

11-13-2002

11-13-02

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



102279604

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):

Photoflex, Inc.

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

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

11-13-02

2. Name and address of receiving party(ies)

Name: Monterey Bay Bank

Internal

Address:

Street Address: 567 Auto Center Drive

City: Watsonville State: CA Zip: 95076

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

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

3. Nature of conveyance:

- Assignment, Merger, Security Agreement, Change of Name, Other

Execution Date: Nov 1, 2002

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

A. Trademark Application No.(s)

See attached Schedule A

B. Trademark Registration No.(s)

See attached Schedule A

Additional number(s) attached Yes No

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

6. Total number of applications and registrations involved:

9

7. Total fee (37 CFR 3.41) \$ 240.00

- Enclosed, Authorized to be charged to deposit account

8. Deposit account number:

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

RETURN TO: FEDERAL RESEARCH CORP 1030 15th STREET NW SUITE 920 WASHINGTON DC 20005

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.

Kanita Nandhavan

Name of Person Signing

Signature

November 8, 2002

Date

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

15

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

11/14/2002 6TON11 00000074 74133692

01 FC:8521 02 FC:8522

40.00 OP 200.00 OP

TRADEMARK REEL: 002615 FRAME: 0054

**SCHEDULE A**

**Trademarks**

**1. REGISTERED MARKS**

IPLO ID#:		FILING DATE/ SERIAL NO.	COUNTRY PUB. DATE	REGISTRATION DATE/ REGISTRATION NO.	
<b>PHOTOFLEX BLK LTRS</b>			UNITED STATES		
60388.200101	9	1/28/1991 74/133692	4/21/1992	7/14/1992 1,700,270	1
<b>PHOTOFLEX &amp; DESIGN</b>			UNITED STATES		
60388.200201	9	3/6/1985 73/525394	7/16/1985	9/24/1985 1,361,582	2
<b>PHOTOFLEX PROFESSIONAL PHOTOGEAR &amp; DESIGN</b>			UNITED STATES		
60388.200301	9	7/5/1990 74/075520	3/17/1992	6/9/1992 6/9/1992 1,691,230	3
<b>PHOTOFLEX PROFESSIONAL PHOTOGEAR &amp; DESIGN</b>			AUSTRALIA		
60388.200332	9	9/11/2000 849852	3/29/2001	9/11/2000 9/11/2000 849852	
<b>PHOTOFLEX PROFESSIONAL PHOTOGEAR &amp; DESIGN</b>			CANADA		
60388.200335	9	9/12/2000 1074524	6/5/2002		
<b>PHOTOFLEX PROFESSIONAL PHOTOGEAR &amp; DESIGN</b>			SWITZERLAND		
60388.200336		11/9/2000 13340/2000			
<b>PHOTOFLEX PROFESSIONAL PHOTOGEAR &amp; DESIGN</b>			PEOPLE'S REPUBLIC OF CHINA		
60388.200338	9	6/24/1994 94059787	3/21/1996	6/21/1996 6/21/1996 848762	
<b>PHOTOFLEX PROFESSIONAL PHOTOGEAR &amp; DESIGN</b>			GERMANY		
60388.200341	9	7/14/1997 397329350	10/30/1997	7/14/1997 7/14/1997 39732935	
<b>PHOTOFLEX PROFESSIONAL PHOTOGEAR &amp; DESIGN</b>			UNITED KINGDOM		
60388.200347	9	6/25/1997 2136898	10/1/1997	6/25/1997 6/25/1997 2136898	
<b>PHOTOFLEX PROFESSIONAL PHOTOGEAR &amp; DESIGN</b>			HONG KONG		
60388.200348	9	6/20/1994 9406760	12/8/1995	6/20/1994 6/20/1994 B2429/1996	

<b>PHOTOFLEX PROFESSIONAL PHOTOGEAR &amp; DESIGN</b>		JAPAN		
			7/22/1994	10/3/1997
60388.200352	9		662809	10/3/1997
				4/2/1997
				3350456
<b>PHOTOFLEX PROFESSIONAL PHOTOGEAR &amp; DESIGN</b>		KOREA		
			11/1/2000	6/21/2002
60388.200353	9		40-2000-	6/21/2002
				0523473
<b>PHOTOFLEX PROFESSIONAL PHOTOGEAR &amp; DESIGN</b>		MALAYSIA		
			11/1/2000	
60388.200354	11		2000/15387	
<b>PHOTOFLEX PROFESSIONAL PHOTOGEAR &amp; DESIGN</b>		MALAYSIA		
			11/1/2000	
60388.200354	9		2000/15388	
<b>PHOTOFLEX PROFESSIONAL PHOTOGEAR &amp; DESIGN</b>		MEXICO		
60388.200355				
<b>PHOTOFLEX PROFESSIONAL PHOTOGEAR &amp; DESIGN</b>		SINGAPORE		
			6/25/1994	6/25/1994
60388.200361	9		5299/84	6/25/1994
				1/2/1998
				B5299/94
<b>PHOTOFLEX PROFESSIONAL PHOTOGEAR &amp; DESIGN</b>		TAIWAN		
			7/29/1994	4/16/1996
60388.200363	9		8349994	4/16/1996
				714132
<b>GALEN ROWELL</b>		UNITED STATES		
			5/16/1991	8/4/1992
60388.200401	9		74/167120	5/12/1992
				1,704,652
<b>ECAMERABAGS</b>		UNITED STATES		
			5/2/2000	
60388.200501	9		76/038839	
<b>ECAMERABAGS.COM &amp; DESIGN</b>		UNITED STATES		
			5/2/2000	
60388.200601	9		76/038842	
<b>WEB PHOTO SCHOOL</b>		UNITED STATES		
			5/2/2000	
60388.200701	41		76/039314	
<b>WEB PHOTO SCHOOL &amp; DESIGN</b>		UNITED STATES		
			5/2/2000	
60388.200801	41		76/039315	
<b>LITEDOME</b>		UNITED STATES		
			7/19/2001	
60388.200901	9		78/074801	

**RECORDING REQUESTED BY:**

MONTEREY BAY BANK  
567 Auto Center Drive  
Watsonville, CA 95076

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**TRADEMARK, PATENT,  
AND LICENSE SECURITY AGREEMENT**

THIS TRADEMARK, PATENT, AND LICENSE SECURITY AGREEMENT ("Agreement") dated as of **November 1, 2002** made by **PHOTOFLEX, INC.**, formerly known as **PHOTOFLEX PRODUCTS** (the "Grantor"), having its principal place of business at **97 Hangar Way, Watsonville, CA 95076** in favor of **MONTEREY BAY BANK** (the "Bank"), located at **567 Auto Center Drive, Watsonville, CA 95076**.

**R E C I T A L S:**

A. Grantor is indebted to the Bank pursuant to a **Business Loan Agreement** dated **September 20, 2002** ("Loan Agreement"), which provides for a Revolving Line of Credit facility in the principal amount of \$2,000,000.00 evidenced, in part, by that certain **Promissory Note dated September 20, 2002 in the principal amount of \$2,000,000.00** and a Term Loan Credit facility in the principal amount of \$500,000.00 evidenced, in part, by that certain **Promissory Note dated September 20, 2002 in the principal amount of \$500,000.00**.

B. The obligations of Grantor to Bank are secured by all of Grantor's right, title and interest in certain personal property collateral as provided under the Loan Agreement.

C. Grantor has agreed, inter alia, to grant Bank a security interest in certain general intangibles including the Intellectual Property Collateral (hereinafter defined).

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor agrees as follows:

1. Defined Terms. The following terms have the following meanings (such meanings being equally applicable to both the singular and plural forms of the terms defined):

"Agreement" means this Trademark, Patent and License Security Agreement, as the same may from time to time be amended, modified or supplemented.

"Loan Agreement" means Loan Agreement, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for said agreement.

"Intellectual Property Collateral" has the meaning assigned to such term in Section 2 of this Agreement.

"Licenses" means license agreements granting Grantor any interest in intellectual property and any and all (i) renewals, extensions, supplements and continuations thereof, (ii) income, royalties, damages and payments now and hereafter due or payable to Grantor with respect thereto, including, without limitation, damages and payments for past or future violations or infringements thereof and (iii) rights to sue for past, present and future violations or infringements thereof.

"Patents" means patents registered in the United States or elsewhere, applications therefor and any and all (i) renewals thereof, (ii) income, royalties, damages and payments now or hereafter due or payable or both with respect thereto, including, without limitation, damages and payments for past or future infringements thereof, (iii) rights to sue for past, present, or future infringements thereof, and (iv) rights corresponding thereto throughout the world.

"Trademarks" means trademarks (including service marks and trade names, whether registered or at common law), registrations and applications therefor and any and all (i) renewals thereof, (ii) income, royalties, damages and payments now and hereafter due or payable or both with respect thereto including, without limitation, damages and payments for past or future infringements thereof, (iii) rights to sue for past, present and future infringements thereof, and (iv) rights corresponding thereto throughout the world.

The words "herein," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole, including the Exhibits and Schedules hereto, and not to any particular section, subsection or clause contained in this Agreement.

2. Grant of Security Interest. In order to secure the complete and due and punctual payment of all of the obligations of Grantor to the Bank, Grantor hereby grants and conveys to the Bank as collateral security, a continuing security interest in all of Grantor's entire right, title and interest in and to intellectual property rights now owned or existing and hereafter acquired or arising in the following assets (all of which being hereinafter referred to as the "Intellectual Property Collateral"):

(i) all Trademarks of Grantor including, without limitation, the Trademarks listed on Schedule A hereto;

(ii) all Patents of the Grantor including, without limitation, the patents listed on Schedule B hereto;

(iii) all Licenses of Grantor including, without limitation, the Licenses listed on Schedule C hereto; and

(iv) the entire goodwill of Grantor's business connected with the use of and symbolized by the Trademarks,

provided, however, that nothing hereunder constitutes or shall be deemed to constitute the grant of a security interest in favor of the Bank with respect to any Intellectual Property Collateral to the extent prohibited by applicable law.

3. Representations and Warranties; New Intellectual Property.

(a) Grantor represents and warrants that it has the full right and power to grant the security interests provided for in this Agreement (subject to the exceptions contained herein) in the Trademarks, Patents and Licenses made hereby; that it has made no previous assignment, transfer or agreements in conflict herewith or constituting an assignment of, a transfer of or an encumbrance on any of the Trademarks, Patents and Licenses. Grantor further represents and warrants that (i) Schedules A, B and C, respectively, list all Trademarks, Patents and Licenses owned or used by Grantor and which are material to any portion of its business or any of Grantor's subsidiaries or affiliates, (ii) the Intellectual Property Collateral does not infringe upon any rights owned or possessed by any entity not a party to this Agreement and, (iii) that it has delivered copies of all Licenses owned or used by Grantor or any of Grantor's subsidiaries or affiliates. Grantor further represents that it does not own or utilize any trade secrets in connection with the operation of its business. Grantor represents and warrants that it no longer conducts business as Photoflex Products; that any and all assets of Grantor in the name Photoflex Products are fully vested in Grantor including, but not limited to any and all Trademarks, Patents, and licenses previously held in the name Photoflex Products, and any and all such Trademarks, Patents, and licenses are owned by Grantor free and clear of any and all liens and encumbrances whatsoever and constitute Intellectual Property Collateral.

(b) In the event, prior to the time the obligations of Grantor to the Bank have been indefeasibly paid in full, Grantor shall (i) obtain any rights to or interests in any new inventions, whether or not patentable, or trademarks, trade names, service marks, and applications therefor, or licenses, or (ii) become entitled to the benefit of any trademark application, trademark, trademark registration or license renewal, the provisions of this Agreement shall automatically apply thereto and anything enumerated in clauses (i) or (ii) shall constitute Intellectual Property Collateral. Grantor shall give to the Bank prompt written notice thereof. Grantor agrees, promptly following the written request by the Bank, to amend this Agreement by amending any or all of Schedules A, B and C, as applicable, to include any such future trademarks, trademark registrations, trademark applications, trade names, service marks, trade secrets, patents, syndication rights, franchises and licenses which would be Intellectual Property Collateral.

4. Rights and Remedies; Application of Monies.

(a) Upon the occurrence and during the continuation of a default of any or all of Grantor's obligations to the Bank, the Bank may, to the fullest extent permitted by applicable law and without advertisement, hearing or process of law of any kind, (i) exercise any and all rights as beneficial and legal owner of the Intellectual Property Collateral, including, without limitation, any and all consensual rights and powers with respect to the Intellectual Property Collateral and (ii) sell or assign or grant a license or franchise to use, or cause to be sold or assigned or grant a license or franchise to use any or all of the Intellectual Property Collateral, in each case, free of all rights and claims of Grantor therein and thereto. Upon the occurrence and during the continuation of a default of any or all of Grantor's obligations to the Bank, the Bank may (i) sell or assign the Intellectual Property Collateral, or any part thereof, for cash or upon credit as the Bank may deem appropriate or (ii) grant licenses or franchises or both to use the Intellectual Property Collateral on such terms and conditions that the Bank shall determine. In connection therewith, the Bank shall have the right to impose such limitations and restrictions on the sale or assignment of the Intellectual Property Collateral as the Bank may deem to be necessary or appropriate to comply with any law, rule or regulation (federal, state or local) having applicability to any such sale and requirements for any necessary governmental approvals.

(b) Except as provided in this Section 4, Grantor hereby expressly waives, to the fullest extent permitted by applicable law, any and all notices, advertisements, hearings or process of law in connection with the exercise by the Bank of any of its rights and remedies hereunder. The Bank shall not be liable to any person for any incorrect or improper payment made pursuant to this Section 4, in the absence of willful misconduct.

(c) Notwithstanding any provisions of this Agreement to the contrary, if, after giving effect to any sale, transfer, assignment or other disposition of any or all of the Intellectual Property Collateral pursuant hereto and after the application of the proceeds hereunder to the obligations of Grantor to the Bank, any said obligations remain unpaid or unsatisfied, Grantor shall remain liable for the unpaid and unsatisfied amount of such remaining obligations.

(d) This Agreement is made to provide for and secure repayment of the obligations of Grantor to the Bank.

5. Termination of Security Interest. This Agreement and the security interests created or granted hereby or thereby, shall terminate when the later of the following shall have occurred: (a) the date that all of the obligations of Grantor to the Bank shall have been fully and indefeasibly paid and satisfied and (b) the date as of which the last of the commitments and related documents and instruments have terminated with respect to the Loan Agreement. After such termination, the Bank (without recourse upon, or any warranty whatsoever by, the Bank), shall execute and deliver to Grantor for filing in each office in which any security agreement, notice or other filing, or any part thereof, shall have been filed, an instrument releasing the Bank's security interest in the Intellectual

Property Collateral, and such other documents and instruments to terminate any security interest of the Bank granted hereby as the Grantor may reasonably request, all without recourse upon, or warranty whatsoever by, the Bank (except that the same shall be free and clear of any claims, liens or encumbrances created by or in respect of the Bank) and all at the cost and expense of Grantor.

6. Use and Protection of Intellectual Property Collateral. Notwithstanding anything to the contrary contained herein, unless an Event of Default has occurred and is continuing, Grantor may continue to exploit, license, franchise, use, enjoy and protect (whether in the United States of America or any foreign jurisdiction) the Intellectual Property Collateral in the ordinary course of business and the Bank shall from time to time execute and deliver, upon written request of Grantor and at Grantor's sole cost and expense, any and all instruments, certificates or other documents, in the form so requested, necessary or appropriate in the judgment of Grantor to enable Grantor to do so.

7. Duties of Grantor. Grantor shall have the duty to preserve and maintain all rights in the Intellectual Property Collateral in respect of which a failure to be able to continue to use the same would have a material adverse effect on the ownership, operation or maintenance of its business and operations, in a manner substantially consistent with its present practices and shall take all action reasonably requested by the Bank to register, record and/or perfect the Bank's right hereunder.

8. The Bank's Right to Sue. Whenever Grantor shall have defaulted in any or all of its obligations to the Bank, the Bank shall have the right, but shall in no way be obligated, to bring suit in its own name to enforce the Trademarks, Copyrights, Patents and Licenses, and, if the Bank shall commence any such suit, Grantor shall, at the request of the Bank, do any and all lawful acts and execute any and all proper documents required by the Bank in aid of such enforcement.

9. No Waiver; Cumulative Remedies. No failure on the part of the Bank to exercise, and no delay on the part of the Bank in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy by the Bank preclude any other or further exercise thereof or the exercise of any other right, power or remedy. All remedies hereunder are cumulative and are not exclusive of any other remedies that may be available to the Bank whether at law, in equity or otherwise.

10. Notices, etc. All notices or other communications hereunder shall be given to the Bank as follows:

**Monterey Bay Bank  
David Porter, Senior Vice President  
567 Auto Center Drive  
Watsonville, CA 95076**



Notices to the Grantor should be addressed to:

**Photoflex, Inc.**  
**Sharron Reeves, President/Secretary**  
**97 Hangar Way**  
**Watsonville, CA 95076**

11. Expenses of Collection. Grantor hereby agrees to pay all expenses of the Bank, including reasonable attorneys' fees, incurred with respect to the collection of any of the Intellectual Property Collateral and the enforcement of the rights of the Bank hereunder which expenses together with interest thereon at the rate provided in the Loan Agreement shall constitute obligations of Grantor to the Bank thereunder and, therefore, secured hereby.

12. Attorney-in-Fact. Grantor hereby irrevocably constitutes and appoints the Bank and any officer or agent thereof, with full power of substitution, as Grantor's true and lawful attorney-in-fact, for the purpose of taking such action and executing agreements, instruments and other documents, in the name of Grantor or otherwise, not inconsistent with the express provisions of this Agreement, as the Bank may deem necessary or advisable to accomplish the purposes hereof, which appointment is an agency coupled with an interest and is irrevocable until payment in full of all obligations of Grantor to the Bank.

The Bank agrees that except upon the occurrence and during the continuation of an Event of Default, it will forbear from exercising the power of attorney or any rights granted to the Bank pursuant to this Section 12.

13. Agreement Governing Law; Binding Character; Assignment. This Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to principles of conflicts of law. This Agreement shall be binding upon Grantor and the Bank and their respective successors and assigns and shall inure to the benefit of Grantor and the Bank, and their respective successors and assigns; provided, however, that Grantor may not assign its rights or obligations hereunder or in connection herewith or any interest herein (voluntarily, by operation of law or otherwise) without the prior written consent of the Bank. No other person (including, without limitation, any other creditor of Grantor) shall have any interest herein or any right or benefit with respect hereto and this Agreement shall not be construed so as to confer any right or benefit upon any person other than the parties to this Agreement and each of their respective successors and assigns.

14. Further Indemnification. Grantor agrees to pay, and save the Bank harmless from, any and all liabilities with respect to, or resulting from any delay in paying (other than a delay caused by the willful misconduct of the Bank), any and all excise, sales or other similar taxes which may be payable with respect to the Intellectual Property Collateral or in connection with any of the transactions contemplated by this Agreement.

15. **WAIVER OF JURY TRIAL.** GRANTOR WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT PROCEEDING OR COUNTERCLAIM OF ANY KIND ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE LOAN AGREEMENT OR ANY OF THE OTHER DOCUMENTS RELATED TO THE LOAN AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY CLAIMS OR COUNTERCLAIMS GROUNDED IN CONTRACT OR TORT.

16. **Severability of Provisions.** Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

17. Concurrently herewith, Grantor and the Bank are entering into a Commercial Security Agreement in connection with the Loan Agreement, which Commercial Security Agreement covers certain personal property assets of Grantor. In the event there is a conflict in any term, condition or provision of this Agreement with the Commercial Security Agreement as it relates to the Intellectual Property Collateral, the term, condition or provision of this Agreement, as applicable, shall control.

18. **Headings.** Paragraph and section headings used in this Agreement are for convenience of reference only and shall not affect the construction of this Agreement.

19. **Execution in Counterparts.** This Agreement may be executed in any number of counterparts, each of which counterparts, when so executed and delivered, shall be deemed to be an original and all of which counterparts, taken together, shall constitute one and the same Agreement.

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

“Grantor”

**PHOTOFLEX, INC.**

By: Sharon Reeves  
Sharon Reeves, President/Secretary

“Bank”

**MONTEREY BAY BANK**

By: David Porter  
David Porter, Senior Vice President

# SCHEDULE A

## Trademarks

### 1. REGISTERED MARKS

IPLO ID#:		FILING DATE/ SERIAL NO.	COUNTRY PUB. DATE	REGISTRATION DATE/ REGISTRATION NO.
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<b>PHOTOFLEX PROFESSIONAL PHOTOGEAR &amp; DESIGN</b>			KOREA		6/21/2002
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60388.200354	11	11/1/2000 2000/15387			
<b>PHOTOFLEX PROFESSIONAL PHOTOGEAR &amp; DESIGN</b>			MALAYSIA		
60388.200354	9	11/1/2000 2000/15388			
<b>PHOTOFLEX PROFESSIONAL PHOTOGEAR &amp; DESIGN</b>			MEXICO		
60388.200355					
<b>PHOTOFLEX PROFESSIONAL PHOTOGEAR &amp; DESIGN</b>			SINGAPORE		
60388.200361	9	6/25/1994 5299/84		1/2/1998	6/25/1994 6/25/1994 B5299/94
<b>PHOTOFLEX PROFESSIONAL PHOTOGEAR &amp; DESIGN</b>			TAIWAN		
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<b>GALEN ROWELL</b>			UNITED STATES		
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<b>WEB PHOTO SCHOOL</b>			UNITED STATES		
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<b>WEB PHOTO SCHOOL &amp; DESIGN</b>			UNITED STATES		
60388.200801	41	5/2/2000 76/039315			
<b>LITEDOME</b>			UNITED STATES		
60388.200901	9	7/19/2001 78/074801			

# SCHEDULE B

## Patents

<b>PATENT TITLE</b>	<b>APPLICATION DATE/ APPLICATION NO.</b>	<b>COUNTRY</b>	<b>ISSUED DATE/ PATENT NO.</b>
<b>MATTER #:</b>			
<b>RAPID ASSEMBLY PHOTOGRAPHIC LIGHTING DOME</b>			
60388 . 27	1/8/1999 09/214685	UNITED STATES	
<b>SHOCK CORDED TRIPOD STAND</b>			
60388 . 3	4/23/1986 06/855755	UNITED STATES	12/15/1987 4712756
<b>CLAMP FOR SHOCK CORDED TRIPOD STAND</b>			
60388 . 300101	10/27/1986 06/924254	UNITED STATES	1/5/1988 4717103
<b>CLAMP FOR SHOCK CORDED TRIPOD STAND</b>			
60388 . 300102		UNITED STATES	
<b>MULTIFUNCTIONAL CAMERA BAG AND BELT SUPPORT</b>			
60388 . 300201	5/2/1991 695577	UNITED STATES	4/27/1993 5205448
<b>CHEST POUCH CAMERA CARRIER</b>			
60388 . 300301	5/24/1991 705107	UNITED STATES	12/22/1992 5172838
<b>LENS CASE WITH SELECTIVE CIRCUMFERENTIAL COMPRESSION</b>			
60388 . 300401	5/24/1991 07/705502	UNITED STATES	12/20/1994 5373980
<b>RAPID ASSEMBLY PHOTOGRAPHIC LIGHTING DOME</b>			
60388 . 300500	6/6/1997 60/048955	UNITED STATES	
<b>RAPID ASSEMBLY PHOTOGRAPHIC LIGHTING DOME</b>			
60388 . 300502		UNITED STATES	
<b>RAPID ASSEMBLY PHOTOGRAPHIC LIGHTING DOME</b>			
60388 . 300530	6/3/1998 PCT/US98/1144	FOREIGN GENERAL	

RAPID ASSEMBLY PHOTOGRAPHIC LIGHTING DOME

60388 . 300535

CANADA

RAPID ASSEMBLY PHOTOGRAPHIC LIGHTING DOME

60388 . 300538

CHINA

RAPID ASSEMBLY PHOTOGRAPHIC LIGHTING DOME

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EUROPEAN COMMUNITY

RAPID ASSEMBLY PHOTOGRAPHIC LIGHTING DOME

60388 . 300548

VARIABLE INTENSITY VIDEO

60388 . 300701

UNITED STATES

## SCHEDULE C

### Licenses

Granted By Third Parties In Favor of Grantor

N/A

11-13-02

Form PTO-1594  
(Rev. 10/02)  
OMB No. 0651-0027 (exp. 6/30/2005)

RECORDATION FORM COVER SHEET  
TRADEMARKS ONLY

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

Tab settings ⇌ ⇌ ⇌ ▼ ▼ ▼ ▼ ▼ ▼ ▼

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

1. Name of conveying party(ies):  
Maxxim Medical, Inc.  
950 Winter Street, Suite 2900  
Waltham, MA 02451  
 Individual(s)                       Association  
 General Partnership               Limited Partnership  
 Corporation-State  
 Other \_\_\_\_\_  
Additional name(s) of conveying party(ies) attached?  Yes  No

2. Name and address of receiving party(ies)  
Name: JPMorgan Chase Bank, as Collateral Agent  
Internal  
Address: \_\_\_\_\_  
Street Address: 270 Park Avenue  
City: New York State: NY Zip: 10017  
 Individual(s) citizenship \_\_\_\_\_  
 Association \_\_\_\_\_  
 General Partnership \_\_\_\_\_  
 Limited Partnership \_\_\_\_\_  
 Corporation-State New York  
 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

3. Nature of conveyance:  
 Assignment                               Merger  
 Security Agreement                       Change of Name  
 Other \_\_\_\_\_  
Execution Date: 11/12/1999

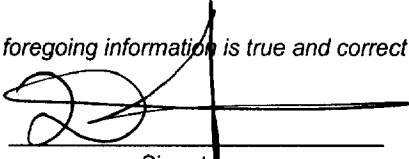
4. Application number(s) or registration number(s):  
A. Trademark Application No.(s)  
B. Trademark Registration No.(s)  
Please see Schedule A attached hereto.  
Additional number(s) attached  Yes  No

5. Name and address of party to whom correspondence concerning document should be mailed:  
Name: Penelope Agadoa  
Internal Address: Federal Research Corporation  
\_\_\_\_\_  
\_\_\_\_\_  
Street Address: 1030 Fifteenth Street, NW, Suite 920  
\_\_\_\_\_  
City: Washington State: D.C. Zip: 20005

6. Total number of applications and registrations involved: ..... 1  
7. Total fee (37 CFR 3.41).....\$ 4000/-  
 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.*  
David J. Miller                                                            11/11/02  
\_\_\_\_\_  
Name of Person Signing                              Signature                              Date

Total number of pages including cover sheet, attachments, and document: 37

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

11/14/2002 GT0N11 00000075 2012185

01 FC:8521 40.00 OP

TRADEMARK  
REEL: 002615 FRAME: 0069



Schedule A

Name of Registered Owner	Trademark	Registration Number	Registration Date
Winfield	Smartdose	2012185	10/29/96

SECURITY AGREEMENT dated as of November 12, 1999 among MAXXIM MEDICAL GROUP, INC., a Delaware corporation (the "*Borrower*"), MAXXIM MEDICAL, INC., a Texas corporation ("*Holdings*"), each subsidiary of the Borrower listed on Schedule I hereto (each such subsidiary individually a "*Subsidiary Guarantor*" and, collectively, the "*Subsidiary Guarantors*"; the Subsidiary Guarantors, Holdings and the Borrower are referred to collectively herein as the "*Grantors*") and THE CHASE MANHATTAN BANK, a New York banking corporation ("*Chase*"), as collateral agent (in such capacity, the "*Collateral Agent*") for the Secured Parties (as defined herein).

Reference is made to (a) the Credit Agreement dated as of November 12, 1999 (as amended, supplemented or otherwise modified from time to time, the "*Credit Agreement*"), among the Borrower, Holdings, the lenders from time to time party thereto (the "*Lenders*"), Chase, as administrative agent for the Lenders (in such capacity, the "*Administrative Agent*"), Collateral Agent, swingline lender and issuing bank (in such capacity, the "*Issuing Bank*"), Bankers Trust Company, as co-syndication agent for the Lenders, Merrill Lynch Capital Corporation, as co-syndication agent for the Lenders, Canadian Imperial Bank of Commerce, as co-documentation agent for the Lenders, and Credit Suisse First Boston, as co-documentation agent for the Lenders, and (b) the Parent Guarantee Agreement dated as of November 12, 1999 (as amended, supplemented or otherwise modified from time to time, the "*Parent Guarantee Agreement*"), between Holdings and the Collateral Agent and (c) the Subsidiary Guarantee Agreement dated as of November 12, 1999 (as amended, supplemented or otherwise modified from time to time, the "*Subsidiary Guarantee Agreement*"), among the Subsidiary Guarantors and the Collateral Agent.

The Lenders have agreed to make Loans to the Borrower, and the Issuing Bank has agreed to issue Letters of Credit for the account of the Borrower, pursuant to, and upon the terms and subject to the conditions specified in, the Credit Agreement. Each of Holdings and the Subsidiary Guarantors has agreed to guarantee, among other things, all the obligations of the Borrower under the Credit Agreement. The obligations of the Lenders to make Loans and of the Issuing Bank to issue Letters of Credit are conditioned upon, among other things, the execution and delivery by the Grantors of an agreement in the form hereof to secure (a) the due and punctual payment by the Borrower of (i) the principal of and interest (including interest accruing during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding) on the Loans, when and as due, whether at maturity, by acceleration, upon one or more dates set for prepayment or otherwise, (ii) each payment required to be made by the Borrower under the Credit Agreement in respect of any Letter of Credit, when and as due, including payments in respect of reimbursement of disbursements, interest thereon and obligations to provide cash collateral, and (iii) all other monetary obligations, including fees, costs, expenses and indemnities, whether primary, secondary, direct, contingent, fixed or otherwise (including monetary obligations incurred during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding), of the Borrower to the Secured Parties under the Credit Agreement and the other Loan Documents, (b) the due and punctual performance of all covenants, agreements, obligations and liabilities of the Borrower under or pursuant to the Credit Agreement and the other Loan Documents, (c) the due and punctual payment and performance of all the covenants, agreements, obligations and liabilities of each Loan Party under or pursuant to this Agreement and the other Loan Documents, (d) the due and punctual payment and performance of all obligations of the Borrower under each Hedging Agreement (other than each Hedging Agreement relating to the Existing Notes, Senior Subordinated Notes, the Permitted Refinancing Indebtedness or the Holdings Notes) entered into with any counterparty that was a Lender or an Affiliate of a Lender at the time such Hedging Agreement was entered into and (e) the due and punctual payment and performance of all

obligations in respect of overdrafts and related liabilities owed to Chase, any Affiliate thereof, the Administrative Agent or the Collateral Agent arising from treasury, depository and cash management services or in connection with any automated clearinghouse transfer of funds (collectively, the "Treasury Services", and all the monetary and other obligations described in the preceding clauses (a) through (e) being collectively called the "Obligations").

Accordingly, the Grantors and the Collateral Agent, on behalf of itself and each Secured Party (and each of their respective successors or assigns), hereby agree as follows:

## ARTICLE I

### *Definitions*

**SECTION 1.01. *Definition of Terms Used Herein.*** Unless the context otherwise requires, all capitalized terms used but not defined herein shall have the meanings set forth in the Credit Agreement and all references to the Uniform Commercial Code shall mean the Uniform Commercial Code in effect in the State of New York as of the date hereof.

**SECTION 1.02. *Definition of Certain Terms Used Herein.*** As used herein, the following terms shall have the following meanings:

"*Account Debtor*" shall mean any person who is or who may become obligated to any Grantor under, with respect to or on account of an Account.

"*Accounts*" shall mean any and all right, title and interest of any Grantor to payment for goods and services sold or leased, including any such right evidenced by chattel paper, whether due or to become due, whether or not it has been earned by performance, and whether now or hereafter acquired or arising in the future, including accounts receivable from Affiliates of the Grantors.

"*Accounts Receivable*" shall mean all Accounts and all right, title and interest in any returned goods, 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 security interests, liens and pledges, whether voluntary or involuntary, in each case whether now existing or owned or hereafter arising or acquired.

"*Collateral*" shall mean all (a) Accounts Receivable, (b) Documents, (c) Equipment, (d) General Intangibles, (e) Inventory, (f) cash and cash accounts, (g) Investment Property and (h) Proceeds.

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

"*Commodity Contract*" shall mean a commodity futures contract, an option on a commodity futures contract, a commodity option or any other contract that, in each case, is (a) traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to the federal commodities laws or (b) traded on a foreign commodity board of trade, exchange or market, and is carried on the books of a Commodity Intermediary for a Commodity Customer.

"*Commodity Customer*" shall mean a person for whom a Commodity Intermediary carries a Commodity Contract on its books.

"*Commodity Intermediary*" shall mean (a) a person who is registered as a futures commission merchant under the federal commodities laws or (b) a person who in the ordinary

course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities laws.

*"Copyright License"* shall mean any written agreement, now or hereafter in effect, granting any right to any third party under any Copyright now or hereafter owned by any Grantor or that such Grantor otherwise has the right to license, or granting any right to such Grantor under any Copyright now or hereafter owned by any third party, and all rights of such Grantor under any such agreement.

*"Copyrights"* shall mean all of the following now owned or hereafter acquired by any Grantor: (a) all copyright rights in any work subject to the copyright laws of the United States or any other country, whether as author, assignee, transferee or otherwise, and (b) all registrations and applications for registration of any such copyright in the United States or any other country, including registrations, recordings, supplemental registrations and pending applications for registration in the United States Copyright Office, including those listed on Schedule II.

*"Credit Agreement"* shall have the meaning assigned to such term in the preliminary statement of this Agreement.

*"Documents"* shall mean all instruments, files, records, ledger sheets and documents covering or relating to any of the Collateral.

*"Entitlement Holder"* shall mean a person identified in the records of a Securities Intermediary as the person having a Security Entitlement against the Securities Intermediary. If a person acquires a Security Entitlement by virtue of Section 8-501(b)(2) or (3) of the Uniform Commercial Code, such person is the Entitlement Holder.

*"Equipment"* shall mean all equipment, furniture and furnishings, and all tangible personal property similar to any of the foregoing, including tools, parts and supplies of every kind and description, and all improvements, accessions or appurtenances thereto, that are now or hereafter owned by any Grantor. The term Equipment shall include Fixtures.

*"Financial Asset"* shall mean (a) a Security, (b) an obligation of a person or a share, participation or other interest in a person or in property or an enterprise of a person that is, or is of a type, dealt with in or traded on financial markets, or that is recognized in any area in which it is issued or dealt in as a medium for investment or (c) any property that is held by a Securities Intermediary for another person in a Securities Account if the Securities Intermediary has expressly agreed with the other person that the property is to be treated as a Financial Asset under Article 8 of the Uniform Commercial Code. As the context requires, the term Financial Asset shall mean either the interest itself or the means by which a person's claim to it is evidenced, including a certificated or uncertificated Security, a certificate representing a Security or a Security Entitlement.

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

*"General Intangibles"* shall mean all choses in action and causes of action and all other assignable intangible personal property of any Grantor of every kind and nature (other than Accounts Receivable) now owned or hereafter acquired by any Grantor, including all rights and interests in partnerships, limited partnerships, limited liability companies and other unincorporated entities, corporate or other business records, indemnification claims, contract rights (including rights under leases, whether entered into as lessor or lessee, Hedging Agreements and other agreements), Intellectual Property, goodwill, registrations, franchises, tax refund claims and any letter of credit, guarantee, claim, security interest or other security held by

or granted to any Grantor to secure payment by an Account Debtor of any of the Accounts Receivable, including all goodwill, going concern value.

*"Intellectual Property"* shall mean all intellectual and similar property of any Grantor of every kind and nature now owned or hereafter acquired by any Grantor, including inventions, designs, Patents, Copyrights, Licenses, Trademarks, trade secrets, confidential or proprietary technical and business information, know-how, show-how or other data or information, software and databases and all embodiments or fixations thereof and related documentation, registrations and franchises, and all additions, improvements and accessions to, and books and records describing or used in connection with, any of the foregoing.

*"Inventory"* shall mean all goods of any Grantor, whether now owned or hereafter acquired, held for sale or lease, or furnished or to be furnished by any Grantor under contracts of service, or consumed in any Grantor's business, including raw materials, intermediates, work in process, packaging materials, finished goods, semi-finished inventory, scrap inventory, manufacturing supplies and spare parts, and all such goods that have been returned to or repossessed by or on behalf of any Grantor.

*"Investment Property"* shall mean all Securities (whether certificated or uncertificated), Security Entitlements, Securities Accounts, Commodity Contracts and Commodity Accounts of any Grantor, whether now owned or hereafter acquired by any Grantor.

*"License"* shall mean any Patent License, Trademark License, Copyright License or other license or sublicense to which any Grantor is a party, including those listed on Schedule III (other than those license agreements in existence on the date hereof and listed on Schedule III and those license agreements entered into after the date hereof, which by their terms prohibit assignment or a grant of a security interest by such Grantor as licensee thereunder).

*"Obligations"* shall have the meaning assigned to such term in the preliminary statement of this Agreement.

*"Patent License"* shall mean any written agreement, now or hereafter in effect, granting to any third party any right to make, use or sell any invention on which a Patent, now or hereafter owned by any Grantor or that any Grantor otherwise has the right to license, is in existence, or granting to any Grantor any right to make, use or sell any invention on which a Patent, now or hereafter owned by any third party, is in existence, and all rights of any Grantor under any such agreement.

*"Patents"* shall mean all of the following now owned or hereafter acquired by any Grantor: (a) all letters patent of the United States or any other country, all registrations and recordings thereof, and all applications for letters patent of the United States or any other country, including registrations, recordings and pending applications in the United States Patent and Trademark Office or any similar offices in any other country, including those listed on Schedule IV, and (b) all reissues, continuations, divisions, continuations-in-part, renewals or extensions thereof, and the inventions disclosed or claimed therein, including the right to make, use and/or sell the inventions disclosed or claimed therein.

*"Perfection Certificate"* shall mean a certificate substantially in the form of Annex I hereto, completed and supplemented with the schedules and attachments contemplated thereby, and duly executed by a Financial Officer and the chief legal officer of the Borrower.

*"Proceeds"* shall mean any consideration received from the sale, exchange, license, lease or other disposition of any asset or property that constitutes Collateral, any value received as a consequence of the possession of any Collateral and any payment received from any insurer or other person or entity as a result of the destruction, loss, theft, damage or other involuntary conversion of whatever nature of any asset or property that constitutes Collateral, and shall

include (a) all cash and negotiable instruments received by or held on behalf of the Collateral Agent, (b) any claim of any Grantor against any third party for (and the right to sue and recover for and the rights to damages or profits due or accrued arising out of or in connection with) (i) past, present or future infringement of any Patent now or hereafter owned by any Grantor, or licensed under a Patent License, (ii) past, present or future infringement or dilution of any Trademark now or hereafter owned by any Grantor or licensed under a Trademark License or injury to the goodwill associated with or symbolized by any Trademark now or hereafter owned by any Grantor, (iii) past, present or future breach of any License and (iv) past, present or future infringement of any Copyright now or hereafter owned by any Grantor or licensed under a Copyright License and (c) any and all other amounts from time to time paid or payable under or in connection with any of the Collateral.

"*Secured Parties*" shall mean (a) the Lenders, (b) the Administrative Agent, (c) the Collateral Agent, (d) the Issuing Bank, (e) each counterparty to a Hedging Agreement (other than a Hedging Agreement relating to the Senior Subordinated Notes, the Permitted Refinancing Indebtedness or the Holdings Notes) entered into with the Borrower if such counterparty was a Lender or an Affiliate of a Lender at the time the Hedging Agreement was entered into, (f) the beneficiaries of each indemnification obligation undertaken by any Grantor under any Loan Document, (g) Chase, any affiliate thereof, the Administrative Agent and the Collateral Agent in respect of any Treasury Services and (h) the successors and assigns of each of the foregoing.

"*Securities*" shall mean any obligations of an issuer or any shares, participations or other interests in an issuer or in property or an enterprise of an issuer that (a) are represented by a certificate representing a security in bearer or registered form, or the transfer of which may be registered upon books maintained for that purpose by or on behalf of the issuer, (b) are one of a class or series or by its terms is divisible into a class or series of shares, participations, interests or obligations and (c)(i) are, or are of a type, dealt with or traded on securities exchanges or securities markets or (ii) are a medium for investment and by their terms expressly provide that they are a security governed by Article 8 of the Uniform Commercial Code.

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

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

"*Security Interest*" shall have the meaning assigned to such term in Section 2.01.

"*Securities Intermediary*" shall mean (a) a clearing corporation or (b) a person, including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity.

"*Trademark License*" shall mean any written agreement, now or hereafter in effect, granting to any third party any right to use any Trademark now or hereafter owned by any Grantor or that any Grantor otherwise has the right to license, or granting to any Grantor any right to use any Trademark now or hereafter owned by any third party, and all rights of any Grantor under any such agreement.

"*Trademarks*" shall mean all of the following now owned or hereafter acquired by any Grantor: (a) all trademarks, service marks, trade names, corporate names, company names, business names, fictitious business names, trade styles, trade dress, logos, other source or business identifiers, designs and general intangibles of like nature, now existing or hereafter adopted or acquired, all registrations and recordings thereof, and all registration and recording applications filed in connection therewith, including registrations and registration applications in

the United States Patent and Trademark Office, any State of the United States or any similar offices in any other country or any political subdivision thereof, and all extensions or renewals thereof, including those listed on Schedule V, (b) all goodwill associated therewith or symbolized thereby and (c) all other assets, rights and interests that uniquely reflect or embody such goodwill.

SECTION 1.03. *Rules of Interpretation.* The rules of interpretation specified in Section 1.03 of the Credit Agreement shall be applicable to this Agreement.

## ARTICLE II

### *Security Interest*

SECTION 2.01. *Security Interest.* As security for the payment or performance, as the case may be, in full of the Obligations, each Grantor hereby bargains, sells, conveys, assigns, sets over, mortgages, pledges, hypothecates and transfers to the Collateral Agent, its successors and assigns, for the ratable benefit of the Secured Parties, and hereby grants to the Collateral Agent, its successors and assigns, for the ratable benefit of the Secured Parties, a security interest in, all of such Grantor's right, title and interest in, to and under the Collateral (the "*Security Interest*"). Without limiting the foregoing, the Collateral Agent is hereby authorized to file one or more financing statements (including fixture filings), continuation statements, filings with the United States Patent and Trademark Office or United States Copyright Office (or any successor office or any similar office in any other country) or other documents for the purpose of perfecting, confirming, continuing, enforcing or protecting the Security Interest granted by each Grantor, without the signature of any Grantor, and naming any Grantor or the Grantors as debtors and the Collateral Agent as secured party.

SECTION 2.02. *No Assumption of Liability.* The Security Interest is granted as security only and shall not subject the Collateral Agent or any other Secured Party to, or in any way alter or modify, any obligation or liability of any Grantor with respect to or arising out of the Collateral.

## ARTICLE III

### *Representations and Warranties*

The Grantors jointly and severally represent and warrant to the Collateral Agent and the Secured Parties that:

SECTION 3.01. *Title and Authority.* Each Grantor has good and valid rights in and title to the Collateral with respect to which it has purported to grant a Security Interest hereunder and has full power and authority to grant to the Collateral Agent the Security Interest in such Collateral pursuant hereto and to execute, deliver and perform its obligations in accordance with the terms of this Agreement, without the consent or approval of any other person other than any consent or approval that has been obtained.

SECTION 3.02. *Filings.* (a) The Perfection Certificate has been duly prepared, completed and executed and the information set forth therein is correct and complete. Fully executed Uniform Commercial Code financing statements (including fixture filings, as applicable) or other appropriate filings, recordings or registrations containing a description of the Collateral have been delivered to the Collateral Agent for filing in each governmental, municipal or other office specified in Schedule 6 to the Perfection Certificate, which are all the filings, recordings and registrations (other than filings required to be made in the United States Patent and Trademark Office and the United States Copyright Office in order to perfect the Security

Interest in Collateral consisting of United States Patents, Trademarks and Copyrights) that are necessary to publish notice of and protect the validity of and to establish a legal, valid and perfected security interest in favor of the Collateral Agent (for the ratable benefit of the Secured Parties) in respect of all Collateral in which the Security Interest may be perfected by filing, recording or registration in the United States (or any political subdivision thereof) and its territories and possessions, and no further or subsequent filing, refile, recording, rerecording, registration or reregistration is necessary in any such jurisdiction, except as provided under applicable law with respect to the filing of continuation statements.

(b) Each Grantor represents and warrants that fully executed security agreements in the form hereof and containing a description of all Collateral consisting of Intellectual Property with respect to United States Patents and United States registered Trademarks (and Trademarks for which United States registration applications are pending) and United States registered Copyrights have been delivered to the Collateral Agent for recording by the United States Patent and Trademark Office and the United States Copyright Office pursuant to 35 U.S.C. § 261, 15 U.S.C. § 1060 or 17 U.S.C. § 205 and the regulations thereunder, as applicable, and otherwise as may be required pursuant to the laws of any other necessary jurisdiction, to protect the validity of and to establish a legal, valid and perfected security interest in favor of the Collateral Agent (for the ratable benefit of the Secured Parties) in respect of all Collateral consisting of Patents, Trademarks and Copyrights in which a security interest may be perfected by filing, recording or registration in the United States (or any political subdivision thereof) and its territories and possessions, or in any other necessary jurisdiction, and no further or subsequent filing, refile, recording, rerecording, registration or reregistration is necessary (other than such actions as are necessary to perfect the Security Interest with respect to any Collateral consisting of Patents, Trademarks and Copyrights (or registration or application for registration thereof) acquired or developed after the date hereof).

SECTION 3.03. *Validity of Security Interest.* The Security Interest constitutes (a) a legal and valid security interest in all the Collateral securing the payment and performance of the Obligations, (b) subject to the filings described in Section 3.02 above, a perfected security interest in all Collateral in which a security interest may be perfected by filing, recording or registering a financing statement or analogous document in the United States (or any political subdivision thereof) and its territories and possessions pursuant to the Uniform Commercial Code or other applicable law in such jurisdictions and (c) a security interest that shall be perfected in all Collateral in which a security interest may be perfected upon the receipt and recording of this Agreement with the United States Patent and Trademark Office and the United States Copyright Office, as applicable. The Security Interest is and shall be prior to any other Lien on any of the Collateral, other than Liens expressly permitted to be prior to the Security Interest pursuant to Section 6.02 of the Credit Agreement.

SECTION 3.04. *Absence of Other Liens.* The Collateral is owned by the Grantors free and clear of any Lien, except for Liens expressly permitted pursuant to Section 6.02 of the Credit Agreement. The Grantor has not filed or consented to the filing of (a) any financing statement or analogous document under the Uniform Commercial Code or any other applicable laws covering any Collateral, (b) any assignment in which any Grantor assigns any Collateral or any security agreement or similar instrument covering any Collateral with the United States Patent and Trademark Office or the United States Copyright Office or (c) any assignment in which any Grantor assigns any Collateral or any security agreement or similar instrument covering any Collateral with any foreign governmental, municipal or other office, which financing statement or analogous document, assignment, security agreement or similar instrument is still in effect, except, in each case, for Liens expressly permitted pursuant to Section 6.02 of the Credit Agreement.



## ARTICLE IV

### *Covenants*

**SECTION 4.01. *Change of Name; Location of Collateral; Records; Place of Business.*** (a) Each Grantor agrees promptly to notify the Collateral Agent in writing of any change (i) in its corporate name or in any trade name used to identify it in the conduct of its business or in the ownership of its properties, (ii) in the location of its chief executive office, its principal place of business, any office in which it maintains books or records relating to Collateral owned by it or any office or facility at which Collateral owned by it is located (including the establishment of any such new office or facility), (iii) in its identity or corporate structure or (iv) in its Federal Taxpayer Identification Number. Each Grantor agrees not to effect or permit any change referred to in the preceding sentence unless all filings have been made under the Uniform Commercial Code or otherwise that are required in order for the Collateral Agent to continue at all times following such change to have a valid, legal and perfected first priority security interest in all the Collateral. Each Grantor agrees promptly to notify the Collateral Agent if any material portion of the Collateral owned or held by such Grantor is damaged or destroyed.

(b) Each Grantor agrees to maintain, at its own cost and expense, such complete and accurate records with respect to the Collateral owned by it as is consistent with its current practices and in accordance with such prudent and standard practices used in industries that are the same as or similar to those in which such Grantor is engaged, but in any event to include complete accounting records indicating all payments and proceeds received with respect to any part of the Collateral, and, at such time or times as the Collateral Agent may reasonably request, promptly to prepare and deliver to the Collateral Agent a duly certified schedule or schedules in form and detail satisfactory to the Collateral Agent showing the identity, amount and location of any and all Collateral.

**SECTION 4.02. *Periodic Certification.*** Each year, at the time of delivery of annual financial statements with respect to the preceding fiscal year pursuant to Section 5.01 of the Credit Agreement, the Borrower shall deliver to the Collateral Agent a certificate executed by a Financial Officer and the chief legal officer of the Borrower (a) setting forth the information required pursuant to Section 2 of the Perfection Certificate or confirming that there has been no change in such information since the date of such certificate or the date of the most recent certificate delivered pursuant to this Section 4.02 and (b) certifying that all Uniform Commercial Code financing statements (including fixture filings, as applicable) or other appropriate filings, recordings or registrations, including all refilings, rerecordings and reregistrations, containing a description of the Collateral have been filed of record in each governmental, municipal or other appropriate office in each jurisdiction identified pursuant to clause (a) above to the extent necessary to protect and perfect the Security Interest for a period of not less than 18 months after the date of such certificate (except as noted therein with respect to any continuation statements to be filed within such period). Each certificate delivered pursuant to this Section 4.02 shall identify in the format of Schedule II, III, IV or V, as applicable, all Intellectual Property of any Grantor in existence on the date thereof and not then listed on such Schedules or previously so identified to the Collateral Agent.

**SECTION 4.03. *Protection of Security.*** Each Grantor shall, at its own cost and expense, take any and all actions necessary to defend title to the Collateral against all persons and to defend the Security Interest of the Collateral Agent in the Collateral and the priority thereof against any Lien not expressly permitted pursuant to Section 6.02 of the Credit Agreement.

**SECTION 4.04. *Further Assurances.*** Each Grantor agrees, at its own expense, to execute, acknowledge, deliver and cause to be duly filed all such further instruments and documents and take all such actions as the Collateral Agent may from time to time request to better assure, preserve, protect and perfect the Security Interest and the rights and remedies

created hereby, including the payment of any fees and taxes required in connection with the execution and delivery of this Agreement, the granting of the Security Interest and the filing of any financing statements (including fixture filings) or other documents in connection herewith or therewith. If any amount payable under or in connection with any of the Collateral shall be or become evidenced by any promissory note or other instrument, such note or instrument shall be immediately pledged and delivered to the Collateral Agent, duly endorsed in a manner satisfactory to the Collateral Agent.

Without limiting the generality of the foregoing, each Grantor hereby authorizes the Collateral Agent, with prompt notice thereof to the Grantors, to supplement this Agreement by supplementing Schedule II, III, IV or V hereto or adding additional schedules hereto to specifically identify any asset or item that the Collateral Agent reasonably believes constitute Copyrights, Licenses, Patents or Trademarks; *provided, however*, that any Grantor shall have the right, exercisable within 10 days after it has been notified by the Collateral Agent of the specific identification of such Collateral, to advise the Collateral Agent in writing of any inaccuracy of the representations and warranties made by such Grantor hereunder with respect to such Collateral. Each Grantor agrees that it will use its best efforts to take such action as shall be necessary in order that all representations and warranties hereunder shall be true and correct with respect to such Collateral within 30 days after the date it has been notified by the Collateral Agent of the specific identification of such Collateral.

SECTION 4.05. *Inspection and Verification.* The Collateral Agent and such persons as the Collateral Agent may reasonably designate shall have the right, at the Grantors' 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 the Grantors' affairs with the officers of the Grantors and their independent accountants and to verify under reasonable procedures, in accordance with Section 5.09 of the Credit Agreement, 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. The Collateral Agent shall share any information it gains from such inspection or verification with Grantors and shall have the absolute right to share any such information with any Secured Party (it being understood that any such information shall be deemed to be "Information" subject to the provisions of Section 9.12 of the Credit Agreement).

SECTION 4.06. *Taxes; Encumbrances.* At its option, the Collateral Agent may discharge past due taxes, assessments, charges, fees, Liens, security interests or other encumbrances at any time levied or placed on the Collateral and not permitted pursuant to Section 6.02 of the Credit Agreement, and may pay for the maintenance and preservation of the Collateral to the extent any Grantor fails to do so as required by the Credit Agreement or this Agreement, and each Grantor jointly and severally agrees to reimburse the Collateral Agent on demand for any payment made or any expense incurred by the Collateral Agent pursuant to the foregoing authorization; *provided, however*, that nothing in this Section 4.06 shall be interpreted as excusing any Grantor from the performance of, or imposing any obligation on the Collateral Agent or any Secured Party to cure or perform, any covenants or other promises of any Grantor with respect to taxes, assessments, charges, fees, liens, security interests or other encumbrances and maintenance as set forth herein or in the other Loan Documents.

SECTION 4.07. *Assignment of Security Interest.* If at any time any Grantor shall take a security interest in any property of an Account Debtor or any other person to secure payment and performance of an Account, such Grantor shall promptly assign such security interest to the Collateral Agent. Such assignment need not be filed of public record unless necessary to continue the perfected status of the security interest against creditors of and transferees from the Account Debtor or other person granting the security interest.

SECTION 4.08. *Continuing Obligations of the Grantors.* Each Grantor shall remain liable to observe and perform all the conditions and obligations to be observed and performed by it under each contract, agreement or instrument relating to the Collateral, all in accordance with the terms and conditions thereof, and each Grantor jointly and severally agrees to indemnify and hold harmless the Collateral Agent and the Secured Parties from and against any and all liability for such performance.

SECTION 4.09. *Use and Disposition of Collateral.* None of the Grantors shall make or permit to be made an assignment for security, pledge or hypothecation of the Collateral or shall grant any other Lien in respect of the Collateral, except as expressly permitted by Section 6.02 of the Credit Agreement. None of the Grantors shall make or permit to be made any transfer of the Collateral and each Grantor shall remain at all times in possession of the Collateral owned by it, except that (a) Inventory may be sold in the ordinary course of business and (b) unless and until the Collateral Agent shall notify the Grantors that an Event of Default shall have occurred and be continuing and that during the continuance thereof the Grantors shall not sell, convey, lease, assign, transfer or otherwise dispose of any Collateral (which notice may be given by telephone if promptly confirmed in writing), the Grantors may use and dispose of the Collateral in any lawful manner not prohibited by this Agreement, the Credit Agreement or any other Loan Document. Without limiting the generality of the foregoing, each Grantor agrees that it shall not permit any Inventory to be in the possession or control of any warehouseman, bailee, agent or processor at any time unless such warehouseman, bailee, agent or processor shall have been notified of the Security Interest and shall have agreed in writing to hold the Inventory subject to the Security Interest and the instructions of the Collateral Agent and to waive and release any Lien held by it with respect to such Inventory, whether arising by operation of law or otherwise.

SECTION 4.10. *Limitation on Modification of Accounts.* None of the Grantors will, without the Collateral Agent's prior written consent, grant any extension of the time of payment of any of the Accounts Receivable, compromise, compound or settle the same for less than the full amount thereof, release, wholly or partly, any person liable for the payment thereof or allow any credit or discount whatsoever thereon, other than extensions, credits, discounts, compromises or settlements granted or made in the ordinary course of business and consistent with its current practices and in accordance with such prudent and standard practices used in industries that are the same as or similar to those in which such Grantor is engaged.

SECTION 4.11. *Insurance.* The Grantors, at their own expense, shall maintain or cause to be maintained insurance covering physical loss or damage to the Inventory and Equipment in accordance with Section 5.07 of the Credit Agreement. Each Grantor irrevocably makes, constitutes and appoints the Collateral Agent (and all officers, employees or agents designated by the Collateral Agent) as such Grantor's true and lawful agent (and attorney-in-fact) for the purpose, during the continuance of an Event of Default, of making, settling and adjusting claims in respect of Collateral under policies of insurance, endorsing the name of such Grantor on any check, draft, instrument or other item of payment for the proceeds of such policies of insurance and for making all determinations and decisions with respect thereto. In the event that any Grantor at any time or times shall fail to obtain or maintain any of the policies of insurance required hereby or to pay any premium in whole or part relating thereto, the Collateral Agent may, without waiving or releasing any obligation or liability of the Grantors hereunder or any Event of Default, in its sole discretion, obtain and maintain such policies of insurance and pay such premium and take any other actions with respect thereto as the Collateral Agent deems advisable. All sums disbursed by the Collateral Agent in connection with this Section 4.11, including reasonable attorneys' fees, court costs, expenses and other charges relating thereto, shall be payable, upon demand, by the Grantors to the Collateral Agent and shall be additional Obligations secured hereby.

SECTION 4.12. *Legend.* Each Grantor shall legend, in form and manner satisfactory to the Collateral Agent, its Accounts Receivable and its books, records and documents evidencing or pertaining thereto with an appropriate reference to the fact that such Accounts Receivable have

been assigned to the Collateral Agent for the benefit of the Secured Parties and that the Collateral Agent has a security interest therein.

*SECTION 4.13. Covenants Regarding Patent, Trademark and Copyright Collateral.*

(a) Each Grantor agrees that it will not, nor will it permit any of its licensees to, do any act, or omit to do any act, whereby any Patent that is material to the conduct of such Grantor's business may become invalidated or dedicated to the public, and agrees that it shall continue to mark any products covered by a Patent with the relevant patent number as necessary and sufficient to establish and preserve its maximum rights under applicable patent laws.

(b) Each Grantor (either itself or through its licensees or its sublicensees) will, for each Trademark material to the conduct of such Grantor's business, (i) maintain such Trademark in full force free from any claim of abandonment or invalidity for non-use, (ii) maintain the quality of products and services offered under such Trademark, (iii) display such Trademark with notice of Federal or foreign registration to the extent necessary and sufficient to establish and preserve its maximum rights under applicable law and (iv) not knowingly use or knowingly permit the use of such Trademark in violation of any third party rights.

(c) Each Grantor (either itself or through licensees) will, for each work covered by a material Copyright, continue to publish, reproduce, display, adopt and distribute the work with appropriate copyright notice as necessary and sufficient to establish and preserve its maximum rights under applicable copyright laws.

(d) Each Grantor shall notify the Collateral Agent immediately if it knows or has reason to know that any Patent, Trademark or Copyright material to the conduct of its business may become abandoned, lost or dedicated to the public, or of any adverse determination or development (including the institution of, or any such determination or development in, any proceeding in the United States Patent and Trademark Office, United States Copyright Office or any court or similar office of any country) regarding such Grantor's ownership of any Patent, Trademark or Copyright, its right to register the same, or to keep and maintain the same.

(e) In no event shall any Grantor, either itself or through any agent, employee, licensee or designee, file an application for any Patent, Trademark or Copyright (or for the registration of any Trademark or Copyright) with the United States Patent and Trademark Office, United States Copyright Office or any office or agency in any political subdivision of the United States or in any other country or any political subdivision thereof, unless it promptly informs the Collateral Agent, and, upon request of the Collateral Agent, executes and delivers any and all agreements, instruments, documents and papers as the Collateral Agent may request to evidence the Collateral Agent's security interest in such Patent, Trademark or Copyright, and each Grantor hereby appoints the Collateral Agent as its attorney-in-fact to execute and file such writings for the foregoing purposes, all acts of such attorney being hereby ratified and confirmed; such power, being coupled with an interest, is irrevocable.

(f) Each Grantor will take all necessary steps that are consistent with the practice in any proceeding before the United States Patent and Trademark Office, United States Copyright Office or any office or agency in any political subdivision of the United States or in any other country or any political subdivision thereof, to maintain and pursue each material application relating to the Patents, Trademarks and/or Copyrights (and to obtain the relevant grant or registration) and to maintain each issued Patent and each registration of the Trademarks and Copyrights that is material to the conduct of any Grantor's business, including timely filings of applications for renewal, affidavits of use, affidavits of incontestability and payment of maintenance fees, and, if consistent with good business judgment, to initiate opposition, interference and cancellation proceedings against third parties.

(g) In the event that any Grantor has reason to believe that any Collateral consisting of a Patent, Trademark or Copyright material to the conduct of any Grantor's business has been or is

about to be infringed, misappropriated or diluted by a third party, such Grantor promptly shall notify the Collateral Agent and shall, if consistent with good business judgment, promptly sue for infringement, misappropriation or dilution and to recover any and all damages for such infringement, misappropriation or dilution, and take such other actions as are appropriate under the circumstances to protect such Collateral.

(h) Upon and during the continuance of an Event of Default, each Grantor shall use its best efforts to obtain all requisite consents or approvals by the licensor of each Copyright License, Patent License or Trademark License to effect the assignment of all of such Grantor's right, title and interest thereunder to the Collateral Agent or its designee.

## ARTICLE V

### *Remedies*

SECTION 5.01. *Remedies upon Default.* Upon the occurrence and during the continuance of an Event of Default, each Grantor agrees to deliver each item of Collateral to the Collateral Agent on demand, and it is agreed that the Collateral Agent shall have the right to take any of or all the following actions at the same or different times: (a) with respect to any Collateral consisting of Intellectual Property, on demand, to cause the Security Interest to become an assignment, transfer and conveyance of any of or all such Collateral by the applicable Grantors to the Collateral Agent, or to license or sublicense, whether general, special or otherwise, and whether on an exclusive or non-exclusive basis, any such Collateral throughout the world on such terms and conditions and in such manner as the Collateral Agent shall determine (other than in violation of any then-existing licensing arrangements to the extent that waivers cannot be obtained), and (b) with or without legal process and with or without prior notice or demand for performance, to take possession of the Collateral and without liability for trespass to enter any premises where the Collateral may be located for the purpose of taking possession of or removing the Collateral and, generally, to exercise any and all rights afforded to a secured party under the Uniform Commercial Code or other applicable law. Without limiting the generality of the foregoing, each Grantor agrees that the Collateral Agent shall have the right, subject to the mandatory requirements of applicable law, to sell or otherwise dispose of all or any part of the Collateral, at public or private sale or at any broker's board or on any securities exchange, for cash, upon credit or for future delivery as the Collateral Agent shall deem appropriate. The Collateral Agent shall be authorized at any such sale (if it deems it advisable to do so) to restrict the prospective bidders or purchasers to persons who will represent and agree that they are purchasing the Collateral for their own account for investment and not with a view to the distribution or sale thereof, and upon consummation of any such sale the Collateral Agent shall have the right to assign, transfer and deliver to the purchaser or purchasers thereof the Collateral so sold. Each such purchaser at any such sale shall hold the property sold absolutely, free from any claim or right on the part of any Grantor, and each Grantor hereby waives (to the extent permitted by law) all rights of redemption, stay and appraisal that such Grantor now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted.

The Collateral Agent shall give the Grantors 10 days' written notice (which each Grantor agrees is reasonable notice within the meaning of Section 9-504(3) of the Uniform Commercial Code as in effect in the State of New York or its equivalent in other jurisdictions) of the Collateral Agent's intention to make any sale of Collateral. Such notice, in the case of a public sale, shall state the time and place for such sale and, in the case of a sale at a broker's board or on a securities exchange, shall state the board or exchange at which such sale is to be made and the day on which the Collateral, or portion thereof, will first be offered for sale at such board or exchange. Any such public sale shall be held at such time or times within ordinary business hours and at such place or places as the Collateral Agent may fix and state in the notice (if any) of such sale. At any such sale, the Collateral, or portion thereof, to be sold may be sold in one lot as an entirety or in separate parcels, as the Collateral Agent may (in its sole and absolute

discretion) determine. The Collateral Agent shall not be obligated to make any sale of any Collateral if it shall determine not to do so, regardless of the fact that notice of sale of such Collateral shall have been given. The Collateral Agent may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for sale, and such sale may, without further notice, be made at the time and place to which the same was so adjourned. In case any sale of all or any part of the Collateral is made on credit or for future delivery, the Collateral so sold may be retained by the Collateral Agent until the sale price is paid by the purchaser or purchasers thereof, but the Collateral Agent shall not incur any liability in case any such purchaser or purchasers shall fail to take up and pay for the Collateral so sold and, in case of any such failure, such Collateral may be sold again upon like notice. At any public (or, to the extent permitted by law, private) sale made pursuant to this Section, any Secured Party may bid for or purchase, free (to the extent permitted by law) from any right of redemption, stay, valuation or appraisal on the part of any Grantor (all said rights being also hereby waived and released to the extent permitted by law), the Collateral or any part thereof offered for sale and may make payment on account thereof by using any claim then due and payable to such Secured Party from any Grantor as a credit against the purchase price, and such Secured Party may, upon compliance with the terms of sale, hold, retain and dispose of such property without further accountability to any Grantor therefor. For purposes hereof, a written agreement to purchase the Collateral or any portion thereof shall be treated as a sale thereof; the Collateral Agent shall be free to carry out such sale pursuant to such agreement and no Grantor shall be entitled to the return of the Collateral or any portion thereof subject thereto, notwithstanding the fact that after the Collateral Agent shall have entered into such an agreement all Events of Default shall have been remedied and the Obligations paid in full. As an alternative to exercising the power of sale herein conferred upon it, the Collateral Agent may proceed by a suit or suits at law or in equity to foreclose this Agreement and to sell the Collateral or any portion thereof pursuant to a judgment or decree of a court or courts having competent jurisdiction or pursuant to a proceeding by a court-appointed receiver.

SECTION 5.02. *Application of Proceeds.* The Collateral Agent shall apply the proceeds of any collection or sale of the Collateral, as well as any Collateral consisting of cash, as follows:

FIRST, to the payment of all costs and expenses incurred by the Administrative Agent or the Collateral Agent (in its capacity as such hereunder or under any other Loan Document) in connection with such collection or sale or otherwise in connection with this Agreement or any of the Obligations, including all court costs and the fees and expenses of its agents and legal counsel, the repayment of all advances made by the Collateral Agent hereunder or under any other Loan Document on behalf of any Grantor and any other costs or expenses incurred in connection with the exercise of any right or remedy hereunder or under any other Loan Document;

SECOND, to the payment in full of the Obligations (the amounts so applied to be distributed among the Secured Parties pro rata in accordance with the amounts of the Obligations owed to them on the date of any such distribution); and

THIRD, to the Grantors, their successors or assigns, or as a court of competent jurisdiction may otherwise direct.

The Collateral Agent shall have absolute discretion as to the time of application of any such proceeds, moneys or balances in accordance with this Agreement. Upon any sale of the Collateral by the Collateral Agent (including pursuant to a power of sale granted by statute or under a judicial proceeding), the receipt of the Collateral Agent or of the officer making the sale shall be a sufficient discharge to the purchaser or purchasers of the Collateral so sold and such purchaser or purchasers shall not be obligated to see to the application of any part of the purchase money paid over to the Collateral Agent or such officer or be answerable in any way for the misapplication thereof.

SECTION 5.03. *Grant of License to Use Intellectual Property.* For the purpose of enabling the Collateral Agent to exercise rights and remedies under this Article at such time as the Collateral Agent shall be lawfully entitled to exercise such rights and remedies, each Grantor hereby grants to the Collateral Agent an irrevocable, non-exclusive license (exercisable without payment of royalty or other compensation to the Grantors) to use, license or sub-license any of the Collateral consisting of Intellectual Property now owned or hereafter acquired by such Grantor, and wherever the same may be located, and including in such license reasonable access to all media in which any of the licensed items may be recorded or stored and to all computer software and programs used for the compilation or printout thereof. The use of such license by the Collateral Agent shall be exercised, at the option of the Collateral Agent, upon the occurrence and during the continuation of an Event of Default; *provided* that any license, sub-license or other transaction entered into by the Collateral Agent in accordance herewith shall be binding upon the Grantors notwithstanding any subsequent cure of an Event of Default.

## ARTICLE VI

### *Miscellaneous*

SECTION 6.01. *Notices.* All communications and notices hereunder shall (except as otherwise expressly permitted herein) be in writing and given as provided in Section 9.01 of the Credit Agreement. All communications and notices hereunder to any Subsidiary Guarantor shall be given to it at its address or telecopy number set forth on Schedule I, with a copy to the Borrower.

SECTION 6.02. *Security Interest Absolute.* All rights of the Collateral Agent hereunder, the Security Interest and all obligations of the Grantors hereunder shall be absolute and unconditional irrespective of (a) any lack of validity or enforceability of the Credit Agreement, any other Loan Document, any agreement with respect to any of the Obligations or any other agreement or instrument relating to any of the foregoing, (b) any change in the time, manner or place of payment of, or in any other term of, all or any of the Obligations, or any other amendment or waiver of or any consent to any departure from the Credit Agreement, any other Loan Document or any other agreement or instrument, (c) any exchange, release or non-perfection of any Lien on other collateral, or any release or amendment or waiver of or consent under or departure from any guarantee, securing or guaranteeing all or any of the Obligations, or (d) any other circumstance that might otherwise constitute a defense available to, or a discharge of, any Grantor in respect of the Obligations or this Agreement.

SECTION 6.03. *Survival of Agreement.* All covenants, agreements, representations and warranties made by any Grantor herein and in the certificates or other instruments prepared or delivered in connection with or pursuant to this Agreement shall be considered to have been relied upon by the Secured Parties and shall survive the making by the Lenders of the Loans, and the execution and delivery to the Lenders of any notes evidencing such Loans, regardless of any investigation made by the Lenders or on their behalf, and shall continue in full force and effect until this Agreement shall terminate.

SECTION 6.04. *Binding Effect; Several Agreement.* This Agreement shall become effective as to any Grantor when a counterpart hereof executed on behalf of such Grantor shall have been delivered to the Collateral Agent and a counterpart hereof shall have been executed on behalf of the Collateral Agent, and thereafter shall be binding upon such Grantor and the Collateral Agent and their respective successors and assigns, and shall inure to the benefit of such Grantor, the Collateral Agent and the other Secured Parties and their respective successors and assigns, except that no Grantor shall have the right to assign or transfer its rights or obligations hereunder or any interest herein or in the Collateral (and any such assignment or transfer shall be void) except as expressly contemplated by this Agreement or the Credit Agreement. This Agreement shall be construed as a separate agreement with respect to each Grantor and may be

amended, modified, supplemented, waived or released with respect to any Grantor without the approval of any other Grantor and without affecting the obligations of any other Grantor hereunder.

SECTION 6.05. *Successors and Assigns.* Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party; and all covenants, promises and agreements by or on behalf of any Grantor or the Collateral Agent that are contained in this Agreement shall bind and inure to the benefit of their respective successors and assigns.

SECTION 6.06. *Collateral Agent's Fees and Expenses; Indemnification.* (a) Each Grantor jointly and severally agrees to pay upon demand to the Collateral Agent the amount of any and all reasonable expenses, including the reasonable fees, disbursements and other charges of its counsel and of any experts or agents, which the Collateral Agent may incur in connection with (i) the administration of this Agreement (including the customary fees and charges of the Collateral Agent for any audits conducted by it or on its behalf with respect to the Accounts Receivable or Inventory), (ii) the custody or preservation of, or the sale of, collection from or other realization upon any of the Collateral, (iii) the exercise, enforcement or protection of any of the rights of the Collateral Agent hereunder or (iv) the failure of any Grantor to perform or observe any of the provisions hereof.

(b) Without limitation of its indemnification obligations under the other Loan Documents, each Grantor jointly and severally agrees to indemnify the Collateral Agent and the other Indemnitees against, and hold each of them harmless from, any and all losses, claims, damages, liabilities and related expenses, including reasonable fees, disbursements and other charges of counsel, incurred by or asserted against any of them arising out of, in any way connected with, or as a result of, the execution, delivery or performance of this Agreement or any claim, litigation, investigation or proceeding relating hereto or to the Collateral, whether or not any Indemnitee is a party thereto; *provided* that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses 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.

(c) Any such amounts payable as provided hereunder shall be additional Obligations secured hereby and by the other Security Documents. The provisions of this Section 6.06 shall remain operative and in full force and effect regardless of the termination of this Agreement or any other Loan Document, the consummation of the transactions contemplated hereby, the repayment of any of the Loans, the invalidity or unenforceability of any term or provision of this Agreement or any other Loan Document, or any investigation made by or on behalf of the Collateral Agent or any Lender. All amounts due under this Section 6.06 shall be payable on written demand therefor.

**SECTION 6.07. GOVERNING LAW. THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK.**

SECTION 6.08. *Waivers; Amendment.* (a) No failure or delay of the Collateral Agent in exercising any power or right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Collateral Agent hereunder and of the Collateral Agent, the Issuing Bank, the Administrative Agent and the Lenders under the other Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provisions of this Agreement or any other Loan Document or consent to any departure by any Grantor therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) below, and then such waiver or consent shall be effective



only in the specific instance and for the purpose for which given. No notice to or demand on any Grantor in any case shall entitle such Grantor or any other Grantor to any other or further notice or demand in similar or other circumstances.

(b) Neither this Agreement nor any provision hereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Collateral Agent and the Grantor or Grantors with respect to which such waiver, amendment or modification is to apply, subject to any consent required in accordance with Section 9.02 of the Credit Agreement.

**SECTION 6.09. WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS. EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS, AS APPLICABLE, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 6.09.**

**EACH GRANTOR HEREBY IRREVOCABLY CONSENTS TO AND WAIVES ANY RIGHT TO OBJECT TO OR OTHERWISE CONTEST THE APPOINTMENT OF A RECEIVER AFTER THE OCCURRENCE OF AN EVENT OF DEFAULT. EACH GRANTOR GRANTS SUCH WAIVER AND CONSENT KNOWINGLY AFTER HAVING DISCUSSED THE IMPLICATIONS THEREOF WITH COUNSEL, ACKNOWLEDGES THAT THE UNCONTESTED RIGHT TO HAVE A RECEIVER APPOINTED FOR THE FOREGOING PURPOSES IS CONSIDERED ESSENTIAL BY THE LENDERS IN CONNECTION WITH THE ENFORCEMENT OF THEIR RIGHTS AND REMEDIES HEREUNDER AND UNDER THE OTHER LOAN DOCUMENTS, AND THE AVAILABILITY OF SUCH APPOINTMENT AS A REMEDY UNDER THE FOREGOING CIRCUMSTANCES WAS A MATERIAL FACTOR IN INDUCING THE LENDERS TO MAKE (AND COMMIT TO MAKE) THE LOANS TO THE BORROWER, AND AGREES TO ENTER INTO ANY AND ALL STIPULATIONS IN ANY LEGAL ACTIONS, OR AGREEMENTS OR OTHER INSTRUMENTS IN CONNECTION WITH THE FOREGOING AND TO COOPERATE FULLY WITH THE COLLATERAL AGENT IN CONNECTION WITH THE ASSUMPTION AND EXERCISE OF CONTROL BY THE RECEIVER OVER ALL OR ANY PORTION OF THE COLLATERAL.**

SECTION 6.10. *Severability*. In the event any one or more of the provisions contained in this Agreement should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby (it being understood that the invalidity of a particular provision in a particular jurisdiction shall not in and of itself affect the validity of such provision in any other jurisdiction). The parties shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

SECTION 6.11 *Counterparts*. This Agreement may be executed in two or more counterparts, each of which shall constitute an original but all of which when taken together shall constitute but one contract (subject to Section 6.04), and shall become effective as provided in

Section 6.04. Delivery of an executed signature page to this Agreement by facsimile transmission shall be effective as delivery of a manually executed counterpart hereof.

SECTION 6.12. *Headings.* Article and Section headings used herein are for the purpose of reference only, are not part of this Agreement and are not to affect the construction of, or to be taken into consideration in interpreting, this Agreement.

SECTION 6.13. *Jurisdiction; Consent to Service of Process.* (a) Each Grantor hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of any New York State court or Federal court of the United States of America sitting in New York City, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or the other Loan Documents, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement shall affect any right that the Collateral Agent, the Administrative Agent, the Issuing Bank or any Lender may otherwise have to bring any action or proceeding relating to this Agreement or the other Loan Documents against any Grantor or its properties in the courts of any jurisdiction.

(b) Each Grantor hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or the other Loan Documents in any New York State or Federal court. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(c) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 6.01. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

SECTION 6.14. *Termination.* (a) This Agreement and the Security Interest shall terminate when all the Obligations have been indefeasibly paid in full, the Lenders have no further commitment to lend, the LC Exposure has been reduced to zero and the Issuing Bank has no further commitment to issue Letters of Credit under the Credit Agreement, at which time the Collateral Agent shall execute and deliver to the Grantors or the Grantor's designee, at the Grantors' expense, all Uniform Commercial Code termination statements and similar documents which the Grantors shall reasonably request from time to time to evidence such termination. Any execution and delivery of termination statements or documents pursuant to this Section 6.14(a) shall be without recourse to or warranty by the Collateral Agent.

(b) A Subsidiary Guarantor shall automatically be released from its obligations hereunder and the Security Interest in the Collateral of such Subsidiary Guarantor shall be automatically released in the event that all the capital stock of such Subsidiary Guarantor shall be sold, transferred or otherwise disposed of to a person that is not an Affiliate of the Borrower in accordance with the terms of the Credit Agreement; *provided* that the Required Lenders or, if required by the terms of the Credit Agreement, all the Lenders shall have consented to such sale, transfer or other disposition (to the extent required by the Credit Agreement) and the terms of such consent did not provide otherwise. The Security Interest in any Collateral that is sold, transferred or otherwise disposed of in accordance with this Agreement, the Credit Agreement and the other Loan Documents (including pursuant to a waiver or amendment of the terms thereof) shall automatically terminate and be released, and such Collateral shall be sold free and clear of the Lien and Security Interest created hereby. In connection with any of the foregoing, the Collateral Agent shall execute and deliver to the Grantors or the Grantors' designee, at the

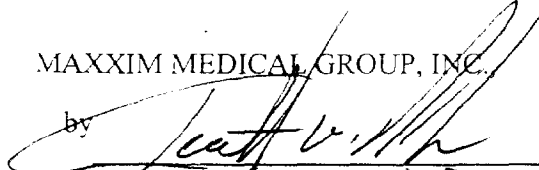
Grantors' expense, all Uniform Commercial Code termination statements and similar documents that the Grantors shall reasonably request from time to time to evidence such termination. Any execution and delivery of termination statements or documents pursuant to this Section 6.14(b) shall be without recourse to or warranty by the Collateral Agent.

SECTION 6.15. *Additional Grantors.* Upon execution and delivery by the Collateral Agent and a Subsidiary of an instrument in the form of Annex 3 hereto, such Subsidiary shall become a Grantor hereunder with the same force and effect as if originally named as a Grantor herein. The execution and delivery of any such instrument shall not require the consent of any Grantor hereunder. The rights and obligations of each Grantor hereunder shall remain in full force and effect notwithstanding the addition of any new Grantor as a party to this Agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

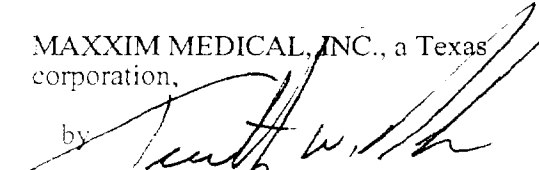
MAXXIM MEDICAL GROUP, INC.

by

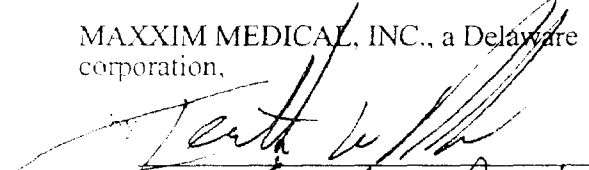
  
Name: Kenneth W. Davidson  
Title: President

MAXXIM MEDICAL, INC., a Texas corporation,

by

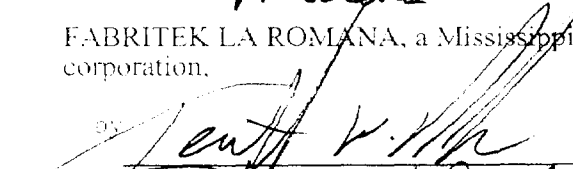
  
Name: Kenneth W. Davidson  
Title: President

MAXXIM MEDICAL, INC., a Delaware corporation,

  
Name: Kenneth W. Davidson  
Title: President

FABRITEK LA ROMANA, a Mississippi corporation,

by

  
Name: Kenneth W. Davidson  
Title: President

MAXXIM INVESTMENT MANAGEMENT, INC., a Nevada corporation,

by

  
Name: Peter Graham  
Title: Chief Operating Officer

THE CHASE MANHATTAN BANK, as Collateral Agent,

by

\_\_\_\_\_  
Name:  
Title:

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

MAXXIM MEDICAL GROUP, INC.,

by

\_\_\_\_\_  
Name:  
Title:

MAXXIM MEDICAL, INC., a Texas corporation,

by

\_\_\_\_\_  
Name:  
Title:

MAXXIM MEDICAL, INC., a Delaware corporation,

by

\_\_\_\_\_  
Name:  
Title:

FABRITEK LA ROMANA, a Mississippi corporation,

by

\_\_\_\_\_  
Name:  
Title:

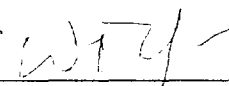
MAXXIM INVESTMENT MANAGEMENT, INC., a Nevada corporation,

by

\_\_\_\_\_  
Name:  
Title:

THE CHASE MANHATTAN BANK, as Collateral Agent,

by

  
\_\_\_\_\_  
Name: William P. Rindfuss  
Title: Vice President

## SUBSIDIARY GUARANTORS

<u>Name</u>	<u>Address</u>
Maxxim Medical, Inc. (DE)	10300 49th Street North Clearwater, Florida 33762
Fabritek La Romana, Inc.	10300 49th Street North Clearwater, Florida 33762
Maxxim Investment Management, Inc.	1325 Airmotive Way, Suite 130 Reno, Nevada 89902

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The Company retains copyrights in all of its product, policy and training manuals and other publications relating to products and medical procedures.



LICENSES

1. License Agreement between Maxxim Delaware and Bovie Medical Corporation whereby Maxxim Delaware has the nonexclusive right to use the name "Bovie Medical" in the United States surgical market.

2. License Agreement between Maxxim Delaware and Promed whereby Maxxim has granted to Promed the exclusive right to use patented technology under Patent Registration Nos. 5398850, 5588556, 5578005 and 5700245 in the European marketplace for three.

## PATENTS

Name of Registered Owner	Patent Description	Registration No.	Registration Date	Expiration Date
Maxxim Delaware	Flexible Polyvinyl Chloride Article and Method of Making	08/172453	12/23/93	
Maxxim Delaware	Flexible Rubber Article and Method of Making	08/445229	5/19/95	
Maxxim Delaware	Flexible Rubber Article and Method of Making	08/445231	5/19/95	
Maxxim Delaware	Improved Angiographic Control Syringe	08/116345	9/3/93	
Maxxim Delaware	Crosslinked Hydrogel And Method for Making Same	07/533805	6/6/90	
Maxxim Delaware	Method and Apparatus for Electrosurgical Measurement	07/648207	1/31/91	
Maxxim Delaware	Flexible Rubber Article and Method of Making	07/896642	6/10/92	
Maxxim Delaware	Flexible Rubber Article and Method of Making	08/264588	6/23/94	
Maxxim Delaware	A Rotating Adaptor for Catheter	07/953588	9/29/92	
Maxxim Delaware	Rotating Adapter for Catheterization System	07/982498	11/27/92	
Maxxim Delaware	Combined Glove and Form	07/359095	5/26/89	
Maxxim Delaware	Electrical Connectors For A Liquid Sensor	06/874226	6/13/86	
Maxxim Delaware	Fluid Valve	4197876	8/30/78	
Maxxim Delaware	Pressure Sensors and Manufacture Thereof	07/417794	10/4/89	
Maxxim Delaware	Pressure Sensor	5042495	6/13/86	
Maxxim Delaware	Disposable Garment	4408357	10/11/83	
Maxxim Delaware	Disposable Garment with Card Tunnel	4457024	7/3/84	
Maxxim Delaware	Surgical Drape	4462396	7/31/84	
Maxxim Delaware	Surgical Drape	4471769	9/18/84	
Maxxim Delaware	Surgical Drape	4476860	10/16/84	
Maxxim Delaware	Disposable Zoned Surgical Gown	4504977	3/19/85	
Maxxim Delaware	Disposable Surgical Sleeve	4504978	3/19/85	
Maxxim Delaware	Surgical Gown Having One-Piece Belt System	4558468	12/17/85	
Maxxim Delaware	Fluid Collection Bag with a Screen for a Surgical Drape	4559937	12/24/85	
Maxxim Delaware	Disposable Surgical Gown	4586196	5/6/86	
Maxxim Delaware	Fluid Collection Bag with a Screen for a Surgical Drape	4598458	7/8/86	
Maxxim Delaware	Sanitary Shoe Cover	4918839	4/24/90	

<b>Name of Registered Owner</b>	<b>Patent Description</b>	<b>Registration No.</b>	<b>Registration Date</b>	<b>Expiration Date</b>
Maxxim Delaware	Method and a Device for Connecting Electric Cables Used in a Hydraulic System	4454381	10/3/95	
Maxxim Delaware	Medical Procedure Kit	pending 08/976617	10/12/99	N/A

## TRADEMARKS

Name of Registered Owner	Trademark/Tradename	Registration No.	Registration Date	Expiration Date
Holdings	Maxxim Medical	1991372	8/6/96	8/6/06
Maxxim Delaware	Argon Pathfinder	1872380	1/10/95	1/10/05
Maxxim Delaware	Dextren	1778815	6/29/93	6/29/03
Maxxim Delaware	Dextren	1795745	9/28/93	9/28/03
Maxxim Delaware	Sensicare	1769228	5/4/93	5/4/03
Maxxim Delaware	Fluifotherapy	1496663	7/19/98	7/19/08
Maxxim Delaware	Hydra-fitness	1338083	5/28/95	5/28/05
Maxxim Delaware	Boundary (Class 10)	1305811	11/20/84	11/20/04
Maxxim Delaware	Neolon	1259312	11/29/83	11/29/03
Maxxim Delaware	Omnitron	1327193	3/26/85	3/26/05
Maxxim Delaware	Vessel-Clude	1107139	11/28/78	11/28/98
Maxxim Delaware	Boundary (Class 5)	1027169	12/16/75 (Renewed 11/5/96)	11/5/16
Maxxim Delaware	Eudermic	879196	10/21/69 (Renewed 11/30/89)	11/30/99
Maxxim Delaware	Tru-Touch (Class 25)	767618	3/31/64 (Renewed 3/31/84)	3/31/04
Maxxim Delaware	Tru-Touch (Class 10)	729226	3/27/62 (Renewed 4-6-82)	4/6/02
Maxxim Delaware	Vesseloops	74/471299	pending	
Maxxim Delaware	Dextren	1795745	9/28/93	9/28/03
Maxxim Delaware	Eudermic	879196	10/21/69 (Renewed 10/21/89)	10/21/99
Maxxim Delaware	Fabric III	1078316	11/29/77	11/29/97
Maxxim Delaware	Sensitive Care	1769228	5/4/93	5/4/03
Winfield	Winfield Symbol of Safety	1883611	3/14/95	3/14/05
Winfield	Winfield (Class 2, 20, 22)	1265467	1/31/84	1/31/04
Winfield	Winfield (Class 10)	1456371	9/8/99	9/8/09
Winfield	Sharps-Tainer	1324568	3/12/85	3/12/05
Winfield	Chemo-Tainer	1385878	3/11/86	3/11/05
Winfield	Saf-T-Clik	1585468	3/6/90	3/6/96
Winfield	Shamrock	1621041	11/6/90	11/6/96
Winfield	Stratofuse	1458197	9/22/87	9/22/99
Winfield	Smartdose	2012185	10/29/96	10/29/07
Winfield	Winfield Medical (Class 10)	2245397	5/18/99	5/18/09
Winfield	Winfield Medical (Class 20)	2201150	11/03/98	11/03/08

<b>Name of Registered Owner</b>	<b>Trademark/Tradename</b>	<b>Registration No.</b>	<b>Registration Date</b>	<b>Expiration Date</b>
Winfield	Metalgard	1578747	1/23/90	1/23/00
Winfield	Condor	1742246	12/22/92	12/22/02
Winfield	Sharpsgard 2000	1366540	10/22/85	10/22/05
Winfield	Vector	1959702	3/5/96	3/5/06
Winfield	Vector MTI	TX4-151-419	11/9/95	11/9/01

[Form Of]  
PERFECTION CERTIFICATE

Reference is made to (a) the Credit Agreement dated as of November 12, 1999 (as amended, supplemented or otherwise modified from time to time, the "Credit Agreement"), among the Borrower, Holdings, the lenders from time to time party thereto (the "Lenders"), The Chase Manhattan Bank, as administrative agent for the Lenders (in such capacity, the "Administrative Agent"), collateral agent, swingline lender and issuing bank (in such capacity, the "Issuing Bank"), Bankers Trust Company, as co-syndication agent for the Lenders, Merrill Lynch Capital Corporation, as co-syndication agent for the Lenders, Canadian Imperial Bank of Commerce, as co-documentation agent for the Lenders, and Credit Suisse First Boston, as co-documentation agent for the Lenders, (b) the Parent Guarantee Agreement dated as of November 12, 1999 (as amended, supplemented or otherwise modified from time to time, the "Parent Guarantee Agreement"), between Holdings and the Collateral Agent and (c) the Subsidiary Guarantee Agreement dated as of November 12, 1999 (as amended, supplemented or otherwise modified from time to time, the "Subsidiary Guarantee Agreement"), among the Subsidiary Guarantors and the Collateral Agent. Capitalized terms used but not defined herein have the meanings assigned in the Credit Agreement or the Parent Guarantee or the Subsidiary Guarantee Agreement, as applicable.

The undersigned, a Financial Officer and a Legal Officer, respectively, of the Borrower, hereby certify to the Collateral Agent and each other Secured Party as follows:

1. Names. (a) The exact corporate name of each Grantor, as such name appears in its respective certificate of incorporation, is as follows:

(b) Set forth below is each other corporate name each Grantor has had in the past five years, together with the date of the relevant change:

(c) Except as set forth in Schedule 1 hereto, no Grantor has changed its identity or corporate structure in any way within the past five years. Changes in identity or corporate structure would include mergers, consolidations and acquisitions, as well as any change in the form, nature or jurisdiction of corporate organization. If any such change has occurred, include in Schedule 1 the information required by Sections 1 and 2 of this certificate as to each acquiree or constituent party to a merger or consolidation.

(d) The following is a list of all other names (including trade names or similar appellations) used by each Grantor or any of its divisions or other business units in connection with the conduct of its business or the ownership of its properties at any time during the past five years:

(e) Set forth below is the Federal Taxpayer Identification Number of each Grantor:

2. Current Locations. (a) The chief executive office of each Grantor is located at the address set forth opposite its name below:

<u>Grantor</u>	<u>Mailing Address</u>	<u>County</u>	<u>State</u>
----------------	------------------------	---------------	--------------

(b) Set forth below opposite the name of each Grantor are all locations where such Grantor maintains any books or records relating to any Accounts Receivable (with each location at which chattel paper, if any, is kept being indicated by an "\*"):

<u>Grantor</u>	<u>Mailing Address</u>	<u>County</u>	<u>State</u>
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(c) Set forth below opposite the name of each Grantor are all the places of business of such Grantor not identified in paragraph (a) or (b) above:

<u>Grantor</u>	<u>Mailing Address</u>	<u>County</u>	<u>State</u>
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(d) Set forth below opposite the name of each Grantor are all the locations where such Grantor maintains any Collateral not identified above:

<u>Grantor</u>	<u>Mailing Address</u>	<u>County</u>	<u>State</u>
----------------	------------------------	---------------	--------------

(e) Set forth below opposite the name of each Grantor are the names and addresses of all persons other than such Grantor that have possession of any of the Collateral of such Grantor:

<u>Grantor</u>	<u>Mailing Address</u>	<u>County</u>	<u>State</u>
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3. Unusual Transactions. All Accounts Receivable have been originated by the Grantors and all Inventory has been acquired by the Grantors in the ordinary course of business.

4. File Search Reports. Attached hereto as Schedule 4(A) are true copies of file search reports from the Uniform Commercial Code filing offices where filings described in Section 3.18 of the Credit Agreement are to be made. Attached hereto as Schedule 4(B) is a true copy of each financing statement or other filing identified in such file search reports.

5. UCC Filings. Duly signed financing statements on Form UCC- 1 in substantially the form of Schedule 5 hereto have been prepared for filing in the Uniform Commercial Code filing office in each jurisdiction where a Grantor has Collateral as identified in Section 2 hereof.

6. Schedule of Filings. Attached hereto as Schedule 6 is a schedule setting forth, with respect to the filings described in Section 5 above, each filing and the filing office in which such filing is to be made.

7. Filing Fees. All filing fees and taxes payable in connection with the filings described in Section 5 above have been paid.

8. Stock Ownership and other Equity Interests. Attached hereto as Schedule 8 is a true and correct list of all the issued and outstanding stock, partnership interests, limited liability company membership interests or other equity interest of Holdings, the Borrower and each Subsidiary and the record and beneficial owners of such stock, partnership interests, membership interests or other equity interests. Also set forth on Schedule 8 is each equity Investment of

Holdings, the Borrower and each Subsidiary that represents 50% or less of the equity of the entity in which such investment was made.

9. Debt Instruments. Attached hereto as Schedule 9 is a true and correct list of all promissory notes and other evidence of indebtedness held by Holdings, the Borrower and each Subsidiary, including all intercompany notes between any of Holdings, the Borrower and the Subsidiaries.

10. Advances. Attached hereto as Schedule 10 is (a) a true and correct list of all advances made by Holdings to the Borrower or any Subsidiary or made by the Borrower or any Subsidiary to Holdings or to the Borrower or any other Subsidiary (other than those identified on Schedule 9), which advances will be on and after the date hereof evidenced by one or more intercompany notes pledged to the Collateral Agent under the Pledge Agreement and (b) a true and correct list of all unpaid intercompany transfers of goods sold and delivered by or to Holdings, the Borrower or any Subsidiary.

11. Mortgage Filings. Attached hereto as Schedule 11 is a schedule setting forth, with respect to each Mortgaged Property, (a) the exact name of the Person that owns such property as such name appears in its certificate of incorporation or other organizational document, (b) if different from the name identified pursuant to clause (a), the exact name of the current record owner of such property reflected in the records of the filing office for such property identified pursuant to the following clause and (c) the filing office in which a Mortgage with respect to such property must be filed or recorded in order for the Collateral Agent to obtain a perfected security interest therein.

12. Intellectual Property. Attached hereto as Schedule 12(A) in proper form for filing with the United States Patent and Trademark Office is a schedule setting forth all of each Grantor's Patents, Patent Licenses, Trademarks and Trademark Licenses, including the name of the registered owner, the registration number and the expiration date of each Patent, Patent License, Trademark and Trademark License owned by any Grantor. Attached hereto as Schedule 12(B) in proper form for filing with the United States Copyright Office is a schedule setting forth all of each Grantor's Copyrights and Copyright Licenses, including the name of the registered owner, the registration number and the expiration date of each Copyright or Copyright License owned by any Grantor.

IN WITNESS WHEREOF, the undersigned have duly executed this certificate on this [ ] day of [ ], 1999.

[ ],

by

Name:  
Title: [Financial Officer]

by

Name:  
Title: [Legal Officer]



SUPPLEMENT NO. [ ] dated as of [ ], to the Security Agreement dated as of November 12, 1999, among MAXXIM MEDICAL GROUP, INC., a Delaware corporation (the "Borrower"), MAXXIM MEDICAL, INC., a Texas corporation ("Holdings"), each subsidiary of the Borrower listed on Schedule I thereto (each such subsidiary individually a "Subsidiary Guarantor" and, collectively, the "Subsidiary Guarantors"; the Subsidiary Guarantors, Holdings and the Borrower are referred to collectively herein as the "Grantors") and THE CHASE MANHATTAN BANK, a New York banking corporation ("Chase"), as collateral agent (in such capacity, the "Collateral Agent") for the Secured Parties (as defined herein).

A. Reference is made to (a) the Credit Agreement dated as of November 12, 1999 (as amended, supplemented or otherwise modified from time to time, the "Credit Agreement"), among the Borrower, Holdings, the lenders from time to time party thereto (the "Lenders"), Chase, as administrative agent for the Lenders (in such capacity, the "Administrative Agent"), Collateral Agent, swingline lender and issuing bank (in such capacity, the "Issuing Bank"), Bankers Trust Company, as co-syndication agent for the Lenders, Merrill Lynch Capital Corporation, as co-syndication agent for the Lenders, Canadian Imperial Bank of Commerce, as co-documentation agent for the Lenders, and Credit Suisse First Boston, as co-documentation agent for the Lenders, (b) the Parent Guarantee Agreement dated as of November 12, 1999 (as amended, supplemented or otherwise modified from time to time, the "Parent Guarantee Agreement"), between Holdings and the Collateral Agent and (c) the Subsidiary Guarantee Agreement dated as of November 12, 1999 (as amended, supplemented or otherwise modified from time to time, the "Subsidiary Guarantee Agreement"), among the Subsidiary Guarantors and the Collateral Agent.

B. Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Security Agreement and the Credit Agreement.

C. The Grantors have entered into the Security Agreement in order to induce the Lenders to make Loans and the Issuing Bank to issue Letters of Credit. Section 6.15 of the Security Agreement provides that additional Subsidiaries of the Borrower may become Grantors under the Security Agreement by execution and delivery of an instrument in the form of this Supplement. The undersigned Subsidiary (the "New Grantor") is executing this Supplement in accordance with the requirements of the Credit Agreement to become a Grantor under the Security Agreement in order to induce the Lenders to make additional Loans and the Issuing Bank to issue additional Letters of Credit and as consideration for Loans previously made and Letters of Credit previously issued.

Accordingly, the Collateral Agent and the New Grantor agree as follows:

SECTION 1. In accordance with Section 6.15 of the Security Agreement, the New Grantor by its signature below becomes a Grantor under the Security Agreement with the same force and effect as if originally named therein as a Grantor and the New Grantor hereby (a) agrees to all the terms and provisions of the Security Agreement applicable to it as a Grantor thereunder and (b) represents and warrants that the representations and warranties made by it as a Grantor thereunder are true and correct on and as of the date hereof. In furtherance of the foregoing, the New Grantor, as security for the payment and performance in full of the Obligations (as defined in the Security Agreement), does hereby create and grant to the Collateral Agent, its successors and assigns, for the benefit of the Secured Parties, their successors and assigns, a security interest in and lien on all of the New Grantor's right, title and interest in and to the Collateral (as defined in the Security Agreement) of the New Grantor. Each reference to a "Grantor" in the Security Agreement shall be deemed to include the New Grantor. The Security Agreement is hereby incorporated herein by reference.

SECTION 2. The New Grantor represents and warrants to the Collateral Agent and the other Secured Parties that this Supplement has been duly authorized, executed and delivered by it and constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms.

SECTION 3. This Supplement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Supplement shall become effective when the Collateral Agent shall have received counterparts of this Supplement that, when taken together, bear the signatures of the New Grantor and the Collateral Agent. Delivery of an executed signature page to this Supplement by facsimile transmission shall be as effective as delivery of a manually signed counterpart of this Supplement.

SECTION 4. The New Grantor hereby represents and warrants that (a) set forth on Schedule I attached hereto is a true and correct schedule of the location of any and all Collateral of the New Grantor and (b) set forth under its signature hereto, is the true and correct location of the chief executive office of the New Grantor.

SECTION 5. Except as expressly supplemented hereby, the Security Agreement shall remain in full force and effect.

**SECTION 6. THIS SUPPLEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.**

SECTION 7. In case any one or more of the provisions contained in this Supplement should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and in the Security Agreement shall not in any way be affected or impaired thereby (it being understood that the invalidity of a particular provision in a particular jurisdiction shall not in and of itself affect the validity of such provision in any other jurisdiction). The parties hereto shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

SECTION 8. All communications and notices hereunder shall be in writing and given as provided in Section 6.01 of the Security Agreement. All communications and notices hereunder to the New Grantor shall be given to it at the address set forth under its signature below.

SECTION 9. The New Grantor agrees to reimburse the Collateral Agent for its reasonable out-of-pocket expenses in connection with this Supplement, including the reasonable fees, other charges and disbursements of counsel for the Collateral Agent.

IN WITNESS WHEREOF, the New Grantor and the Collateral Agent have duly executed this Supplement to the Security Agreement as of the day and year first above written.

[Name Of New Grantor],

by

Name:  
Title:  
Address:

THE CHASE MANHATTAN BANK, as  
Collateral Agent,

by

Name:

Title:

LOCATION OF COLLATERAL<sup>1</sup>

Description

Location

---

<sup>1</sup> To the extent that Intellectual Property is included, provide the detail set out in the relevant Schedule to the Security Agreement.