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

1. Name of conveying party(ies): 11-5-02 National Steel Car Limited

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

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

- Nature of conveyance: Assignment Merger Security Agreement Change of Name Other

Execution Date: July 19, 2002

2. Name and address of receiving party(ies) Name: Trilon Bancorp Inc.

Internal Address:

Street Address: BCE Place, 181 Bay Street

City: Toronto State: Ontario Zip: M5J 2T3

- Individual(s) citizenship Association General Partnership Limited Partnership Corporation-State Other

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No (Designations must be a separate document from assignment) Additional name(s) & address(es) attached? Yes No

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

A. Trademark Application No.(s)

75/009830

B. Trademark Registration No.(s)

2,171,583

Additional number(s) attached Yes No

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

Name: RICHES, McKENZIE & HERBERT LLP

Internal Address:

Street Address: 2 Bloor Street East, Suite 1800

City: Toronto State: Ontario Zip: M4W 3J5

6. Total number of applications and registrations involved: 1

7. Total fee (37 CFR 3.41): \$ 40.00

- Enclosed Authorized to be charged to deposit account

8. Deposit account number:

(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. Statement and signature.

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

Paul Herbert

November 4, 2002

Name of Person Signing

Signature

Date

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

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: 002610 FRAME: 0082

Canada }  
Province of Ontario }  
To Wit }

To all whom these Presents  
may come, be seen or known

I, PAUL LAURIE HERBERT

a Notary Public, in and for the Province of Ontario, by Royal Authority duly appointed,  
residing at the City of Toronto, in said Province,

*Do Certify and Attest* that the paper-writing hereto annexed is a true copy of a document  
produced and shown to me and purporting to be the General Security Agreement  
between Trilon Bancorp Inc. and National Steel Car Limited

on the 10th day of July, 2002,

the said copy having been compared by me with the said original document, an act whereof being  
requested I have granted under my Notarial Form and Seal of Office to serve and avail as  
I shall or may require.

*In Testis: Whereof* I have hereto subscribed my name and affixed my Notarial Seal of Office  
at Toronto, Ontario, Canada

this 4th day of November, 2002.

SEAL

  
\_\_\_\_\_  
PAUL LAURIE HERBERT

A Notary Public in and for the Province of Ontario.

# GENERAL SECURITY AGREEMENT

THIS AGREEMENT made the 19<sup>th</sup> day of July, 2002.

**B E T W E E N:**

**NATIONAL STEEL CAR LIMITED**, having its chief executive office at 602 Kenilworth Avenue North, Hamilton, Ontario L8N 3J4, Fax No. (905) 544-8872 (hereinafter called the "**Debtor**")

and

**TRILON BANCORP INC.**, having an office at BCE Place, Bay/Wellington Tower, 181 Bay Street, Suite 4420, Toronto, Ontario M5J 2T3, Fax No. (416) 365-9642

(hereinafter called the "**Secured Party**")

**IN CONSIDERATION** of the sum of One Dollar (\$1.00) now paid to it by the Secured Party (receipt of which is hereby acknowledged), and to secure the due payment and performance of all Obligations (hereinafter defined), the Debtor hereby agrees with the Secured Party and provides as follows:

## **ARTICLE 1 SECURITY**

### **1.1 Charge**

Subject to the exceptions set forth in Section 1.2, the Debtor hereby:

- (a) grants, sells, assigns, conveys, transfers, mortgages, pledges and charges, as and by way of fixed and specific mortgage, pledge and charge to and in favour of the Secured Party, and grants to the Secured Party a security interest in, all personal property of every nature and kind whatsoever and wheresoever situate now or at any time and from time to time owned by the Debtor or in which or in respect of which the Debtor has any interest or rights of any kind, including the following described property:
  - (i) all inventory of whatsoever kind and wheresoever situate now owned or hereafter acquired by the Debtor including goods for sale or lease or that have been leased; goods furnished or to be furnished under a contract of service; goods which are raw materials, work in process or materials used or consumed in a business or profession of the Debtor; goods used or

procured for packing; finished goods; industrial growing crops, oil, gas and other minerals to be extracted; timber to be cut; and the young of animals after conception ("**Inventory**");

- (ii) all book accounts and book debts and generally all accounts, debts, dues, claims, choses in action and demands of every nature and kind howsoever arising or secured including letters of credit, and advices of credit, which are now due, owing or accruing or growing due to or owned by or which may hereafter become due, owing or accruing or growing due or owned by the Debtor including claims against the Crown and claims under insurance policies ("**Accounts**");
- (iii) all machinery, equipment, tools, apparatus, plants, fixtures, furniture, vehicles, goods and other tangible personal property of whatsoever nature and kind, now owned or hereafter acquired by the Debtor other than Inventory ("**Equipment**");
- (iv) all chattel paper now owned or hereafter acquired by the Debtor ("**Chattel Paper**");
- (v) all warehouse receipts, bills of lading and other documents of title, whether negotiable or otherwise, now owned or hereafter acquired by the Debtor ("**Documents of Title**");
- (vi) all instruments now owned or hereafter acquired by the Debtor ("**Instruments**");
- (vii) all deeds, documents, writings, papers, books of accounts and other books evidencing or relating to Accounts, Chattel Paper, Instruments or Documents of Title or by which such are or may hereafter be secured, evidenced, acknowledged or made payable; and all contracts, securities, instruments and other rights and benefits in respect thereof;
- (viii) all shares, stocks, warrants, bonds, debentures, debenture stock or the like now owned or hereafter acquired by the Debtor;
- (ix) all intangible property now owned or hereafter acquired by the Debtor including choses in action, goodwill, licences, patents, trade-marks, copyrights, industrial designs, plant breeders' rights, integrated circuit topographies, trade secrets, rights of personality, information technology (whether registered or not and whether Canadian or foreign) and all other intellectual property and industrial property ("**Intangibles**");
- (x) all monies other than trust monies lawfully belonging to others;
- (xi) any property in any form (including fixtures) derived directly or indirectly from any dealings with any property herein described (including all products and cash and non-cash proceeds thereof); indemnification or

compensation for any such property lost, destroyed, damaged or lawfully or unlawfully taken or injuriously affected; all increases, additions and accessions thereto and substitutions and replacements thereof;

- (xii) all personal property, if any, described in Schedule B hereto; and
- (b) charges with payment to the Secured Party of all Obligations as and by way of a floating charge the whole of the undertaking of the Debtor and all of its property and assets, real and personal, movable and immovable, tangible and intangible, of every nature and kind whatsoever and wheresoever situate, both present and future (other than property and assets from time to time effectively subjected to the fixed and specific mortgages and charges created hereby or by any instrument supplemental hereto).

## 1.2 Exceptions as to Leases etc.

The last day of any term of years reserved by any lease, verbal or written, or any agreement therefor, now held or hereafter acquired by the Debtor is excepted out of the Collateral, but the Debtor shall stand possessed of any such reversion upon trust to assign and dispose thereof as the Secured Party may direct. Where the giving of a fixed and specific mortgage and charge on any real or personal property held by the Debtor under lease requires the consent of the lessor of such property, the giving of the fixed and specific mortgage and charge hereunder on such property shall not take effect until such consent is obtained or legally dispensed with but the suspension of the effect of the fixed and specific mortgage and charge on such property shall not affect the floating charge on such property or the fixed and specific mortgage and charge on any other property of the Debtor.

All shares of 3303284 Canada Inc. now owned or hereafter acquired by Besco Beauty Corp. as nominee of the Debtor, or as hereafter acquired by the Debtor, are excepted out of the Collateral.

## 1.3 Charge Valid Irrespective of Advance of Money

The mortgages, pledges and charges hereby created shall have effect and be deemed to be effective whether or not the monies or obligations hereby secured or any part thereof shall be advanced or owing or in existence before or after or upon the date of this Agreement and neither the giving of this Agreement nor any advance of funds shall oblige the Secured Party to advance any funds or any additional funds. The Debtor acknowledges that the parties have not agreed to postpone the time for attachment of any of the charges created hereby, including the floating charge created hereby, all of which shall attach upon the execution hereof. The Debtor acknowledges that value has been given.

## 1.4 Supplemental Indentures

The Debtor shall from time to time on demand by the Secured Party execute and deliver such further deeds or indentures supplemental hereto, which shall thereafter form part hereof, for the purpose of mortgaging to the Secured Party any property now owned or hereafter acquired by the Debtor and falling within the description of the Collateral, for correcting or

amplifying the description of any property hereby mortgaged or intended so to be, or for any other purpose not inconsistent with the terms of this Agreement.

### 1.5 Continuing Security

This Agreement and any other security given with the Secured Party's consent in replacement thereof, substitution therefor or in addition thereto shall be held by the Secured Party as general and continuing security for due payment and performance of all Obligations, including all costs and amounts payable pursuant hereto and interest on the Obligations at the rate or rates applicable thereto in accordance with the prevailing agreement between the Secured Party and the Debtor. Any and all payments made at any time in respect of the Obligations and the proceeds realized from any securities held therefor (including moneys realized from the enforcement of this Agreement) may be applied (and reapplied from time to time notwithstanding any previous application) to such part or parts of the Obligations as the Secured Party sees fit. The Secured Party may hold as additional security hereunder any increase or profits or other proceeds realized from the Collateral (including money) for such period of time as the Secured Party sees fit. The Debtor shall be accountable for any deficiency and the Secured Party shall be accountable for any surplus.

## ARTICLE 2 REPRESENTATIONS AND WARRANTIES

### 2.1 General Representations and Warranties

The Debtor represents, warrants and covenants to and with the Secured Party as follows:

(a) Incorporation and Status

The Debtor is duly incorporated and validly subsisting under the laws of its jurisdiction of incorporation and has the corporate power and capacity to own its properties and assets and to carry on its business as presently carried on by it and holds all material licences, permits and assets as are required to own its properties and assets and to carry on business in each jurisdiction in which it does so.

(b) Power and Capacity

The Debtor has the corporate power and capacity to enter into each of the Security Documents to which it is a party and to do all acts and things as are required or contemplated hereunder or thereunder to be done, observed and performed by it.

(c) Due Authorization and Enforceability

The Debtor has taken all necessary corporate action to authorize the execution, delivery and performance of each of the Security Documents to which it is a party and each such document constitutes, or upon execution and delivery will

constitute, a valid and binding obligation of the Debtor enforceable against it in accordance with its terms, subject only to the following qualifications:

- (i) an order of specific performance and an injunction are discretionary remedies, and in particular, may not be available where damages are considered an adequate remedy; and,
- (ii) enforcement may be limited by bankruptcy, insolvency, liquidation, reorganization, reconstruction and other similar laws generally affecting enforceability of creditors' rights.

(d) No Contravention

The execution and delivery of this Agreement and the other Security Documents and the performance by the Debtor of its obligations thereunder (i) does not and will not violate any law or any provision of the articles, by-laws, constating documents or other organizational documents of the Debtor or constitute a breach of any existing contractual or other obligation of the Debtor or contravene any licence or permit to which the Debtor is subject, (ii) will not result in the creation of, or require the Debtor to create, any Encumbrance in favour any person other than the Secured Party, and (iii) will not result in or permit the acceleration of the maturity of any indebtedness or other obligation of the Debtor.

(e) Locations

The chief executive office and all of the tangible Collateral (except for Inventory in transit) are located at the Premises referred to in Schedule A hereto.

(f) No Consents Required

No authorization, consent or approval of, or filing with or notice to, any person is required in connection with the execution, delivery or performance of this Agreement or any of the other Security Documents by the Debtor.

(g) Solvency

The Debtor is not an insolvent person within the meaning of the *Bankruptcy and Insolvency Act* (Canada).

(h) No Litigation

There are no actions, suits, judgments, awards or proceedings pending or, to the knowledge of the Debtor, threatened against the Debtor before any court or government department, commission, board, agency or instrumentality, domestic or foreign, or before any other authority, or before any arbitrator of any kind, which would, if determined adversely to the Debtor, materially adversely affect its business, property, financial condition or prospects or its ability to perform any of the provisions of any Security Document to which it is a party or which

purports to affect the legality, validity or enforceability of any Security Document, and the Debtor is not in default with respect to any judgment, order, writ, injunction, award, rule or regulation of any Governmental Authority or any arbitrator, which individually or in the aggregate results in any such material adverse effect.

(i) No Default

The Debtor is not in default or breach under any material commitment or obligation or under any order, writ, decree or demand of any Governmental Authority or with respect to any leases, licences or permits to own and/or operate material properties and assets or to carry on business and there exists no state of facts which, after notice or the passage of time or both, would constitute such a default or breach; and there are not any proceedings in progress, pending or threatened, which may result in the revocation, cancellation, suspension or any adverse modification of any such leases, licences or permits.

(ii) Serial Numbered Goods and Fixtures

Full particulars (including serial number) of each motor vehicle in which the Debtor has rights and which is not Inventory are set out in Schedule B hereto. None of the goods comprised in the Collateral are fixtures except any fixtures that are described so that they may be readily identified in Schedule B hereto and identified as fixtures therein and that are affixed or attached to the Premises described in Schedule A hereto.

(iii) Consumer Goods

None of the Collateral now owned or hereafter acquired is now or shall at any time be consumer goods of the Debtor.

2.2 Environmental Representations, Warranties and Covenants

The Debtor represents, warrants and covenants to and with the Secured Party as follows:

- (a) The Collateral and the operations of the Occupants now and will at all times in future comply in all material respects with all Environmental Laws and Environmental Orders.
- (b) After due and diligent inquiry, it has been found that, except for Permitted Substances, there is no Hazardous Substance on or in any of the Premises.
- (c) There is no judicial or administrative proceeding or investigation pending and no Environmental Order has been issued or, to the best of the Debtor's knowledge, threatened concerning the possible violation of any Environmental Laws or Environmental Orders by any of the Occupants, by any of the operations of the Occupants or otherwise in relation to the Collateral.



- (d) Except for Permitted Substances, no Hazardous Substance shall be brought onto or used on or in any part of the Premises without the prior written consent of the Secured Party and any Hazardous Substance brought onto or into any part of the Premises or used by any person on or in any part of the Premises shall be transported, used and stored only in accordance with all Environmental Laws, other lawful requirements, prudent industrial standards (including any published environmental standards of any applicable industry association) and any requirements of applicable insurance policies.
- (e) The Debtor shall promptly notify the Secured Party if it:
  - (i) receives notice from any Governmental Authority of any violation or potential violation of any Environmental Laws or Environmental Orders, including the Release of a Hazardous Substance, which may have occurred or been committed or is about to occur or be committed;
  - (ii) receives notice that any administrative or judicial complaint or Environmental Order has been issued or filed or is about to be issued or filed against any of the Occupants or their representatives alleging violations of any Environmental Laws or Environmental Orders or requiring the taking of any action in connection with any Hazardous Substance;
  - (iii) learns of the enactment of any Environmental Laws or the issuance of any Environmental Orders which may have a material adverse effect on the Premises or the operations or the condition, financial or otherwise, of any of the Occupants; or
  - (iv) knows of or suspects that any Hazardous Substance (other than a Permitted Substance) has been brought onto any part of the Premises or that there is any actual, threatened or potential Release of any Hazardous Substance (whether or not a Permitted Substance) on, from, in or under any part of the Premises.
- (f) The Debtor shall indemnify the Secured Party and hold the Secured Party harmless against and from all loss, costs, damages and expenses which the Secured Party may sustain, incur or be or become liable for by reason of or arising from the presence, clean-up, removal or disposal of any Hazardous Substance referred to in this section or compliance with Environmental Laws or Environmental Orders relating thereto, including any clean-up, decommissioning, restoration or remediation of the Premises and other affected lands or property (and this indemnification shall survive the satisfaction, release or extinguishment of the indebtedness secured hereby).

### 2.3 Title

The Debtor covenants with the Secured Party that, subject only to Permitted Encumbrances, it lawfully owns and is lawfully possessed of the Collateral and has good right

and authority to mortgage and charge the same as provided for herein, free and clear of all Encumbrances (other than Permitted Encumbrances), and it will warrant and defend the title thereto as well as to any other property, rights and interests hereafter acquired by the Debtor. No person has any agreement or right or option to acquire any of such property (except under unfilled purchase orders accepted in the ordinary course of business for the sale of Inventory).

**ARTICLE 3  
COVENANTS OF THE DEBTOR**

**3.1 General Covenants**

So long as this Agreement remains outstanding, the Debtor covenants and agrees as follows:

(a) To Pay Costs

The Debtor shall pay all costs, charges and expenses of or incurred by the Secured Party (i) incidental to the preparation, execution and filing of this Agreement and any other Security Documents and any instruments relating thereto (including any supplemental security or any instrument amending any of the Security Documents), (ii) in inspecting the Collateral or in or about taking, recovering or keeping possession of any of the Collateral or in any other proceedings taken in enforcing the remedies provided herein or otherwise in relation to this Agreement or the Collateral, or by reason of non-payment of the moneys hereby secured, (iii) the costs of any sale proceedings hereunder, whether such sale prove abortive or not, and (iv) the costs of any Receiver with respect to, and all expenditures made by the Secured Party or any Receiver in the course of, doing anything hereby permitted to be done by the Secured Party or such Receiver (including any costs and expenditures relating to compliance with the *Bankruptcy and Insolvency Act* (Canada)). All such costs and expenses and other monies payable hereunder, together with interest at the highest rate applicable to any Obligations, shall be payable on demand and shall constitute a charge on the Collateral. Without limiting the generality of the foregoing, such costs shall extend to and include any legal costs incurred by or on behalf of the Secured Party as between solicitor and own client.

(b) To Pay Certain Debts

The Debtor shall punctually pay and discharge every obligation, failure to pay or discharge which might result in any lien or charge or right of distress, forfeiture, termination or sale or any other remedy being enforced against the Collateral and provide to the Secured Party when required satisfactory evidence of such payment and discharge, but the Debtor may on giving the Secured Party such security (if any) as the Secured Party may require refrain from paying or discharging any obligation so long as it contests in good faith its liability therefor.

(c) To Maintain Corporate Existence and Security

The Debtor shall:

- (i) maintain its corporate existence;
- (ii) diligently preserve all its rights, licences, powers, privileges, franchises and goodwill;
- (iii) observe and perform all of its obligations and comply with all conditions under leases, licences and other agreements to which it is a party or upon or under which any of the Collateral is held;
- (iv) carry on and conduct its business in a proper and efficient manner so as to preserve and protect the Collateral and income therefrom;
- (v) keep proper books of account with correct entries of all transactions in relation to its business;
- (vi) observe and conform to all valid requirements of law and of any Governmental Authority relative to the Collateral or the carrying on by the Debtor of its business;
- (vii) repair and keep in repair and good order and condition all property, including the Collateral, the use of which is necessary or advantageous in connection with its business;
- (viii) immediately notify the Secured Party in writing of any proposed change of name of the Debtor or of the Debtor's chief executive office;
- (ix) keep the Secured Party constantly informed in writing as to the location of the Collateral and the books of account and other records of the Debtor; and
- (x) effect such registrations as may be required by the Secured Party from time to time to protect the security hereof.

(d) To Insure

The Debtor shall keep the Collateral and the operations of the Debtor insured in such amounts as the Secured Party may reasonably require against loss or damage by fire and such other risks as the Secured Party may from time to time specify, with insurers approved by the Secured Party. The Debtor shall whenever from time to time requested by the Secured Party provide the Secured Party with satisfactory evidence of such insurance and any renewal thereof which shall at all times be subject to mortgage clauses in a form approved by the Secured Party, and shall at the request of the Secured Party forthwith assign, transfer and deliver unto the Secured Party the policy or policies of such insurance. Evidence

satisfactory to the Secured Party of the renewal of every policy of insurance shall be provided to the Secured Party at least seven (7) days before the termination thereof.

(e) To Furnish Proofs

The Debtor shall forthwith on the happening of any loss or damage furnish at its own expense all necessary proofs and do all necessary acts to enable the Secured Party to obtain payment of the insurance monies, which, in the sole discretion of the Secured Party, may be applied in reinstating the insured property or be paid to the Debtor or be applied in payment of the monies owing hereunder, whether due or not then due, or paid partly in one way and partly in another.

(f) Inspection by the Secured Party

The Debtor shall allow any employees or authorized agents of the Secured Party at any reasonable time to enter the premises of the Debtor in order to inspect the Collateral and to inspect the books and records of the Debtor and make extracts therefrom, and shall permit the Secured Party prompt access to such other persons as the Secured Party may deem necessary or desirable for the purposes of inspecting or verifying any matters relating to any part of the Collateral or the books and records of the Debtor, provided that any information so obtained shall be kept confidential, save as required by the Secured Party in exercising its rights hereunder.

(g) Accounts

Subject to any Permitted Encumbrances thereon, Accounts shall be received by the Debtor in trust for the Secured Party; provided that as long as an Event of Default has not occurred the Debtor may collect and use the Accounts in the ordinary course of business.

(h) Notice of Litigation and Damage

The Debtor will promptly give written notice to the Secured Party of (i) all claims or proceedings pending or threatened against the Debtor which may give rise to uninsured liability in excess of Twenty-Five Thousand Dollars (\$25,000.00) or which may have a material adverse affect on the business or operations of the Debtor and (ii) all damage to or loss or destruction of any property comprising part of the Collateral which may give rise to an insurance claim in excess of Twenty-Five Thousand Dollars (\$25,000.00); and will supply the Secured Party with all information reasonably requested in respect of any such claim.

(i) Notice of Default

The Debtor will promptly give written notice to the Secured Party of the occurrence of any Event of Default or of any event which after notice or lapse of time would constitute an Event of Default.

(j) Not to Create Certain Charges

The Debtor shall not, without the prior written consent of the Secured Party, create or permit to arise any Encumbrance on any of the Collateral (other than Permitted Encumbrances), and will not permit any Subsidiary to do the same (except in favour of the Debtor).

(k) Not to Sell

The Debtor shall not, except as otherwise permitted hereunder, remove, destroy, lease, sell or otherwise dispose of any of the Collateral; provided that the Debtor may (i) sell or otherwise dispose of Equipment which has become worn out or damaged or otherwise unsuitable for their purposes on condition that it shall substitute therefor, subject to the lien hereof and free from prior liens or charges, property of equal value so that the security hereby constituted shall not thereby be in any way reduced or impaired; and (ii) sell Inventory and grant licences to use intellectual property in the ordinary course of business and for the purpose of carrying on the same.

(l) Not to Make Certain Changes

The Debtor shall not without the prior written consent of the Secured Party:

- (i) make or pay any Corporate Distribution, except as expressly permitted herein;
- (ii) change its financial year end;
- (iii) purchase, establish or acquire in any manner any new business undertaking;
- (iv) materially change the nature of the Debtor's business as presently carried on;
- (v) amalgamate, consolidate or merge or enter into a partnership, joint venture or syndicate with any other person, or acquire or establish any Subsidiary;
- (vi) enter into any transaction, or permit any Subsidiary to do so, outside the ordinary active business operations of the Debtor and its Subsidiaries;
- (vii) acquire or invest in any securities except instruments or securities issued by a financial institution or liquid securities traded on a recognized public securities exchange and acquired only for the Debtor's cash management purposes or permit any Subsidiary to do so; or
- (viii) remove any of the Collateral or any of the books of account or other records of the Debtor from the jurisdiction where presently located.

(m) Serial Numbered Goods and Fixtures

Upon the acquisition by the Debtor from time to time of rights in any motor vehicles which are not Inventory and which are not fully described in Schedule B hereto, or upon repossession by or return to the Debtor of any such goods, the Debtor will forthwith give written notice to the Secured Party of full particulars (including the serial number) of the same. The Debtor will not permit goods now or hereafter comprised in the Collateral to become fixtures unless they are, or are to be, affixed or attached to the Premises described in Schedule A hereto and unless the goods are described in Schedule B hereto so that they may be readily identified and are identified therein as fixtures.

**ARTICLE 4  
EVENTS OF DEFAULT AND REMEDIES**

4.1 Events of Default

The occurrence of any of the following events shall constitute an Event of Default under this Agreement:

- (a) if default occurs in payment or performance of any Obligation (whether arising herein or otherwise);
- (b) if any representation or warranty made by the Debtor herein or in any other Security Document or in any certificate, statement or report furnished in connection herewith is found to be false or incorrect in any way so as to make it materially misleading when made or when deemed to have been made;
- (c) if default occurs in payment or performance of any obligation in favour of any person to whom the Debtor is indebted except obligations to trade creditors incurred in the ordinary course of business;
- (d) if default occurs in payment or performance of any obligation (whether now existing, presently arising or created in future) of any Affiliate of the Debtor in favour of the Secured Party;
- (e) if the Debtor commits an act of bankruptcy or becomes insolvent within the meaning of any bankruptcy or insolvency legislation applicable to it or a petition or other process for the bankruptcy of the Debtor is filed or instituted;
- (f) if any act, matter or thing is done toward, or any action or proceeding is launched, had or taken for, terminating the corporate existence of the Debtor, whether by winding-up, surrender of charter or otherwise;
- (g) if the Debtor ceases to carry on its business or makes or proposes to make any sale of its assets in bulk or any sale of its assets out of the usual course of its business;

- (h) if any proposal is made or any petition is filed by the Debtor under any law having for its purpose the extension of time for payment, composition or compromise of the liabilities of the Debtor or other reorganization or arrangement respecting its liabilities or if the Debtor gives notice of its intention to make or file any such proposal or petition including an application to any court for an order to stay or suspend any proceedings of creditors pending the making or filing of any such proposal or petition;
- (i) if any receiver, administrator or manager of the property, assets or undertaking of the Debtor or a substantial part thereof is appointed pursuant to the terms of any trust deed, trust indenture, debenture or similar instrument or by or under any judgment or order of any court;
- (j) if any balance sheet or other financial statement provided by the Debtor to the Secured Party pursuant to the provisions hereof is false or misleading in any material respect;
- (k) if the Debtor permits any sum which has been admitted as due by it or is not disputed to be due by it and which forms, or is capable of being made, a charge upon any of the Collateral in priority to, or pari passu with, the charge created by this Agreement to remain unpaid for thirty (30) days after proceedings have been taken to enforce the same as such charge;
- (l) if any proceedings are taken to enforce any Encumbrance affecting any of the Collateral;
- (m) if any action is taken or power or right be exercised by any Governmental Authority or if any claim or proceeding is pending or threatened by any person which may have a material adverse effect on the Debtor, its business or operations, its properties or its prospects;
- (n) if in the opinion of the Secured Party a material adverse change has occurred in the financial condition or business of the Debtor which may impair the ability or willingness of the Debtor to perform any of the Obligations or if the Secured Party considers that the Collateral is in jeopardy or that the Secured Party is insecure.

#### 4.2 Consequences of an Event of Default

Upon the occurrence of an Event of Default, any obligation of the Secured Party to make further loans or advances or extend other credit to the Debtor shall immediately terminate and all Obligations and all monies secured hereby shall at the option of the Secured Party become forthwith due and payable whereupon the floating charge hereby created shall crystallize, all of the rights and remedies hereby conferred in respect of the Collateral shall become immediately enforceable and any and all additional and collateral securities for payment of this Agreement shall become immediately enforceable.

#### 4.3 Enforcement

Upon the happening of any Event of Default the Secured Party may by instrument in writing declare that the security hereof has become enforceable and crystallized and the Secured Party shall have the following rights and powers:

- (a) to enter into possession of all or any part of the Collateral;
- (b) to preserve and maintain the Collateral and make such replacements thereof and additions thereto as it deems advisable;
- (c) to borrow money in the Debtor's name or in the Secured Party's name or to advance the Secured Party's own money to the Debtor, in any case upon such terms as the Secured Party may deem reasonable and upon the security hereof;
- (d) to pay or otherwise satisfy in whole or in part any Encumbrances which, in the Secured Party's opinion, rank in priority to the security hereof;
- (e) after entry by its officers or agents or without entry to sell, lease or otherwise dispose in any way whatsoever of all or any part of the Collateral either en bloc or separately at public auction or by tender or by private agreement and at such time or times and on such terms and conditions as the Secured Party in its absolute discretion may determine and without any notice to or concurrence of the Debtor except as may be required by applicable law; and
- (f) by instrument in writing to appoint any person or persons (whether an officer or officers of the Secured Party or not) as receiver (herein called the "Receiver") of all or any part of the Collateral and to remove any Receiver so appointed and appoint another or others in his stead.

The security of this Agreement may be realized and the rights enforced by any remedy or in any manner authorized or permitted by this Agreement or by law or equity and no remedy for the realization of the security hereof shall be exclusive of or dependent upon any other remedy and all or any remedies may from time to time be exercised independently or in any combination.

#### 4.4 Disposition

Without limiting the generality of the foregoing it shall be lawful for the Secured Party:

- (a) to make any sale, lease or other disposition of the Collateral either for cash or upon credit or partly for one and partly for the other upon such conditions as to terms of payment as it in its absolute discretion may deem proper;
- (b) to rescind or vary any contract for sale, lease or other disposition that the Secured Party may have entered into pursuant hereto and resell, release or redispense of the Collateral with or under any of the powers conferred herein; and



- (c) to stop, suspend or adjourn any sale, lease or other disposition from time to time and to hold the same as adjourned without further notice.

Upon any such sale, lease or other disposition the Secured Party shall be accountable only for money actually received by it. The Debtor shall be accountable for any deficiency and the Secured Party shall be accountable for any surplus. The Secured Party may deliver to the purchaser or purchasers of the Collateral or any part thereof good and sufficient conveyances or deeds for the same free and clear of any claim by the Debtor. The purchaser or lessee receiving any disposition of the Collateral or any part thereof need not inquire whether default under this Agreement has actually occurred but may as to this and all other matters rely upon a statutory declaration of an officer of the Secured Party, which declaration shall be conclusive evidence as between the Debtor and any such purchaser or lessee, and the purchaser or lessee need not look to the application of the purchase money, rent or other consideration given upon such sale, lease or other disposition, which shall not be affected by any irregularity of any nature or kind relating to the crystallizing or enforcing of the security hereof or the taking of possession of the Collateral or the sale, lease or other disposition thereof.

#### 4.5 Powers of Receiver

Any Receiver appointed as aforesaid shall have the power without legal process:

- (a) to take possession of the Collateral or any part thereof wherever the same may be found;
- (b) to carry on the business of the Debtor or any part thereof in the name of the Debtor or of the Receiver; and
- (c) to exercise on behalf of the Secured Party all of the rights and remedies herein granted to the Secured Party,

and without in any way limiting the foregoing the Receiver shall have all the powers of a receiver appointed by a court of competent jurisdiction. Any Receiver shall, so far as concerns responsibility for his acts, be deemed the agent of the Debtor, and the Secured Party shall not be in any way responsible for any misconduct or negligence on the part of any Receiver or any loss resulting therefrom.

#### 4.6 Application of Moneys

All moneys actually received by the Secured Party or by the Receiver in enforcing the security of this Agreement shall be applied, subject to the proper claims of any other person:

- (a) first, to pay or reimburse the Secured Party and any Receiver the costs, charges, expenses and advances payable by the Debtor in accordance herewith;
- (b) second, in or toward the payment to the Secured Party of all other moneys owing hereunder or secured hereby in such order as the Secured Party in its sole discretion may determine; and

(c) third, any surplus shall be paid to the Debtor or its assigns.

#### 4.7 Limitations on Liability

Neither the provisions of this Agreement nor anything done under or pursuant to the rights, remedies and powers conferred upon the Secured Party and the Receiver, whether hereunder or otherwise, will render the Secured Party a mortgagee in possession. Neither the Secured Party nor any Receiver will be bound to collect, dispose of, realize, enforce or sell any securities, Instruments, Chattel Paper or Intangibles (including any Accounts) comprised in the Collateral or to allow any such Collateral to be sold or disposed of, nor will it be responsible for any loss occasioned by any such sale or other dealing or for any failure to sell or so act, nor will it be responsible for any failure to take necessary steps to preserve rights against others in respect of such Collateral, nor will it be responsible for any loss occasioned by the failure to exercise any rights in respect of Collateral within the time limited for the exercise thereof. Neither the Secured Party nor the Receiver will be obligated to keep Collateral separate or identifiable.

### ARTICLE 5 GENERAL

#### 5.1 Definitions

As used herein the following expressions shall have the following meanings:

"**Collateral**" means all property and assets of the Debtor whether specifically charged or subjected to the floating charge under Section 1.1 (except as excluded pursuant to Section 1.2);

"**Encumbrance**" has the meaning attributed to the term "**Lien**" in the Loan Agreement;

"**Governmental Authority**" has the meaning attributed to the term "**Governmental Body**" in the Loan Agreement;

"**Loan Agreement**" means the loan agreement between the Secured Party and the Debtor dated with even date herewith and all schedules attached thereto, in each case as they may be amended, supplemented or restated from time to time;

"**Normal Business**" means the primary business activities of the Debtor as at the date of this Agreement;

"**Obligations**" means all monies now or at any time and from time to time hereafter owing or payable by the Debtor to the Secured Party and all other obligations (whether now existing, presently arising or created in the future) of the Debtor in favour of the Secured Party, and whether direct or indirect, absolute or contingent, matured or not, whether arising from agreement or dealings between the Secured Party and the Debtor or from any agreement or dealings with any third person by which the Secured Party may be or become in any manner whatsoever a creditor or other obligee of the Debtor or however otherwise arising and whether the Debtor be bound alone or with another or others and whether as principal or surety;

"Premises" means all lands and premises owned or occupied by the Debtor from time to time (including the lands and premises referred to in Schedule A hereto); and

"Security Documents" means, collectively, this Agreement and all other agreements and other instruments delivered to the Secured Party by the Debtor (whether now existing or presently arising) for the purpose of establishing, perfecting, preserving or protecting any security held by the Secured Party in respect of any Obligations.

## 5.2 Construction

(a) The division of this Agreement into Articles, Sections, subsections, paragraphs and clauses and the insertion of headings are for convenience of reference only and will not affect the construction or interpretation of this Agreement.

(b) Words importing the singular number only include the plural and *vice versa* and words importing gender include all genders.

The terms, "**this Agreement**", "**hereof**", "**hereunder**", and similar expressions refer to the whole of this agreement, as it may be amended, modified, revised, supplemented or restated from time to time, and not to any particular Article, Section, subsection, paragraph or other portion of this Agreement.

(d) The terms, "**any**" and "**or**", are not exclusive.

(e) The term, "**including**", means including without limiting the generality of any description preceding such term.

(f) The term, "**person**", means any individual, corporation, company, partnership, unincorporated association, trust, joint venture, governmental body or any other legal entity whatsoever.

(g) Every reference to a party hereto shall extend to and include such party's heirs, executors, administrators, other legal representatives, successors and permitted assigns, as if specifically named.

(h) Unless otherwise expressly provided in this Agreement, any reference in this Agreement to any law shall include any by-law, regulation, order, act or statute of any governmental body and shall be construed as a reference thereto as amended or re-enacted from time to time or as a reference to any successor thereto.

(i) Amounts of currency expressed herein are, except as otherwise expressly provided, in lawful money of Canada.

(j) Time shall be in all respects of the essence herein.

(k) If any of the provisions of this Agreement shall be held invalid or unenforceable by any court having jurisdiction, this Agreement shall be construed as if not

containing those provisions, and the rights and obligations of the parties hereto should be construed and enforced accordingly.

- (l) This Agreement shall be governed by, and construed in accordance with, the internal laws of the Province of Ontario and the federal laws of Canada applicable therein (other than conflict of laws rules) and shall be treated in all respects as an Ontario contract.
- (m) Except as expressly provided herein, terms which are defined in the *Personal Property Security Act* (Ontario) shall have the same meaning where used herein.

### 5.3 **Waiver**

No act or omission by the Secured Party in any manner whatever in the premises shall extend to or be taken to affect any provision hereof save only express waiver in writing. A waiver of default shall not extend to, or be taken in any manner whatsoever to affect the rights of the Secured Party with respect to, any subsequent default, whether similar or not. The Debtor waives every defence based upon any or all indulgences that may be granted by the Secured Party.

### 5.4 **Other Securities**

The rights of the Secured Party hereunder shall not be prejudiced nor shall the liabilities of the Debtor or of any other person be reduced in any way by the taking of any other security of any nature or kind whatsoever either at the time of execution of this Agreement or at any time hereafter.

### 5.5 **No Merger or Novation**

Neither the taking of any judgment nor the exercise of any power of seizure or sale shall operate to extinguish the liability of the Debtor to pay the moneys hereby secured nor shall the same operate as a merger of any covenant herein contained or of any other Obligation, nor shall the acceptance of any payment or other security constitute or create any novation.

### 5.6 **Amalgamation**

The Debtor acknowledges that if it amalgamates with any other corporation or corporations (a) the Collateral and the lien created hereby shall extend to and include all the property and assets of each of the amalgamating corporations and the amalgamated corporation and to any property or assets of the amalgamated corporation thereafter owned or acquired, (b) the term, "**Debtor**", where used herein shall extend to and include each of the amalgamating corporations and the amalgamated corporation, and (c) the term, "**Obligations**", where used herein shall extend to and include the Obligations of each of the amalgamating corporations and the amalgamated corporation.

5.7 **Power of Attorney**

The Debtor for valuable consideration irrevocably appoints the Secured Party and its officers from time to time or any of them to be the attorneys of the Debtor in the name of and on behalf of the Debtor to execute and do any deeds, transfers, conveyances, assignments, assurances and things which the Debtor ought to execute and do under the covenants and provisions herein contained and generally to use the name of the Debtor in the exercise of all or any of the powers hereby conferred on the Secured Party.

5.8 **The Secured Party May Remedy Default**

If the Debtor fails to do anything hereby required to be done by it, the Secured Party may, but shall not be obliged to, do such thing and all sums thereby expended by the Secured Party shall be payable forthwith by the Debtor, shall be secured hereby and shall have the benefit of the lien hereby created, but no such performance by the Secured Party shall be deemed to relieve the Debtor from any default hereunder.

**Collections**

The Secured Party is entitled at any time whether or not an Event of Default has occurred hereunder to notify any account debtor or any obligor on an Instrument to make payment to the Secured Party whether or not the Debtor was theretofore making collections on the Collateral and to take control of any proceeds to which the Secured Party is entitled.

5.10 **Purchase Money Security Interest**

The Debtor acknowledges that the security interest in any item of Collateral and shall constitute a purchase-money security interest to the extent it secures the Obligations incurred by the Debtor to enable the Debtor to acquire rights in such Collateral. The Secured Party hereby reserves title to any item of Collateral which may be sold by the Secured Party to the Debtor until satisfaction of the Obligations as aforesaid.

5.11 **Notices**

Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be given by telecopier or other means of electronic communication or by hand-delivery or by a commercial overnight courier service as hereinafter provided. Any such notice if sent by telecopier or other means of electronic communication, shall be deemed to have been received on the Business Day of sending provided the notice or other communication is sent by 5:00 p.m. (Toronto time), otherwise or in the case of overnight courier, it shall be deemed to have been received on the following Business Day, or if delivered by hand shall be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to a senior employee of the addressee at such address with responsibility for matters to which the information relates. Notice of change of address shall also be governed by this Section.

- (a) if to the Debtor:

600 Kenilworth Avenue North  
Hamilton, Ontario  
L8N 3J4

Attn: Gregory J. Aziz and  
Cecil Mosselman  
Fax: (905) 544-8872 and  
(905) 547-8757

and a copy to:

Heenan Blaikie LLP  
200 Bay Street, South Tower  
Suite 2600, Royal Bank Plaza  
Toronto, Ontario  
M5J 2J4

Attention: Richard Lewin  
Fax: (416) 360-8425

Kelley Drye & Warren LLP  
101 Park Avenue  
New York, New York  
USA 10178

Attention: Jane Jablons  
Fax: (212) 808-7897

(b) if to the Secured Party:

Trilon Bancorp Inc.  
BCE Place, Bay/Wellington Tower  
181 Bay Street, Suite 4420  
Toronto, Ontario  
M5J 2T3

Attention: Bruce Robertson  
Fax: (416) 365-9642

and a copy to:

Messrs. Goodman and Carr LLP  
200 King Street West  
Suite 2300  
Toronto, Ontario  
M5H 3W5

Attention: Barry Tarshis  
Fax: (416) 595-0567

## 5.12 Receipt

The Debtor hereby acknowledges receipt of a true copy of this Agreement and a copy of the financing statement registered under the *Personal Property Security Act* (Ontario) in respect of the security created hereby.

5.13 **Successors and Assigns, etc.**

This Agreement and all its provisions shall enure to the benefit of the Secured Party, and assigns, and shall be binding upon the Debtor, and its successors.

5.14 **Loan Agreement to Govern**

- (a) Section 1.9 of the Loan Agreement is hereby incorporated into this Agreement and shall form part of this Agreement as if the said Section 1.9 were set out herein in full. For the purposes hereof, the term "this Agreement" in the said Section 1.9 shall be replaced with the term, "the Loan Agreement".
- (b) Except as otherwise expressly provided herein, terms used in this Agreement shall have the meanings ascribed to them in the Loan Agreement.
- (c) Articles 2 and 3 of this Agreement are hereby deleted and the Debtor represents, warrants and covenants to and with the Secured Party as to each and every matter as set forth in Articles 3 and 4 of the Loan Agreement and the said Articles 3 and 4 are hereby incorporated into this Agreement by reference as if said Articles 3 and 4 were set out herein in full. Where any matter in Articles 3 and 4 of the Loan Agreement refers to the location of property as disclosed in Schedule D of the Loan Agreement, such reference shall be deemed to refer, for the purposes hereof, to the Premises.
- (d) Section 4.1 of this Agreement is hereby replaced with Section 7.1 of the Loan Agreement which is hereby incorporated into this Agreement by reference and shall form part of this Agreement as if the said Section 7.1 was set out herein in full.
- (e) All interpretation provisions and exceptions contained in the Loan Agreement that are applicable to Articles 3 and 4 and Section 7.1 of the Loan Agreement are hereby incorporated by reference and shall form a part of this Agreement, *mutatis mutandis*, as if set out herein in full.
- (f) Upon any amendment of any provision of the Loan Agreement that is incorporated herein by reference, as well as any terms, interpretative provisions or exceptions contained in the Loan Agreement applicable to the said provisions of the Loan Agreement, this Agreement shall be deemed to be amended in the identical manner without the consent or any act of the Debtor.

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**IN WITNESS WHEREOF** the Debtor has hereunto affixed its Corporate Seal attested by the hands of its proper officers duly authorized in that behalf.

**NATIONAL STEEL CAR LIMITED**

per: Cecil Mosselman  
Name: Cecil Mosselman  
Title: Corporate Secretary c/s

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**Schedule A  
PREMISES**

As set out in Schedule D of the Loan Agreement, only as such Schedule D pertains to the Debtor.

**Schedule B  
EQUIPMENT**

**(Section 1.1(a)(xii))**

See attached list of rail cars.

SPEC CAR LETTER	SPEC CAR NUMBER	NSC	R/A	CN
NSCX	7001			1
NSCX	7002			1
NSCX	7003			1
NSCX	7004			1
NSCX	7005			1
NSCX	7006			1
NSCX	7007			1
NSCX	7008			1
NSCX	7009			1
NSCX	7010			
NSCX	7011			1
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NSCX	7027			1
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NSCX	7029			1
NSCX	7030			
NSCX	7031			1
NSCX	7032			1
NSCX	7033			1
NSCX	7034			1

Coil Cars on lease to Flex	
LW 42050 To LW 42064	15 Cars
Coil Cars on lease to CN	
CN 187215 to CN 187364	150 Cars
Coil Car inventory summary:	
Flex	15
CN on lease	150
At NSC	60
At Rail America	58
At CN Niagara Storage	248
<b>Total Cars</b>	<b>531</b>

TRADEMARK

REEL: 002610 FRAME: 0108

NSCX	7035			
NSCX	7036			
NSCX	7037			
NSCX	7038			
NSCX	7039			
NSCX	7040			1
NSCX	7041			1
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NSCX	7394			1
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NSCX	7396			1
NSCX	7397			1
NSCX	7398			1
NSCX	7399			1
NSCX	7400			1
NSCX	7401			1
NSCX	7402			
NSCX	7403			
NSCX	7404			
NSCX	7405			1
NSCX	7406			1
NSCX	7407			1
NSCX	7408			1
NSCX	7409			1
NSCX	7410			1
		60	58	248

# RICHES, MCKENZIE & HERBERT LLP

BARRISTERS & SOLICITORS  
PATENT & TRADE MARK AGENTS  
PAUL HERBERT, B.SC.,PHM.,LL.B.  
BRANT LATHAM, B.A.SC.(CHEM.ENG.),LL.B.,P.ENG.  
DAN HITCHCOCK, B.ENG.,LL.B.,P.ENG.  
GARY M. TRAVIS, B.SC.(GEOL.),LL.B.  
JEFF PERVANAS, B.A.SC.(ENG.SCI.),LL.B.  
JASON LEUNG, B.SC.(GENETICS),J.D.  
PAUL E. THOMAS, B.A.SC.(CHEM.ENG.),M.A.SC.,LL.B.  
PATENT & TRADE MARK AGENT  
A. LEONARD GROVE

SUITE 1800  
2 BLOOR STREET EAST  
**TORONTO, CANADA**  
M4W 3J5

TELEPHONE (416) 961-5000  
FAX (416) 961-5081  
E-MAIL riches@patents-toronto.com

CONTINUING THE PRACTICE OF  
GEORGE H. RICHES AND ASSOCIATES  
ESTABLISHED 1887

November 4, 2002

Assistant Commissioner for Trademarks  
BOX ASSIGNMENTS  
2900 Crystal Drive  
Arlington, VA 22202-3513  
U.S.A.

Re: National Steel Car Limited  
Trade Mark Registration in U.S.A>  
Trade Mark : NSC BUILDERS OF RELIABLE RAIL  
TRANSPORT 1912 DESIGN  
Serial No. : 75/009,830  
Reg. No. : 2,171,583  
Our Ref. : Goodman and Car/Gen/PH

---

Dear Sirs:

We enclose herewith the following:

1. Recordation form PTO-1594;
2. Notarial copy of General Security Agreement between National Steel Car Limited as Debtor and Trilon Bancorp Inc. as the Secured Party;
3. Our cheque in the sum of \$40.00 U.S. with respect to the recordal fee.

Please attend to the recordal of the General Security Agreement.

The Commissioner is hereby authorized to charge any further necessary fees to deposit account number 18-1350, under an order corresponding to our case number above. A duplicate copy of this letter is enclosed.

Respectfully submitted,

**RICHES, MCKENZIE & HERBERT LLP**

PLH/las  
Encl.  
Ret. Ack. Card

Paul Herbert  
Reg. No. 27,278

**TRADEMARK**  
**REEL: 002610 FRAME: 0119**

# RICHES, MCKENZIE & HERBERT LLP

BARRISTERS & SOLICITORS  
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PAUL HERBERT, B. SC., PHM., LL. B.  
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DAN HITCHCOCK, B. ENG., LL. B., P. ENG.  
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CONTINUING THE PRACTICE OF  
GEORGE H. RICHES AND ASSOCIATES  
ESTABLISHED 1897

November 4, 2002

Assistant Commissioner for Trademarks  
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