

01-24-2003

1-2303

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



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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):

SARATOGA SPRING WATER COMPANY

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

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

3. Nature of conveyance:

- Assignment Merger Security Agreement Change of Name Other

Execution Date: 01/14/03

2. Name and address of receiving party(ies)

Name: KeyBank National Association

Internal

Address:

Street Address: 66 South Pearl Street

City: Albany State: NY Zip: 12207

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

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

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:

Name: Timothy Rudge

Internal Address: KeyBank National Association

Association

Street Address: 66 South Pearl Street

6th Floor

City: Albany State: NY Zip: 12207

6. Total number of applications and registrations involved:

12

7. Total fee (37 CFR 3.41): \$315.00

- Enclosed Authorized to be charged to deposit account

8. Deposit account number:

n/a

(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.

Charles R. Haviland, Jr.

Name of Person Signing

Signature

Signature

1/14/03

Date

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

2

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

01/23/2003 TDIAZI 00000127 71117283

01 FC:8521 02 FC:8522

40.00 OP 275.00 OP

TRADEMARK REEL: 002657 FRAME: 0020

SCHEDULE A  
to  
TRADEMARK RECORDATION COVER SHEET

ITEM #4  
SCHEDULE OF MARKS

MARK	SER. #	REG. #
SARATOGA VICHY	71/117283	129867
SARATOGA and RACETRACK DESIGN	73/762803	1,580,394
SARATOGA (word only)	73,200471	1,256,330
RACETRACK DESIGN	73,762,700	1,580,393
SARATOGA SPRING WATER	75/139784	2,129,959
SARATOGA VICHY WATER SV	72/231703	822963
SV DESIGN	71/421101	372822
SARATOGA SPLASH	75/141211	2,131,922
EVERYTHING ELSE IS JUST WATER	75/381176	2,233,022
S (stylized)	73/246469	1,198,188
MAN DESIGN	74/614904	2,022,888
SARATOGA SODA	75/662774	Pending

## SECURITY AGREEMENT

**SECURITY AGREEMENT**, dated as of January 14, 2003 (as amended, modified, or supplemented from time to time, this "**Agreement**") is made by and between **SARATOGA SPRING WATER COMPANY**, a Delaware corporation, with an address of 11 Geysers Road, Saratoga Springs, New York 12866 (herein, together with its successors and assigns, the "**Borrower**" or "**Assignor**"); and **KEYBANK NATIONAL ASSOCIATION**, a national banking association (herein, together with its successors and assigns, the "**Lender**"). Except as otherwise defined herein, terms used herein and defined in the Loan Agreements (as defined below) shall be used herein as therein defined.

### WITNESSETH:

**WHEREAS**, this Agreement is made pursuant to Credit Agreement, dated as of December 28, 2001, by and among Borrower, Lender and SSW Acquisition Corp. (the "**Credit Agreement**"), as amended by Amendment No. 1 by and between the Lender and the Borrower dated as of the date hereof (the "**Amendment**", the Amendment and the Credit Agreement shall be referred to herein, collectively, as the "**Loan Agreements**");

**WHEREAS**, the Amendment provides, among other things, for an additional term loan by Lender to the Borrower in the principal amount of Five Hundred Thousand Dollars (\$500,000) (the "**Second Term Loan**"), with such loan being evidenced by a promissory note (the "**Second Term Note**", such term to include all notes and other securities issued in exchange therefor or in replacement thereof);

**WHEREAS**, this Agreement is made for the benefit of the Lender (the "**Secured Creditor**");

**WHEREAS**, the Assignor will obtain benefits from the incurrence of the Credit Document Obligations (as such term is hereafter defined) and, accordingly, desires to execute this Agreement in order to satisfy the condition described in the preceding paragraph and to induce the Secured Creditor to extend the Credit Document Obligations.

**NOW, THEREFORE**, in consideration of the benefits accruing to the Assignor, the receipt and sufficiency of which are hereby acknowledged, the Assignor hereby makes the following representations and warranties to the Lender and hereby covenants and agrees with the Lender as follows:

#### 1. DEFINITIONS AND TERMS.

**1.1. Defined Terms.** The following terms shall have the meanings herein specified unless the context otherwise requires:

**"Account"** shall mean any "account" as such term is now or hereafter defined in the UCC.

**"Account Agreement"** shall mean an agreement, satisfactory in form and substance to the Lender, among an Assignor, the Lender and the financial institution in which the Assignor has a Deposit Account, pursuant to which, among other things, the Lender shall have sole dominion and control over all funds held to the credit of, and all disbursements from, such Deposit Account by the Lender.

**"Account Debtor"** shall mean any "account debtor", as such term is now or hereafter defined in the UCC.

**"Accounts Receivable"** shall mean: (i) all Accounts, now existing or hereafter arising; and (ii) without limitation of the foregoing, in any event shall include, but shall not be limited to: (1) all right to a payment, whether or not earned by performance, for Goods or other property (other than money) that has been or is to be sold, consigned, leased, licensed, assigned or otherwise disposed of, for services rendered or to be rendered, for a policy of insurance issued or to be issued, for a suretyship obligation incurred or to be incurred, for energy provided or to be provided, or for the use or hire of a vessel under a charter or other contract whether due or to become due, whether or not it has been earned by performance, and whether now existing or hereafter acquired or arising in the future, including Accounts Receivable from employees and Affiliates of the Assignor; (2) all rights evidenced by an Account, invoice, purchase order, requisition, bill of exchange, note, contract, security agreement, lease, chattel paper, or any evidence of indebtedness or security related to the foregoing; (3) all security pledged, assigned, hypothecated or granted to or held by an Assignor to secure the foregoing; (4) all guarantees, letters of credit, banker's acceptances, drafts, endorsements, credit insurance and indemnifications on, for or of, any of the foregoing, including all rights to make drawings, claims or demands for payment thereunder; and (5) all powers of attorney for the execution of any evidence of indebtedness, guaranty, letter of credit or security or other writing in connection therewith.

**"Amendment"** shall have the meaning provided in the Preliminary Statement of this Agreement.

**"Agreement"** shall mean this Security Agreement as the same may be modified, supplemented or amended from time to time in accordance with its terms.

**"As-Extracted Collateral"** shall mean any "as-extracted collateral" as such term is now or hereafter defined in the UCC.

**"Assignor"** shall have the meaning specified in the first paragraph of this Agreement.

**"Business Day"** means any day excluding Saturday, Sunday and any day which shall be at the Payment Office of the Lender a legal holiday or a day on which banking institutions are authorized by law to close.

**"Chattel Paper"** shall mean any "chattel paper", as such term is now or hereafter defined in the UCC.

**"Collateral"** shall have the meaning provided in Section 2.1.

**"Contract Rights"** shall mean all rights of an Assignor under or in respect of a Contract, including, without limitation, all rights to payment, damages, liquidated damages, and enforcement.

**"Contracts"** shall mean all contracts between an Assignor and one or more additional parties.

**"Copyrights"** shall mean any U.S. or foreign copyright to which an Assignor now or hereafter has title, as well as any application for a U.S. or foreign copyright hereafter made by the Assignor.

**"Credit Agreement"** shall have the meaning provided in the Preliminary Statements of this Agreement.

**"Credit Document Obligations"** shall mean and include:

(i) the principal of and interest on the Second Term Note issued by, and the Second Term Loan made to, the Borrower under the Loan Agreements,

(ii) all other obligations and liabilities owing by the Borrower to the Lender under the Loan Agreements and the other Credit Documents to which the Borrower is now or may hereafter become a party (including, without limitation, indemnities, Fees and other amounts payable thereunder), whether primary, secondary, direct, contingent, fixed or otherwise, in all cases whether now existing, or hereafter incurred or arising, including any such interest or other amounts incurred or arising during the pendency of any bankruptcy, insolvency, reorganization, receivership or similar proceeding, regardless of whether allowed or allowable in such proceeding or subject to an automatic stay under section 362(a) of the Bankruptcy Code.

**"Deposit Account"** shall mean any "deposit account" as such term is now or hereafter defined in the UCC.

**"Documents"** shall mean any "document" as such term is now or hereafter defined in the UCC.

**"Equipment"** shall mean any "equipment" as such term is now or hereafter defined in the UCC.

**"Event of Default"** shall mean any Event of Default under, and as defined in, the Loan Agreements or any payment default, after any applicable grace period.

**"Fixtures"** shall mean any "fixtures" as such term is now or hereafter defined in the UCC.

**"General Intangibles"** shall mean any "general intangibles" as such term is now or hereafter defined in the UCC.

**"Goods"** shall mean any "goods" as such term is now or hereafter defined in the UCC.

**"Instruments"** shall mean any "instrument" as such term is now or hereafter defined in the UCC.

**"Inventory"** shall mean: (i) any "inventory" as such term is now or hereafter defined in the UCC; and (ii) without limitation of the foregoing, in any event shall include, but shall not be limited to, all merchandise and other Goods held for sale or lease, or furnished or to be furnished under contracts for service, including, without limitation (1) raw materials; (2) work in process; (3) finished goods; (4) products made or processed; (5) intermediates; (6) packing materials; (7) shipping materials; (8) labels; (9) semi-finished inventory; (10) scrap inventory; (11) spare parts inventory; (12) manufacturing supplies; (13) consumable supplies; (14) other substances commingled therewith or added thereto; and (15) all such Goods that have been returned, reclaimed, repossessed or exchanged.

**"Investment Property"** shall mean any "investment property" as such term is now or hereafter defined in the UCC.

**"Lender"** shall have the meaning provided in the Preliminary Statements of this Agreement.

**"Loan Agreements"** shall have the meaning provided in the Preliminary Statements of this Agreement.

**"Marks"** shall mean any trademarks and service marks now held or hereafter acquired by an Assignor, which are registered in the United States Patent and Trademark Office or the corresponding offices or registries of other countries, as well as any unregistered marks used by an Assignor anywhere in the world and trade dress including logos and/or designs in connection with which any of these registered or unregistered marks are used.

**"Money"** shall mean any "money" as such term is now or hereafter defined in the UCC.

**"Patents"** shall mean any U.S. patent to which an Assignor now or hereafter has title, as well as any application for a U.S. or foreign patent now or hereafter made by an Assignor.

**"Permits"** shall mean, to the extent permitted to be assigned by the terms thereof or by applicable law, all licenses, permits, rights, orders, variances, franchises or authorizations of or from any governmental authority or agency.

**"Proceeds"** shall mean: (i) any "proceeds" as such term is now or hereafter defined in the UCC; and (ii) without limitation of the foregoing, in any event, shall include, but not be limited to: (1) whatever is acquired upon the sale, lease, license, exchange, or other disposition of any Collateral; (2) whatever is collected on, or distributed on account of, any Collateral; (3) rights arising out of any Collateral; (4) claims arising out of the loss or nonconformity of, defects in, or damage to any Collateral; (5) claims and rights to any proceeds of any insurance, indemnity, warranty or guaranty payable to an Assignor (or the Lender, as assignee, loss payee or an additional insured) with respect to any of the Collateral; (6) claims and rights to payments (in any form whatsoever) made or due and payable to an Assignor from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the Collateral by any governmental authority (or any person acting under color of governmental authority); (7) all cash, money, checks and negotiable instruments received or held on behalf of the Lender pursuant to any lockbox or similar arrangement relating to the payment of Accounts Receivable or other Collateral; and (8) any and all other amounts from time to time paid or payable under or in connection with any of the Collateral.

**"Products"** shall mean any "products" as such term is now or hereafter defined in the UCC.

**"Proprietary Information"** means all information and know-how worldwide, including, without limitation, technical data; manufacturing data; research and development data; data relating to compositions, processes and formulations, manufacturing and production know-how and experience; management know-how; training programs; manufacturing, engineering and other drawings; specifications; performance criteria; operating instructions; maintenance manuals; technology; technical information; software; computer programs; engineering and computer data and databases; design and engineering specifications; catalogs; promotional literature; financial, business and marketing plans; inventions and invention disclosures.

**"Secured Creditor"** shall have the meaning provided in the Preliminary Statements of this Agreement.

**"Secured Obligations"** shall mean and include:

(i) in the case of the Borrower as an Assignor, its primary obligations in respect of all Credit Document Obligations as to which it is a primary obligor;

(ii) in the case of an Assignor, any and all sums advanced by the Lender in compliance with the provisions of this Agreement or any of the other Credit Documents in order to preserve the Collateral of the Assignor or to preserve or protect its Security Interest in such Collateral, including, without limitation, sums advanced to pay or discharge insurance premiums, taxes, Liens and claims; and

(iii) in the case of an Assignor, in the event of any proceeding for the collection or enforcement of any indebtedness, obligations, or liabilities of the Assignor referred to in clauses (i) and (ii) above, after an Event of Default shall have occurred and be continuing, the reasonable expenses of re-taking, holding, preparing for sale or lease, selling or otherwise disposing of or realizing on the Collateral of the Assignor, or of any exercise by the Lender of its rights hereunder in respect of the Assignor or its Collateral, together with reasonable attorneys' fees and court costs.

**"Security Interest"** shall mean the security interests granted by the Assignor pursuant to section 2.1 hereof.

**"Significant Mark"** shall have the meaning provided in section 6.3 of this Agreement.

**"Significant Patent"** shall have the meaning provided in section 7.3 of this Agreement.

**"Trade Secrets"** means any secretly held existing engineering and other data, information, production procedures and other know-how relating to the design, manufacture, assembly, installation, use, operation, marketing, sale and servicing of any products or business of an Assignor worldwide whether written or not written.

**"UCC"** shall mean the Uniform Commercial Code, as at any time adopted and in effect in any jurisdiction, specifically including and taking into account all amendments, supplements, revisions and other modifications of the Uniform Commercial Code which hereafter are adopted or otherwise take effect.

**1.2. Terms Generally.** The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall." Unless the context requires otherwise: (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein); (b) any reference herein to any person shall be construed to include such person's successors and assigns; (c) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof; and (d) unless otherwise specified, all references herein to sections, Annexes and Exhibits shall be construed to refer to sections of, and Annexes and Exhibits to, this Agreement.

## **2. SECURITY INTERESTS.**

**2.1. Grant of Security Interests.** As security for the prompt and complete payment and performance when due of the Secured Obligations, the Assignor does hereby sell, assign and



transfer unto the Lender, and does hereby grant to the Lender for the benefit of the Secured Creditor, a continuing security interest in, all of the right, title and interest of the Assignor in, to and under all of the following, whether now existing or hereafter from time to time arising or acquired and wherever located (collectively, the "*Collateral*"):

- (1) all Accounts, including, without limitation, each and every Account Receivable;
- (2) all Goods;
- (3) all Inventory;
- (4) all Equipment;
- (5) all Documents;
- (6) all Instruments;
- (7) all Chattel Paper;
- (8) all Money;
- (9) all Deposit Accounts
- (10) all Investment Property;
- (11) all Fixtures;
- (12) all As-Extracted Collateral;
- (13) all General Intangibles;
- (14) all of each of the following: (A) all Contracts, together with all Contract Rights arising thereunder; (B) all rights to any letter of credit, including, without limitation, all rights to "proceeds of a letter of credit", as such term is now or hereafter defined in the UCC; (C) any "support obligation", as such term is now or hereafter defined in the UCC; (D) all rights, claims and interests in or under any policy of insurance; (E) any "commercial tort claim", as such term is now or hereafter defined in the UCC; (F) any claim arising out of any other tort; and (G) all rights represented by a judgment;
- (15) all of each of the following: (A) all Marks, together with the registrations and right to all renewals thereof, and the goodwill of the business of the Assignor symbolized by the Marks; (B) all Patents and Copyrights; (C) all computer programs and software of the Assignor and all intellectual property rights therein and all other

Proprietary Information of the Assignor, including, but not limited to, Trade Secrets; and (D) all Permits;

(16) all other items, kinds and types of personal property, tangible or intangible, of whatever nature, whether similar or dissimilar to any or all of the foregoing, and regardless of whether the creation or perfection or effect of perfection or nonperfection of a security interest therein is governed by the UCC of any particular jurisdiction or by any other applicable treaty, convention, statute, law or regulation of any applicable jurisdiction;

(17) all additions, modifications, alterations, improvements, upgrades, accessions, components, parts, appurtenances, substitutions and/or replacements of, to or for any of the foregoing; and

(18) all Proceeds and Products of any and all of the foregoing;

**TO HAVE AND HOLD** unto and be dealt with by the Lender for the benefit of the Secured Creditor, upon the terms and conditions set forth in this Agreement;

**PROVIDED, HOWEVER**, that there is specifically excluded from the Security Interest, and the term Collateral shall not include:

(A) any Equipment or Goods that is subject to a "purchase money security interest" as such term is now or hereafter defined in the UCC, which (x) constitutes a Permitted Lien under the Loan Agreements; and (y) prohibits the creation by the Assignor of a junior security interest therein, unless the holder thereof has consented to the creation of such a junior security interest; or

(B) any Account, Account Receivable, Contract, Permit, Proprietary Information or General Intangible, or the Proceeds or Products of any of the foregoing, **if and only to the extent that:**

(1) in the case of any such item of Collateral: (x) any Contract evidencing such item of Collateral contains a valid and effective contractual restriction or limitation which prohibits the grant or creation of a security interest therein; or (y) a valid and effective restriction or limitation imposed by applicable law, regulation, rule, order or other directive of any governmental body, agency or authority, or the order of any court of competent jurisdiction, prohibits the grant or creation of a security interest in such item of Collateral, or

(2) in the case of any such item of Collateral, such item of Collateral would be subject to loss or forfeiture upon the grant or creation of a security interest therein by reason of: (x) a valid and effective contractual restriction or limitation contained in any Contract evidencing such item of Collateral; or (y) a valid and effective restriction or limitation imposed by applicable law, regulation, rule, order or

other directive of any governmental body, agency or authority, or the order of any court of competent jurisdiction.

The inclusion of any item or type of property in any of the foregoing clauses or in any of the defined terms used therein does not imply the exclusion of such item or type of property from any of the other clauses of this Section 2.1 or any of the definitions used in such clauses. The Security Interest of the Lender under this Agreement extends to all Collateral of any kind and/or nature which the Assignor may acquire at any time during the continuation of this Agreement.

**2.2. No Assumption of Liability.** The Security Interest of the Assignor is granted as security only and shall not subject the Lender or any Secured Creditor to, or in any way alter or modify, any obligation or liability of the Assignor with respect to or arising out of any of the Collateral.

**2.3. Power of Attorney.** The Assignor hereby irrevocably constitutes and appoints the Lender its true and lawful agent and attorney-in-fact, and in such capacity the Lender shall have the right, with full power of substitution, in the name of the Assignor or otherwise, for the use and benefit of the Lender or the Secured Creditor, *but only* after the occurrence of and during the continuance of an Event of Default: (1) to receive, endorse, present, assign, deliver and/or otherwise deal with any and all notes, acceptances, letters of credit, checks, drafts, money orders, or other evidences of payment relating to the Collateral of the Assignor or any part thereof; (2) to demand, collect, receive payment of, and give receipt for and give credits, allowances, discounts, discharges, releases and acquittances of and for any or all of the Collateral of the Assignor; (3) to sign the name of the Assignor on any invoice or bill of lading relating to any of the Collateral of the Assignor; (4) to send verifications of any or all of the Accounts Receivable of the Assignor to its Account Debtors; (5) to commence and prosecute any and all suits, actions or proceedings at law or in equity in or before any court or other tribunal (including any arbitration proceedings) to collect or otherwise realize on all or any of the Collateral of the Assignor, or to enforce any rights of the Assignor in respect of any of its Collateral; (6) to settle, compromise, compound, adjust or defend any actions, suits or proceedings relating to any or all of the Collateral of the Assignor; (7) to notify, or require the Assignor to notify or cause to be notified, its Account Debtors to make payment directly to the Lender or to a Deposit Account; and/or (8) to use, sell, assign, transfer, pledge, make any agreement with respect to or otherwise deal with any or all of the Collateral of the Assignor, and to do all other acts and things necessary or appropriate to carry out the intent and purposes of this Agreement, as fully and completely as though the Lender were the absolute owner of the Collateral of the Assignor for all purposes; *provided however*, that nothing herein contained shall be construed as requiring or obligating the Lender or the Secured Creditor to make any commitment or to make any inquiry as to the nature or sufficiency of any payment received by the Lender or the Secured Creditor, or to present or file any claim or notice, or to take any action with respect to the Collateral or any part thereof or the moneys due or to become due in respect thereof or any property covered thereby, and no action taken or omitted to be taken by the Lender or the Secured Creditor with respect to the Collateral or any part thereof shall give rise to any defense, counterclaim or offset in favor of the Assignor or to any claim or action against the Lender. It is understood and agreed that the appointment of the Lender as the agent and attorney-in-fact of the Assignor for the purposes set forth above is a presently effective appointment, is coupled with an interest and is irrevocable. The provisions of this section shall in no event relieve the Assignor of

any of its obligations under this Agreement, the Loan Agreements, or any of the other Credit Documents with respect to the Collateral or any part thereof or impose any obligation on the Lender or the Secured Creditor to proceed in any particular manner with respect to the Collateral or any part thereof, or in any way limit the exercise by the Lender or a Secured Creditor of any other or further right it may have on the date of this Agreement or hereafter, whether hereunder, under any other Loan Document or Credit Document, by law or otherwise.

### 3. REPRESENTATIONS AND WARRANTIES.

The Assignor represents and warrants to the Lender and to the Secured Creditor, which representations and warranties shall survive execution and delivery of this Agreement, as follows:

**3.1. Title and Authority.** The Assignor has: (i) good and valid title to all tangible items owned by it and constituting any portion of the Collateral with respect to which it has purported to grant the Security Interest, and good and valid rights in all other Collateral with respect to which it has purported to grant the Security Interest; and (ii) full power and authority to grant to the Lender 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.

**3.2. Absence of Other Liens.** (a) There is no financing statement (or similar statement or instrument of registration under the law of any jurisdiction) covering or purporting to cover any interest of any kind of the Assignor in the Collateral, *except*: (i) as disclosed in Annex A hereto (the "*Permitted Filings*"); and (ii) for financing statements and continuation statements filed to perfect or continue the perfection of the Security Interest.

(b) The Assignor is, and as to any Collateral acquired by it from time to time after the date hereof, the Assignor will be, the owner of all of the Collateral owned by it free and clear of any Lien, and the Security Interest of the Assignor in its Collateral is and will be superior and prior to any other security interest or other Lien, *except for* Permitted Liens.

**3.3. Validity of Security Interest.** The Security Interest of the Assignor constitutes a legal and valid security interest in all of the Collateral of the Assignor, securing the payment and performance of the Secured Obligations.

**3.4. Perfection of Security Interest under UCC.** (a) All notifications and other actions, including, without limitation:

- (1) all deposits of certificates and instruments evidencing any Collateral (duly endorsed or accompanied by appropriate instruments of transfer) ;
- (2) all notices to and acknowledgments of any bailee or other person;
- (3) all acknowledgments and agreements respecting the right of the Lender to "control" any Collateral, as such term is now or hereafter defined in the UCC; and

(4) all filings, registrations and recordings, which are (x) required by the terms of this Agreement to have been given, made, obtained, done and accomplished, and (y) necessary to create, preserve, protect and perfect the Security Interest granted by the Assignor to the Lender hereby in respect of its portion of the Collateral, have been given, made, obtained, done and accomplished.

(b) After giving effect to all such actions, but subject to the effect of section 4.2(e) hereof, the Security Interest granted by the Assignor to the Lender pursuant to this Agreement in and to its portion of the Collateral will be perfected, to the extent a security interest in the Assignor's portion of the Collateral can be perfected under the UCC of any applicable jurisdiction.

**3.5. Places of Business, Locations of Collateral, etc.** At and as of the date hereof: (i) the principal place of business of the Assignor, or its chief executive office if it has more than one place of business, is located at the address indicated on Annex B hereto; (ii) the U.S. Federal Tax I.D. Number of the Assignor is set forth on Annex B hereto; and (iii) all Inventory and Equipment of the Assignor is located at one of the locations shown on Annex C hereto.

#### **4. GENERAL COVENANTS.**

**4.1. No Other Liens; Defense of Title, etc.** (a) The Assignor will not make or grant, or suffer or permit to exist, any Lien on any of its Collateral, *other* than the Permitted Liens.

(b) The Assignor, at its sole cost and expense, will take any and all actions reasonably necessary to defend title to its Collateral against any and all persons and to defend the validity, perfection, effectiveness and priority of the Security Interest of the Lender therein against any Lien other than Permitted Liens.

**4.2. Further Assurances; Filings and Recordings, etc.** (a) The Assignor, at its sole cost and expense, will duly execute, acknowledge and deliver all such agreements, instruments and other documents and take all such actions (including, without limitation: (1) physically pledging Instruments, Documents, Chattel Paper and certificates evidencing Investment Property, with the Lender; (2) obtaining from other persons Deposit Account Agreements in accordance with section 5.2; (3) obtaining from other persons lien waivers and bailee letters in accordance with section 4.4(c); (4) obtaining from other persons agreements evidencing the exclusive control and dominion of the Lender over any Investment Property, in instances where confirmation of the "control" of the Lender over the particular Investment Property is required in order to perfect a security interest therein and such actions are required under the circumstances contemplated by section 4.2(e)(iv); and (5) making filings, recordings and registrations), as the Lender may from time to time reasonably request in order to better assure, preserve, protect and perfect the Security Interest of the Lender in the Collateral of the Assignor, and the rights and remedies of the Lender hereunder, or otherwise to further effectuate the intent and purposes of this Agreement and to carry out the terms hereof.

(b) The Assignor, at its sole cost and expense, will: (i) at all times cause this Agreement (and/or proper notices, financing or other statements in respect hereof, and supplemental collateral assignments or collateral security agreements in respect of any portion of the Collateral) to be duly filed, recorded, registered and published, and re-filed, re-recorded, re-registered and re-published in such manner and in such places as may be required under the UCC or other applicable law in order to establish, perfect, preserve and protect the rights, remedies and Security Interest of the Lender in or with respect to the Collateral of the Assignor; and (ii) pay all taxes, fees and charges and comply with all statutes and regulations, applicable to such filing, recording, registration and publishing and such re-filing, re-recording, re-registration and re-publishing. The Assignor irrevocably authorizes the Lender to file any financing statements with respect to the Collateral of the Assignor without the signature of the Assignor where the Lender is permitted by applicable law to do so.

(c) When requested from time to time by the Lender to do so, the Assignor will promptly furnish to the Lender such information concerning itself and the location of its Collateral, in order that the Lender may determine whether all filings, recordings and registrations have been made in all jurisdictions in which such filing, recording or registration is necessary under the UCC or other applicable law in order to establish, perfect, preserve and protect the rights, remedies and Security Interest of the Lender in or with respect to the Collateral of the Assignor.

(d) When requested from time to time by the Lender to do so, the Assignor will promptly furnish to the Lender such information and copies of documents as may be requested concerning any item or type of Collateral as to which a security interest may not be perfected by the filing of a financing statement under the UCC of any applicable jurisdiction, in order that the Lender may determine whether to require the Assignor to take any actions under section 4.2(a) with regard thereto.

(e) Notwithstanding the foregoing or anything to the contrary contained in this Agreement:

(i) the Assignor shall not be required to file any UCC financing statement or other document as a mortgage, deed of trust or "fixture filing" which includes the legal description of any real property, in order to perfect the Security Interest in any Fixtures or other types of property included in the Collateral, *unless* and until required to do so on not less than ten (10) days' prior written notice from the Lender to such effect;

(ii) the Assignor shall not be required to file this Agreement or any separate collateral document with the United States Patent and Trademark Office or with the United States Copyright Office, in order to perfect the Security Interest in any Patents, Trademarks, Copyrights or similar Collateral, *unless* and until required to do so on not less than ten (10) days' prior written notice from the Lender to such effect;

(iii) the Assignor shall not be obligated to physically deliver to, or deposit with, the Lender, any of its Collateral in order to perfect the Security Interest therein, *unless* and until the Lender shall have given the Assignor written notice requiring the same to be done, and if any such notice is given, the Assignor will immediately, and in any event within five

accompanied by any appropriate instruments or endorsements or transfer. In the case of any Chattel Paper, the Lender may require, in lieu of the delivery thereof to the Lender, that the writings evidencing the Chattel Paper be legended to reflect the Security Interest of the Lender therein, all in a manner acceptable to the Lender.

(b) If at any time the Assignor shall take and perfect a security interest in any property of an Account Debtor, as security for the Accounts Receivable owed by such Account Debtor and/or any of its Affiliates, or take and perfect a security interest arising out of the consignment to any person of any Inventory or other Collateral, the Assignor shall, if requested by the Lender, promptly execute and deliver to the Lender a separate assignment of all financing statements and other filings made to perfect the same. Such separate assignment need not be filed of public record unless necessary to continue the perfected status of the security interest of the Assignor against creditors of any transferees from the Account Debtor to consignee.

**4.6. Modification of Terms of Accounts and Contracts, etc.** The Assignor will not enter into any material modification of the terms or provisions of any of its Accounts Receivable or Contracts, or grant any extension of time for the payment of any of its Accounts Receivable or Contracts, or compromise or settle the same for less than the full amount thereof, or release, wholly or partially, any person liable for the payment thereof or any guaranty, letter of credit, collateral or other obligation supporting or securing the payment thereof, or allow any credit or discount whatsoever thereon, *other* than modifications, extensions, compromises, settlements, credits and discounts granted or made: (i) in the ordinary course of business; or (ii) outside the ordinary course of business but in accordance with reasonable business practices and involving aggregate concessions not in excess of \$500,000 in any fiscal year, in each case effected when the Lender is not exercising its rights under Section 8 hereof during the continuance of an Event of Default.

**4.7. Maintenance of Records, etc.** The Assignor will keep and maintain at its own cost and expense satisfactory and complete records of its Accounts Receivable, Contracts and other Collateral, including, but not limited to, the originals of all documentation with respect thereto, records of all payments received, all credits granted thereon, all merchandise returned and all other dealings therewith. All billings and invoices issued by the Assignor with respect to its Accounts Receivable will, in all material respects, be in compliance with, and conform to, the requirements of all applicable federal, state and local laws and any applicable laws of any relevant foreign jurisdiction. If an Event of Default shall have occurred and be continuing and the Lender so directs, the Assignor shall legend, in form and manner reasonably satisfactory to the Lender, its Accounts Receivable and Contracts, as well as books, records and documents of the Assignor evidencing or pertaining thereto with an appropriate reference to the fact that such Accounts Receivable and Contracts have been assigned to the Lender and that the Lender has a security interest therein.

**4.8. Collateral Reports.** Whenever requested to do so by the Lender, the Assignor will promptly, at its own sole cost and expense, deliver to the Lender, in written hard copy form or on magnetic tape or other computer or machine readable form, as specified by the Lender, such listings, agings, descriptions, schedules and other reports with respect to its Accounts Receivable, Inventory, Equipment and other Collateral as the Lender may reasonably request, all of the same to be in such scope, categories and detail as the Lender may have reasonably requested and to be

accompanied by copies of invoices and other documentation as and to the extent reasonably requested by the Lender.

**4.9. Inspections and Verification.** The Lender and such persons as the Lender may reasonably designate shall have the right, at the Assignor's own cost and expense, at any time or from time to time, on not less than one Business Day's prior notice to the Assignor to inspect the Collateral of the Assignor, all books and records related thereto (and to make extracts and copies thereof) and the premises upon which any of such Collateral is located, to discuss the Assignor's affairs with the officers of the Assignor and its independent accountants, and to verify under reasonable procedures the validity, amount, quality, quantity, value, condition and status of, or any other matter relating to, such Collateral, including, in the case of Accounts or other Collateral in the possession of any third person, by contacting Account Debtors or the third person possessing such Collateral (after not less than two (2) days' prior notice to the applicable Assignor) for the purpose of making such verification. Any procedures or actions taken, prior to the occurrence and continuance of an Event of Default, in order to verify Accounts by contacting Account Debtors, shall be effected by the Borrower's independent accountants, acting at the direction of the Lender, in such manner (consistent with their normal auditing procedures) so as not to reveal the identity of the Lender or the existence of the Security Interest to the Account Debtors. The Borrower will instruct its independent accountants to undertake any such verification when and as requested by the Lender. The results of any such verification by independent accountants shall be reported by such independent accountants to both the Lender and the Borrower.

**4.10. Payment of Taxes and Claims.** The Assignor will pay and discharge all taxes, assessments and governmental charges or levies imposed upon it or upon its income or profits, or upon any Collateral or other properties belonging to it, prior to the date on which penalties attach thereto, and all lawful claims which, if unpaid, might become a Lien or charge upon any of its Collateral or any other properties belonging to it; *provided* that the Assignor shall not be required to pay any such tax, assessment, charge, levy or claim which is being contested in good faith and by proper proceedings if it has maintained adequate reserves with respect thereto in accordance with GAAP; and *provided, further*, that the Assignor will not be considered to be in default of any of the provisions of this sentence if the Assignor fails to pay any such amount which, individually or in the aggregate, is immaterial. Without limiting the generality of the foregoing, the Assignor will pay in full all of its wage obligations to its employees in accordance with the Fair Labor Standards Act (29 U.S.C. sections 206-207) and any comparable provisions of applicable law.

**4.11. Condition of Collateral.** The Assignor will maintain: (i) its Equipment in good condition, ordinary wear and tear excepted; (ii) its finished goods Inventory in saleable condition; and (iii) all other tangible items of its Collateral, taken as an entirety, in such condition as is consistent with good business practices, ordinary wear and tear excepted.

**4.12. Insurance.** The Assignor, without any cost or expense to the Lender or any other Secured Creditor, will at all times keep its business and its Collateral insured against fire, theft, other casualties, liability for damage to other persons or property, and other insurable risks, as and to the extent contemplated by the Loan Agreements. Such insurance shall name the Lender as loss payee (in the case of casualty insurance) or as an additional named insured as its interests may



appear (in the case of liability insurance). Each policy referred to in this Section 4.12 shall provide that it will not be canceled or reduced or expire except after not less than thirty (30) days' written notice to the Lender and shall also provide that the interests of the Lender shall not be invalidated by an act or negligence of the Assignor or any person having an interest in any facility owned, leased or used by the Assignor nor by occupancy or use of any facility owned, leased or used by the Assignor for purposes more hazardous than permitted by such policy nor by any foreclosure or other proceedings relating to any facility owned, leased or used by the Assignor. The Assignor will advise the Lender promptly of any policy cancellation, reduction or amendment. All of such insurance shall be primary and non-contributing with any insurance which may be carried by the Lender. At or prior to the time of the initial Borrowing under the Loan Agreements, the Assignor will provide to the Lender: (x) certificates or endorsements naming the Lender as an additional insured or loss payee with respect to the casualty and liability insurance maintained as required hereby; and (y) if requested to do so, copies of all insurance policies maintained by it as required hereby. The Assignor shall deliver to the Lender contemporaneously with the expiration or replacement of any policy of insurance required to be maintained hereunder a certificate as to the new or renewal policy.

**4.13. Proceeds of Casualty Insurance, Condemnation or Taking.** (a) All amounts recoverable under any policy of casualty insurance or any award for the condemnation or taking by any governmental authority of any portion of the Collateral are hereby assigned to the Lender.

(b) The Assignor will apply any such proceeds or amounts received by it in the manner provided in the Amendment, including, if required under the terms of the Loan Agreements, by paying over the same directly to the Lender.

(c) In the event any portion of the Collateral suffers a casualty loss or is involved in any proceeding for condemnation or taking by any governmental authority, *then* if an Event of Default has occurred and is continuing, the Lender is authorized and empowered, at its option, to participate in, control, direct, adjust, settle and/or compromise any such loss or proceeding, to collect and receive the proceeds therefrom and, after deducting from such proceeds any expenses incurred by it in connection with the collection or handling thereof, to apply the net proceeds to the Secured Obligations in accordance with the Loan Agreements.

(d) If any proceeds are received by the Lender as a result of a casualty, condemnation or taking involving the Collateral and no Event of Default has occurred and is continuing, *then* the Lender will promptly release such proceeds to the Assignor.

**4.14. Protective Advances by the Lender.** At its option, but without being obligated to do so, the Lender may, upon prior notice to the Assignor: (i) pay and discharge past due taxes, assessments and governmental charges, at any time levied on or with respect to any of the Collateral of the Assignor which the Assignor has failed to pay and discharge in accordance with the requirements of this Agreement or any of the Loan Agreements or other Credit Documents; (ii) pay and discharge any claims of other creditors of the Assignor which are secured by any Lien on any Collateral, other than a Permitted Lien; (iii) pay for the maintenance, repair, restoration and preservation of the Collateral to the extent the Assignor fails to comply with its obligations in regard thereto under this Agreement, the Loan Agreements, or the other Credit Documents or the

Lender reasonably believes payment of the same is necessary or appropriate to avoid a material loss or diminution in value of the Collateral; and/or (iv) obtain and pay the premiums on insurance for the Collateral which the Assignor fails to maintain in accordance with the requirements of this Agreement, the Loan Agreements, and the other Credit Documents, and the Assignor agrees to reimburse the Lender, on demand, for all reasonable payments and expenses incurred by the Lender with respect to the Assignor or any of its Collateral pursuant to the foregoing authorization, **provided, however**, that nothing in this Section 4.14 shall be construed as excusing the Assignor from the performance of, or imposing any obligation on the Lender or any other Secured Creditor to cure or perform, any covenants or other agreements of the Assignor with respect to any of the foregoing matters as set forth herein or in any of the other Credit Documents.

## **5. SPECIAL PROVISIONS CONCERNING COLLECTION OF ACCOUNTS, ETC.**

### **5.1. Collection.**

(a) The Assignor shall, in a manner consistent with the provisions of this Section 5, endeavor to cause to be collected from the Account Debtor named in each of its Accounts, as and when due (including, without limitation, amounts which are delinquent, such amounts to be collected in accordance with generally accepted lawful collection procedures), any and all amounts owing under or on account of such Accounts.

(b) The Assignor shall, and the Lender hereby authorizes the Assignor to, enforce and collect all amounts owing to it on its Inventory and Accounts, for the benefit and on behalf of the Lender and the other Secured Creditors, **provided, however**, that such privilege may at the option of the Lender, by notice to the Borrower (on behalf of the Assignor), be terminated upon the occurrence and during the continuance of any Event of Default.

### **5.2. Account Agreements, etc.**

(a) As promptly as practicable and in any event within ten (10) days following the occurrence and continuance of an Event of Default, the Assignor shall enter into an Account Agreement with the Lender and each financial institution in which the Assignor has a Deposit Account.

(b) The Assignor agrees to cause all payments by its Account Debtors to be immediately deposited in its Deposit Account, and promptly to deposit all payments received by it from any other sale of any of its Collateral, whether in the form of cash, checks, notes, drafts, bills of exchange, money orders or otherwise, in its Deposit Account in precisely the form in which received (but with any endorsements of the Assignor necessary for deposit or collection). Until any such payments are so deposited, such payments shall be held in trust by the Assignor for and as the property of the Lender, for the benefit of the Lender and the Secured Creditor.

## **6. SPECIAL PROVISIONS CONCERNING TRADEMARKS.**

**6.1. Additional Representations and Warranties.** The Assignor represents and warrants that it is the true and lawful owner or licensee of the Marks listed in Annex E attached hereto and that said listed Marks constitute all the marks registered in the United States Patent and Trademark Office or any corresponding offices or registries of foreign countries that the Assignor now owns or uses in connection with its business. The Assignor represents and warrants that it owns or is licensed to use all Marks that it uses, and that it owns all of the registrations listed on Annex E. The Assignor further warrants that it is aware of no third party claim that any aspect of the Assignor's present or contemplated business operations infringes or will infringe any trademark or service mark in a manner which could have a material adverse effect on the financial condition, business or property of the Assignor.

**6.2. Licenses and Assignments.** The Assignor hereby agrees not to divest itself of any right under a Mark other than in the ordinary course of business absent prior written approval of the Lender.

**6.3. Infringements.** The Assignor agrees, promptly upon learning thereof, to notify the Lender in writing of the name and address of, and to furnish such pertinent information that may be available with respect to, any party who may be infringing or otherwise violating any of the Assignor's rights in and to any Mark that has a material adverse effect on the financial condition, business or property of the Assignor taken as a whole (each such Mark, a "**Significant Mark**"), or with respect to any party claiming that the Assignor's use of any Significant Mark violates any property right of that party, to the extent that such infringement or violation could have a material adverse effect on the financial condition, business or property of the Assignor. The Assignor further agrees, unless otherwise directed by the Lender, diligently to prosecute any person infringing any Significant Mark in a manner consistent with its past practice and in the ordinary course of business.

**6.4. Preservation of Marks.** The Assignor agrees to use or license the use of its Significant Marks in interstate commerce during the time in which this Agreement is in effect, sufficiently to preserve such Marks as trademarks or service marks registered under the laws of the United States.

**6.5. Maintenance of Registration.** The Assignor shall, at its own expense, diligently process all documents required by the Trademark Act of 1946, 15 U.S.C. §§1051 *et seq.* or applicable foreign laws to maintain any trademark registration, the abandonment of which would reasonably be expected to have a Material Adverse Effect, including but not limited to affidavits of use and applications for renewals of registration in the United States Patent and Trademark Office or corresponding offices or registries of foreign countries for all of its Marks pursuant to 15 U.S.C. §§1058(a), 1059 and 1065 or applicable foreign law, and shall pay all fees and disbursements in connection therewith, and shall not abandon any such filing of affidavit of use or any such application of renewal prior to the exhaustion of all administrative and judicial remedies without prior written consent of the Lender, which consent shall not be unreasonably withheld.

**6.6. Future Registered Marks.** If any mark registration issues hereafter to the Assignor as a result of any application now or hereafter pending before the United States Patent and Trademark Office, or any corresponding offices or registries of foreign countries, within 30

days of receipt of such certificate, the Assignor shall deliver a copy of such certificate, and a grant of security in such mark to the Lender, confirming the grant thereof hereunder, the form of such confirmatory grant to be substantially the same as the form hereof.

**6.7. Remedies.** If an Event of Default shall occur and be continuing, the Lender may, by written notice to the Assignor, take any or all of the following actions: (i) declare the entire right, title and interest of the Assignor in and to each of the Marks, together with all trademark rights and rights of protection to the same, vested, in which event such rights, title and interest shall immediately vest, in the Lender for the benefit of the Secured Creditor, in which case the Assignor agrees to execute an assignment in form and substance reasonably satisfactory to the Lender, of all its rights, title and interest in and to the Marks to the Lender for the benefit of the Secured Creditor; (ii) take and use or sell the Marks and the goodwill of the Assignor's business symbolized by the Marks and the right to carry on the business and use the assets of the Assignor in connection with which the Marks have been used; and (iii) direct the Assignor to refrain, in which event the Assignor shall refrain, from using the Marks in any manner whatsoever, directly or indirectly, and, if requested by the Lender, change the Assignor's corporate name to eliminate therefrom any use of any Mark and execute such other and further documents that the Lender may request to further confirm this and to transfer ownership of the Marks and registrations and any pending trademark application in the United States Patent and Trademark Office or the offices or registries of foreign countries to the Lender.

## **7. SPECIAL PROVISIONS CONCERNING PATENTS AND COPYRIGHTS.**

**7.1. Additional Representations and Warranties.** The Assignor represents and warrants that it is the true and lawful owner or licensee of all rights in the Patents listed in Annex F attached hereto and in the Copyright registrations listed in Annex G attached hereto, that said Patents constitute all the United States and foreign patents and applications for United States or foreign patents that the Assignor now owns and that said Copyrights constitute all the registered United States or foreign copyrights that the Assignor now owns. The Assignor represents and warrants that it owns or is licensed to practice under all Patents and Copyright registrations that it now owns, uses or practices under. The Assignor further warrants that it is aware of no third party claim that any aspect of the Assignor's present or contemplated business operations infringes or will infringe any patent or any copyright in a manner which could have a material adverse effect on the financial condition, business or property of the Assignor.

**7.2. Licenses and Assignments.** The Assignor hereby agrees not to divest itself of any right under a Patent or Copyright other than in the ordinary course of business absent prior written approval of the Lender, which such approval shall not be unreasonably withheld.

**7.3. Infringements.** The Assignor agrees, promptly upon learning thereof, to furnish the Lender in writing with all pertinent information available to the Assignor with respect to any infringement or other violation of the Assignor's rights in any Patent that has a material adverse effect on the financial condition, business or property of the Assignor taken as a whole (each such Patent, a "*Significant Patent*") or Copyright, or with respect to any claim that practice of any Significant Patent or Copyright violates any property right of that party, to the extent that such infringement or violation could have a material adverse effect on the financial condition, business

or property of the Assignor. The Assignor further agrees, absent direction of the Lender to the contrary, diligently to prosecute any person infringing any Significant Patent or Copyright about which it has knowledge in a manner consistent with its past practice and in the ordinary course of business.

**7.4. Maintenance of Patents.** At its own expense, the Assignor shall make timely payment of all post issuance fees required pursuant to 35 U.S.C. § 41 to maintain in force rights under each Patent.

**7.5. Prosecution of Patent Applications.** At its own expense, the Assignor shall diligently prosecute all applications for United States patents listed on Annex F hereto, and shall not abandon any such application, except in favor of a continuation application based on such application, prior to exhaustion of all administrative and judicial remedies, absent written consent of the Lender, which such consent shall not be unreasonably withheld, conditioned or delayed.

**7.6. Other Patents and Copyrights.** Within 30 days of acquisition of a United States or foreign Patent or Copyright, or of filing of an application for a United States or foreign Patent or Copyright, the Assignor shall deliver to the Lender a copy of said Patent or Copyright, as the case may be, with a grant of security as to such Patent or Copyright, as the case may be, confirming the grant thereof hereunder, the form of such confirmatory grant to be substantially the same as the form hereof.

**7.7. Remedies.** If an Event of Default shall occur and be continuing, the Lender may, by written notice to the Assignor, take any or all of the following actions: (i) declare the entire right, title and interest of the Assignor in each of the Patents and Copyrights vested, in which event such right, title and interest shall immediately vest in the Lender for the benefit of the Secured Creditor, in which case the Assignor agrees to execute an assignment in form and substance reasonably satisfactory to the Lender of all its right, title, and interest to such Patents and Copyrights to the Lender for the benefit of the Secured Creditor; (ii) take and practice or sell the Patents and Copyrights; (iii) direct the Assignor to refrain, in which event the Assignor shall refrain, from practicing the Patents and Copyrights directly or indirectly, and the Assignor shall execute such other and further documents as the Lender may request further to confirm this and to transfer ownership of the Patents and Copyrights to the Lender for the benefit of the Secured Creditor.

## **8. REMEDIES UPON OCCURRENCE OF EVENT OF DEFAULT.**

**8.1. Remedies Generally; Obtaining of the Collateral.** The Assignor agrees that, if any Event of Default shall have occurred and be continuing, *then* and in every such case, subject to any mandatory requirements of applicable law then in effect, the Lender, in addition to any rights now or hereafter existing under applicable law, shall have all rights as a secured creditor under the UCC in all relevant jurisdictions and may exercise any or all of the following rights (all of which the Assignor hereby agrees is commercially reasonable):

(a) personally, or by agents or attorneys, immediately retake possession of the Collateral or any part thereof, from the Assignor or any other person who then has

possession of any part thereof with or without notice or process of law, and for that purpose may enter upon the Assignor's or such other person's premises where any of the Collateral is located and remove the same and use in connection with such removal any and all services, supplies, aids and other facilities of the Assignor;

(b) instruct the obligor or obligors on any Account, agreement, instrument or other obligation (including, without limitation, Account Debtors) constituting the Collateral to make any payment required by the terms of such Account, agreement, instrument or other obligation directly to the Lender and/or directly to a Deposit Account;

(c) sell, assign or otherwise liquidate, or direct the Assignor to sell, assign or otherwise liquidate, any or all of the Collateral or any part thereof, and take possession of the proceeds of any such sale or liquidation;

(d) direct any financial institution which maintains a Deposit Account to transfer funds from such Deposit Account to the Lender;

(e) pay and discharge taxes, Liens or claims on or against any of the Collateral;

(f) pay, perform or satisfy, or cause to be paid, performed or satisfied, for the benefit of the Assignor, any of the obligations, terms, covenants, provisions or conditions to be paid, observed, performed or satisfied by the Assignor under any contract, agreement or instrument relating to its Collateral, all in accordance with the terms, covenants, provisions and conditions thereof, as and to the extent that the Assignor fails or refuses to perform or satisfy the same;

(g) enter into any extension if, or any other agreement in any way relating to, any of the Collateral;

(h) make any compromise or settlement the Lender deems desirable or proper with respect to any of the Collateral; and/or

(i) take possession of the Collateral or any part thereof, by directing the Assignor or any other person in possession thereof in writing to deliver the same to the Lender at any place or places designated by the Lender, in which event the Assignor shall, at its own expense;

(i) forthwith cause the same to be moved to the place or places so designated by the Lender and there delivered to the Lender,

(ii) store and keep any Collateral so delivered to the Lender at such place or places pending further action by the Lender as provided in Section 8.2, and

(iii) while the Collateral shall be so stored and kept, provide such guards and maintenance services as shall be necessary to protect the same and to preserve and maintain them in good condition;

it being understood that the Assignor's obligation so to deliver the Collateral is of the essence of this Agreement and that, accordingly, upon application to a court of equity having jurisdiction, the Lender shall be entitled to a decree requiring specific performance by the Assignor of said obligation.

**8.2. Disposition of the Collateral.** Upon the occurrence and continuance of an Event of Default, any Collateral repossessed by the Lender under or pursuant to Section 8.1 and any other Collateral whether or not so repossessed by the Lender, may be sold, assigned, leased or otherwise disposed of under one or more contracts or as an entirety, and without the necessity of gathering at the place of sale of the property to be sold, and in general in such manner, at such time or times, at such place or places and on such terms as the Lender may, in compliance with any mandatory requirements of applicable law, determine to be commercially reasonable. Any of the Collateral may be sold, leased or otherwise disposed of, in the condition in which the same existed when taken by the Lender or after any overhaul or repair which the Lender shall determine to be commercially reasonable. Any such disposition which shall be a private sale or other private proceedings permitted by such requirements shall be made upon not less than ten (10) days' written notice to the Assignor specifying the time at which such disposition is to be made and the intended sale price or other consideration therefor, and shall be subject, for the ten (10) days after the giving of such notice, to the right of the Assignor or any nominee of the Assignor to acquire the Collateral involved at a price or for such other consideration at least equal to the intended sale price or other consideration so specified. Any such disposition which shall be a public sale permitted by such requirements shall be made upon not less than ten (10) days' written notice to the Assignor specifying the time and place of such sale and, in the absence of applicable requirements of law, shall be by public auction (which may, at the Lender's option, be subject to reserve), after publication of notice of such auction not less than ten (10) days prior thereto in two newspapers in general circulation in the city where such Collateral is located. To the extent permitted by any such requirement of law, the Lender on behalf of the Secured Creditor may bid for and become the purchaser (by bidding in Secured Obligations or otherwise) of the Collateral or any item thereof, offered for sale in accordance with this Section 8.2 without accountability to the Assignor (except to the extent of surplus money received as provided in Section 8.4). If, under mandatory requirements of applicable law, the Lender shall be required to make disposition of the Collateral within a period of time which does not permit the giving of notice to the Assignor as hereinabove specified, the Lender need give the Assignor only such notice of disposition as shall be reasonably practicable in view of such mandatory requirements of applicable law.

**8.3. Waiver of Claims.** Except as otherwise provided in this Agreement, **THE ASSIGNOR HEREBY WAIVES, TO THE EXTENT PERMITTED BY APPLICABLE LAW, NOTICE AND JUDICIAL HEARING IN CONNECTION WITH THE LENDER'S TAKING POSSESSION OR THE LENDER'S DISPOSITION OF ANY OF THE COLLATERAL, INCLUDING, WITHOUT LIMITATION, ANY AND ALL PRIOR NOTICE AND HEARING FOR ANY PREJUDGMENT REMEDY OR REMEDIES AND ANY SUCH RIGHT WHICH THE ASSIGNOR WOULD OTHERWISE HAVE UNDER THE CONSTITUTION OR ANY STATUTE OF THE UNITED STATES OR OF ANY STATE,** and the Assignor hereby further waives, to the extent permitted by law:

- (i) all damages occasioned by such taking of possession except any damages which are the direct result of the Lender's gross negligence or willful misconduct;

(ii) all other requirements as to the time, place and terms of sale or other requirements with respect to the enforcement of the Lender's rights hereunder; and

(iii) all rights of redemption, appraisal, valuation, stay, extension or moratorium now or hereafter in force under any applicable law in order to prevent or delay the enforcement of this Agreement or the absolute sale of the Collateral or any portion thereof, and the Assignor, for itself and all who may claim under it, insofar as it or they now or hereafter lawfully may, hereby waives the benefit of all such laws.

Any sale of, or the grant of options to purchase, or any other realization upon, any Collateral shall operate to divest all right, title, interest, claim and demand, either at law or in equity, of the Assignor therein and thereto, and shall be a perpetual bar both at law and in equity against the Assignor and against any and all persons claiming or attempting to claim the Collateral so sold, optioned or realized upon, or any part thereof, from, through and under the Assignor.

**8.4. Application of Proceeds.** All Collateral and proceeds of Collateral obtained and realized by the Lender in connection with the enforcement of this Agreement pursuant to this Section 8 shall be applied as follows:

(a) *first*, to the payment to the Lender, for application to the Secured Obligations as provided in the Loan Agreements; and

(b) *second*, to the extent remaining after the application pursuant to the preceding clause (i) and following the termination of this Agreement pursuant to Section 10.11 hereof, to the Assignor or to whomever may be lawfully entitled to receive such payment.

**8.5. Remedies Cumulative, etc.** Each and every right, power and remedy hereby specifically given to the Lender shall be in addition to every other right, power and remedy specifically given under this Agreement, the Loan Agreements, and any Credit Documents now or hereafter existing at law or in equity, or by statute and each and every right, power and remedy whether specifically herein given or otherwise existing may be exercised from time to time or simultaneously and as often and in such order as may be deemed expedient by the Lender. All such rights, powers and remedies shall be cumulative and the exercise or the beginning of exercise of one shall not be deemed a waiver of the right to exercise of any other or others. No delay or omission of the Lender in the exercise of any such right, power or remedy, or partial or single exercise thereof, and no renewal or extension of any of the Secured Obligations, shall impair or constitute a waiver of any such right, power or remedy or shall be construed to be a waiver of any Event of Default or an acquiescence therein. No notice to or demand on the Assignor in any case shall entitle it to any other or further notice or demand in similar or other circumstances or constitute a waiver of any of the rights of the Lender to any other or further action in any circumstances without notice or demand. In the event that the Lender shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit, the Lender may recover reasonable expenses, including attorneys' fees, and the amounts thereof shall be included in such judgment.



**8.6. Discontinuance of Proceedings.** In case the Lender shall have instituted any proceeding to enforce any right, power or remedy under this Agreement by foreclosure, sale, entry or otherwise, and such proceeding shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Lender, then and in every such case the Assignor, the Lender and each holder of any of the Secured Obligations shall be restored to their former positions and rights hereunder with respect to the Collateral subject to the security interest created under this Agreement, and all rights, remedies and powers of the Lender shall continue as if no such proceeding had been instituted.

**8.7. Purchasers of Collateral.** Upon any sale of any of the Collateral by the Lender hereunder (whether by virtue of the power of sale herein granted, pursuant to judicial process or otherwise), the receipt of the Lender or 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 Lender or such officer or be answerable in any way for the misapplication or nonapplication thereof.

## 9. INDEMNITY.

**9.1. Indemnity.** (a) The Assignor agrees to indemnify, reimburse and hold the Lender and the Secured Creditor, its successors, assigns, employees, agents and servants (any or all of the foregoing, individually an "*Indemnitee*" and collectively, the "*Indemnitees*") harmless from and against any and all liabilities, obligations, losses, costs, expenses, damages, penalties, fines, claims, demands, actions, suits, proceedings, judgments, arbitration awards and appeals of whatsoever kind and nature (all of the foregoing, collectively "*Indemnifiable Claims and Amounts*"), at any time imposed on, asserted (whether or not successfully) against, or suffered or incurred by, any of the Indemnitees, in any way relating to or arising out of or otherwise connected to:

(i) the execution, delivery or performance by the Assignor of this Agreement or any of the contracts, agreements or instruments included in its Collateral, including, without limitation, any actual or claimed failure of the Assignor to duly pay, observe, perform or satisfy any of the obligations, terms, covenants, provisions or conditions to be paid, observed, performed or satisfied by it under any contract, agreement or instrument included in, or otherwise related to, its Collateral;

(ii) any actual or claimed violation by the Assignor of, or any liabilities or obligations of the Assignor arising under, any laws, regulations, rules, orders or judgments of any country, state or other governmental body, unit, agency or court, in any way related to any of its Collateral;

(iii) the manufacture, ownership, ordering, purchase, delivery, control, acceptance, lease, financing, possession, operation, condition, sale, return or other disposition, or use of any of the Collateral (including, without limitation, latent or other defects, whether or not discoverable); and/or

(iv) any actual or claimed injury to any person or property, or the death of any person, whether based on any actual or alleged tort (including, without limitation, claims arising or imposed under the doctrine of strict liability), breach of an express or implied warranty, or other basis or theory of liability;

**provided** that no Indemnitee shall be indemnified pursuant to this Section 9.1: (a) for Indemnifiable Claims and Amounts to the extent caused by the gross negligence or willful misconduct of such Indemnitee.

(b) If any action, suit or proceeding is commenced against any Indemnitee which such Indemnitee believes is subject to indemnification hereunder, such Indemnitee shall promptly notify the Borrower (who shall receive such notice on behalf of the Assignor), and such Indemnitee may, and if requested by the Borrower (on behalf of Assignor) shall, in good faith, contest the validity, applicability and amount of such action, suit or proceeding with counsel selected by such Indemnitee, and shall permit the Borrower (on behalf of all Assignors) to participate in such contest, subject to the overall control and direction of such Indemnitee and its counsel. In addition, in connection with the defense of any action, suit or proceeding covered by this Section 9.1 against more than one Indemnitee, all such Indemnitees shall be represented by the same legal counsel selected by such Indemnitees; **provided, however**, that if such legal counsel determines in good faith that representing all such Indemnitees would or could result in a conflict of interest under the laws or ethical principles applicable to such legal counsel or that a defense or counterclaim is available to an Indemnitee that is not available to all such Indemnitees, then to the extent reasonably necessary to avoid such a conflict of interest or to permit unqualified assertion of such defense or counterclaim, each Indemnitee shall be entitled to separate representation by a legal counsel selected by that Indemnitee.

(c) The Assignor agrees that, upon written notice by any Indemnitee of the incurrence or sufferance by such Indemnitee of any Indemnifiable Claims and Amounts, the Assignor will pay, on demand, all Indemnifiable Claims and Amounts, from time to time incurred or suffered by such Indemnitee. Each Indemnitee agrees to use its best efforts to promptly notify the Borrower (on behalf of the Assignor) of any written assertion of any Indemnifiable Claims and Amounts of which such Indemnitee has actual knowledge.

(d) Without limitation of the foregoing, the Assignor agrees to pay, or reimburse the Lender for (if the Lender shall have incurred fees, costs or expenses because an Assignor shall have failed to comply with its obligations under this Agreement, the Loan Agreements, or any Credit Document), any and all out-of-pocket fees, costs and expenses of whatever kind or nature incurred in connection with the creation, preservation or protection of the Security Interest of the Lender in the Collateral, including, without limitation, all fees and taxes in connection with the recording or filing of instruments and documents in public offices, payment or discharge of any taxes or Liens upon or in respect of the Collateral, premiums for insurance with respect to the Collateral and all other fees, costs and expenses in connection with protecting, maintaining or preserving the Collateral and the Lender's interest therein, whether through judicial proceedings or otherwise, or in defending or prosecuting any actions, suits or proceedings arising out of or relating to the Collateral.

(e) In addition, and without limitation of the foregoing, the Assignor agrees to pay, indemnify and hold each Indemnitee harmless from and against any and all loss, costs, damages and expenses which such Indemnitee may suffer, expend or incur in consequence of or growing out of any material misrepresentation by the Assignor in this Agreement, or in any statement or writing contemplated by or made or delivered pursuant to or in connection with this Agreement.

(f) If and to the extent that the obligations of the Assignor under this Section 9.1 are unenforceable for any reason, the Assignor hereby agrees to make the maximum contribution to the payment and satisfaction of such obligations which is permissible under applicable law.

**9.2. Indemnity Obligations Secured by Collateral; Survival.** Any amounts paid by any Indemnitee as to which such Indemnitee has the right to reimbursement shall constitute Secured Obligations secured by the Collateral. The indemnity obligations of the Assignor contained in this Section 9 shall continue in full force and effect notwithstanding the full payment of the Second Term Note issued under the Loan Agreements and all of the other Secured Obligations and notwithstanding the discharge thereof.

## **10. MISCELLANEOUS.**

**10.1. Notices.** Except as otherwise expressly provided herein, all notices and other communications provided for hereunder shall be in writing (including telegraphic, telex, facsimile transmission or cable communication) and mailed, telegraphed, telexed, transmitted, cabled or delivered, (i) if to the Borrower, at its address specified in or pursuant to the Loan Agreements; (ii) if to the Assignor to it c/o the Borrower at its address specified in or pursuant to the Loan Agreements; and (iii) if to the Lender, at its address specified in or pursuant to the Loan Agreements; or in any case at such other address as any of the persons listed above may hereafter notify the others in writing. All such notices and communications shall be mailed, telegraphed, telexed, telecopied, or cabled or sent by overnight courier, and shall be effective when received, or three (3) Business Days after delivery, whichever is sooner.

**10.2. Entire Agreement.** This Agreement, the Loan Agreements, and the Credit Documents represent the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements between the parties. There are no unwritten oral agreements between the parties.

**10.3. Amendments and Waivers.** None of the terms and conditions of this Agreement may be changed, waived, modified or varied in any manner whatsoever unless in writing duly signed by: (i) the Assignor affected thereby (it being understood that the addition or release of the Assignor hereunder shall not constitute a change, waiver, modification or variance affecting the Assignor other than the Assignor so added or released); and (ii) the Lender.

**10.4. Obligations Absolute.** The obligations of the Assignor under this Agreement shall be absolute and unconditional and shall remain in full force and effect without regard to, and shall not be released, suspended, discharged, terminated or otherwise affected by, any circumstance or occurrence whatsoever, other than indefeasible payment in full of, and complete performance of, all of the Secured Obligations, including, without limitation:

(a) any renewal, extension, amendment or modification of, or addition or supplement to or deletion from the Loan Agreements or other Credit Documents, or any other instrument or agreement referred to therein, or any assignment or transfer of any thereof;

(b) any waiver, consent, extension, indulgence or other action or inaction under or in respect of any such agreement or instrument or this Agreement except as expressly provided in such renewal, extension, amendment, modification, addition, supplement, assignment or transfer;

(c) any furnishing of any additional security to the Lender or its assignee or any acceptance thereof or any release of any security by the Lender or its assignee;

(d) any limitation on any person's liability or obligations under any such instrument or agreement or any invalidity or unenforceability, in whole or in part, of any such instrument or agreement or any term thereof;

(e) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to the Assignor or any Subsidiary of the Assignor, or any action taken with respect to this Agreement by any trustee or receiver, or by any court, in any such proceeding, whether or not the Assignor shall have notice or knowledge of any of the foregoing; or

(f) any other event or circumstance which, but for this provision, might release or discharge a guarantor or other surety from its obligations as such.

**10.5. Successors and Assigns.** This Agreement shall be binding upon the Assignor and its successors and assigns and shall inure to the benefit of the Lender and its successors and assigns, *provided* that the Assignor may not transfer or assign any or all of its rights or obligations hereunder without the written consent of the Lender. All agreements, statements, representations and warranties made by the Assignor herein or in any certificate or other instrument delivered by the Assignor or on its behalf under this Agreement shall survive the execution and delivery of this Agreement and the Credit Documents.

**10.6. Headings Descriptive.** The headings of the several sections of this Agreement are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Agreement.

**10.7. Severability.** 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, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

**10.8. Governing Law. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE CONSTRUED IN ACCORDANCE WITH AND BE GOVERNED BY THE LAW OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO CONFLICT OF LAW RULES OR PRINCIPLES.**

**10.9. Enforcement Expenses, etc.** The Assignor hereby agrees to pay, to the extent not paid pursuant to the Loan Agreements, all reasonable out-of-pocket costs and expenses of the Lender and each other Secured Creditor in connection with the enforcement of this Agreement, the preservation of the Collateral, the perfection of the Security Interest, and any amendment, waiver or consent relating hereto (including, without limitation, the reasonable fees and disbursements of counsel employed by the Lender).

**10.10. Release of Portions of Collateral.** (a) So long as no payment default on any of the Secured Obligations or Event of Default is in existence or would exist after the application of proceeds as provided below, the Lender shall, at the request of an Assignor, release any or all of the Collateral of the Assignor, *provided* that: (x) such release is permitted by the terms of the Loan Agreements; and (y) the proceeds of such Collateral are to be applied as required pursuant to the Loan Agreements or any consent or waiver entered into with respect thereto.

(b) At any time that the Assignor desires that the Lender take any action to give effect to any release of Collateral pursuant to the foregoing Section 10.10(a), it shall deliver to the Lender a certificate signed by a principal executive officer stating that the release of the respective Collateral is permitted pursuant to Section 10.10(a). In the event that any part of the Collateral is released as provided in Section 10.10(a), the Lender, at the request and expense of the Assignor, will duly release such Collateral and assign, transfer and deliver to the Assignor (without recourse and without any representation or warranty) such of the Collateral as is then being (or has been) so sold and as may be in the possession of the Lender and has not theretofore been released pursuant to this Agreement.

**10.11. Termination.** When the Second Term Note is no longer outstanding and when the Second Term Loan and the other Secured Obligations (other than unasserted indemnity obligations) have been paid in full, this Agreement shall terminate, and the Lender, at the request and expense of the Assignor, will execute and deliver to the Assignor a proper instrument or instruments (including UCC termination statements) acknowledging the satisfaction and termination of this Agreement, and will duly assign, transfer and deliver to the Assignor (without recourse and without any representation or warranty) such of the Collateral as may be in the possession of the Lender and as has not theretofore been sold or otherwise applied or released pursuant to this Agreement.

**10.12. Lender.** The Lender will hold in accordance with this Agreement all items of the Collateral at any time received under this Agreement. The acceptance by the Lender of this Agreement, with all the rights, powers, privileges and authority so created, shall not at any time or in any event obligate the Lender to appear in or defend any action or proceeding relating to the Collateral to which it is not a party, or to take any action hereunder or thereunder, or to expend

any money or incur any expenses or perform or discharge any obligation, duty or liability under the Collateral.

**10.13. [Intentionally Omitted]**

**10.14. Other Creditors, etc. Not Third Party Beneficiaries.** No creditor of the Assignor or any of its Affiliates, or other person claiming by, through or under the Assignor or any of its Affiliates, other than the Lender, and its respective successors and assigns, shall be a beneficiary or third party beneficiary of this Agreement or otherwise shall derive any right or benefit herefrom.

**10.15. Counterparts.** This Agreement may be executed in any number of counterparts and by different parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same agreement. A set of counterparts executed by all the parties hereto shall be lodged with the Borrower and the Lender.

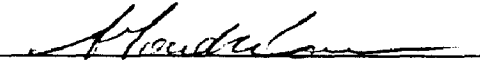
**10.16. Effectiveness.** This Agreement shall be effective as to the Assignor upon its execution and delivery to the Lender of a counterpart of this Agreement manually executed on behalf of the Assignor, regardless of the date of this Agreement or the date this Agreement is executed and delivered by any other party hereto.

**11. WAIVER OF JURY TRIAL. THE ASSIGNOR AND THE LENDER EACH HEREBY IRREVOCABLY WAIVES ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. THE ASSIGNOR HEREBY (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY SECURED CREDITOR HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH SECURED CREDITOR WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.**


**[SIGNATURE PAGE FOLLOWS]**

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

**SARATOGA SPRING WATER COMPANY**  
*as Assignor*

By:   
Name: Adam Madkour  
Title: President and CEO

**KEYBANK NATIONAL ASSOCIATION,**  
*as Lender*

By:   
Name: Bryant J. Cassella  
Title: Senior Vice President

ANNEX A  
to  
SECURITY AGREEMENT

SCHEDULE OF EXISTING FINANCING STATEMENTS

Debtor	Secured Party	Filing Number and Jurisdiction	Original Filing Date	Description of Collateral
Saratoga Spring Water Company/SSW Acquisition Corp.	Cephas Capital Partners, L.P.	20045645 State of Delaware	January 17, 2002	Junior Blanket Lien
Saratoga Beverage Group, Inc. to be assigned to Saratoga Spring Water Company	M&T Bank	20010984869; State of Delaware	June 21, 2001	Bottling Equipment
Same as above	Same as above	011999 State of New York	January 20, 1998	Same as above
Same as above	Citicorp Del Lease, Inc.	175217 State of New York	August 14, 1998	1998 Caterpillar Model #2EC15, Serial #: A2EC120216 with triple mast, 42" forks, sideshifter, 2 batteries and charger
Same as Above	Citicorp Del Lease, Inc.;	175225 State of New York	August 14, 1998	1998 Caterpillar Model #: 2EC15, Serial #: A2EC120217 with triple mast, 42: forks, sideshifter, 3 batteries and 1 charger



ANNEX B  
to  
SECURITY AGREEMENT

SCHEDULE OF CHIEF EXECUTIVE OFFICES

ASSIGNOR	TAX I.D. NO.	ADDRESS
Saratoga Spring Water Company	14-1815848	11 Geysers Road, Saratoga Springs, New York 12866

ANNEX C  
to  
SECURITY AGREEMENT

SCHEDULE OF EQUIPMENT  
AND INVENTORY LOCATIONS

11 Geyser Road, Saratoga Springs, New York	33 Cady Hill Road Saratoga Springs, New York
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ANNEX D  
to  
SECURITY AGREEMENT

SCHEDULE OF TRADE AND FICTITIOUS NAMES

Name: \_\_\_\_\_ Jurisdiction Where Used: \_\_\_\_\_

None

ANNEX E  
to  
SECURITY AGREEMENT

SCHEDULE OF MARKS

MARK	SER. #	REG. #
SARATOGA VICHY	71/117283	129867
SARATOGA and RACETRACK DESIGN	73/762803	1,580,394
SARATOGA (word only)	73,200471	1,256,330
RACETRACK DESIGN	73,762,700	1,580,393
SARATOGA SPRING WATER	75/139784	2,129,959
SARATOGA VICHY WATER SV	72/231703	822963
SV DESIGN	71/421101	372822
SARATOGA SPLASH	75/141211	2,131,922
EVERYTHING ELSE IS JUST WATER	75/381176	2,233,022
S (stylized)	73/246469	1,198,188
MAN DESIGN	74/614904	2,022,888
SARATOGA SODA	75/662774	Pending
SARATOGA SPRING WATER SV & design	0353272 - Canada	TMA193343
SV and design	0353271 - Canada	189923
EAU MINERALE SARATOGA SV and design	0395773 - Canada	TMA228175

ANNEX F  
to  
SECURITY AGREEMENT

SCHEDULE OF PATENTS AND APPLICATIONS

----None----

ANNEX G  
to  
SECURITY AGREEMENT

SCHEDULE OF COPYRIGHTS AND APPLICATIONS

----None----

WHITEMAN OSTERMAN & HANNA LLP

MICHAEL WHITEMAN  
MEVIN H. OSTERMAN  
JOHN HANNA JR.  
JOEL FRIGES  
PHILIP LITVIN  
SARAH K. EHN  
DANIEL A. RUTZOW  
ELISE M. WAPPEL  
MICHAEL LYON  
RICHARDELE KURLINZ  
MARGARET J. GILLES  
KIMBERLY N. PI  
HEATHER M. DEBEL  
FRANK WINE  
CAROLYN M. BICKNER  
NORMA J. MCFARHAM  
ALAN J. COHENBERG  
BETH A. BERNHARDT  
MARTIN J. KOZLAK  
CHARLES R. HAVILAND JR.  
DANIEL R. TRIPLE  
CHRISTINE TOWER THARP

ATTORNEYS AT LAW

ONE COMMERCE PLAZA  
ALBANY, NEW YORK 12260  
TEL 518.487.7600  
FAX 518.487.7777  
woh.com

SENIOR COUNSEL  
JOHN P. DUNNE

OF COUNSEL  
HOLLY KENNEDY PASSANTINO  
MARY WALSHE BRYDE  
MARGARET CANNOLISI SHZ  
JEAN L. GERBER  
DAVID R. EVERT  
MICHAEL G. STRICKLAND  
JOHN J. HENRY  
ELLEN M. BATA  
BRIAN J. LIDGLEY  
ANDREW M. JOHNSON  
SETH J. LETH  
KRISTIN KOEHLER O'NEILL  
ROBERT M. GAY  
ROBERT J. DEWITT  
ROBERTA A. WALLON  
TIMOTHY P. MURKIN  
JANIS E. FALLON  
KEITH M. GARDNER  
JOSEPH D. STONER  
JOHN P. CALABESCU  
DANIEL J. DEAN  
PATRICIA A. LEANEKIN  
SCOTT T. DEKORF  
JASON M. MARCELLI  
DORR B. LELAND  
PETER M. CASPER  
JEFFREY A. HENNINGHAM  
WILLIAM J. KOLAN  
DOROTHY JANE GOLDSTEIN BRESLIN  
ALANNA M. REYNAN

January 21, 2003

**VIA FEDERAL EXPRESS**

Commissioner of Patents & Trademarks  
Assignment Division  
BOX ASSIGNMENTS, CG-4  
1213 Jefferson Davis Highway, Suite 320  
Washington, D.C. 20231

Re: Security Agreement between  
Saratoga Spring Water Company  
and KeyBank National Association

Dear Sir or Madam:

Enclosed for recording are the following items:

- 1. Original Trademark Recordation Form Cover Sheet;
- 2. Copy of the Security Agreement, dated January 14, 2003;
- 3. Check in the amount of \$315 for the requisite filing fees; and
- 4. Return postcard.

Please date stamp and return the enclosed postage prepaid postcard upon your receipt of this package.

Feel free to contact me at (518) 487-7702 should you have any questions. Thank you for your consideration.

Sincerely,

*Brenda J. Film*  
Brenda J. Film, Paralegal

Enclosures

cc: Charles R. Haviland, Jr., Esq.  
Holly Kennedy Passantino, Esq.

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**SARATOGA SPRING WATER COMPANY,  
As Assignor**

**With**

**KEYBANK NATIONAL ASSOCIATION,  
As Lender**

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**SECURITY AGREEMENT**

**Dated as of**

**January 14, 2003**

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