

Form PTO-1594  
(Rev. 10/02)  
OMB No. 0651-0027 (exp. 6/30/2005)  
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### RECORDATION FORM COVER SHEET TRADEMARKS ONLY

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):

MIJA Industries, Inc.

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

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

3. Nature of conveyance:

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

Execution Date: June 24, 2003

2. Name and address of receiving party(ies)

Name: Citizens Capital, Inc.

Internal Address: \_\_\_\_\_

Street Address: 28 State Street

City: Boston State: MA Zip: 02108

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

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

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

A. Trademark Application No.(s) See attached Schedule B

B. Trademark Registration No.(s) See attached Schedule B

Additional number(s) attached  Yes  No

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

Name: Kimberly B. Herman, Esq.

Internal Address: \_\_\_\_\_

Street Address: Sullivan & Worcester LLP  
One Post Office Square

City: Boston State: MA Zip: 02109

6. Total number of applications and registrations involved: 4

7. Total fee (37 CFR 3.41).....\$ 115.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:

500751

DO NOT USE THIS SPACE

9. Signature.

Kimberly B. Herman, Esq.  
Name of Person Signing

Kimberly B. Herman  
Signature

6/25/03  
Date

Total number of pages including cover sheet, attachments, and document: 21

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

CH \$115.00 500751 76395309

Schedule B

## U.S. Registrations

<u>Trademark</u>	<u>Registration Number</u>	<u>Current Status</u>
"MIJA" (and Design)	1,748,311	Renewed January 26, 2003

## Pending U.S. Applications

<u>Trademark</u>	<u>Serial Number</u>	<u>Filing Date</u>
"EN-GAUGE"	76/395,309	April 15, 2002
"M" (and Design)	76/424,741	June 21, 2002
"M" (and Design)	76/424,740	June 21, 2002

## TRADEMARK COLLATERAL AGREEMENT

This TRADEMARK COLLATERAL AGREEMENT (this "Agreement") dated as of June 24, 2003 by and between MIJA Industries, INC., a Massachusetts corporation having its principal place of business at 11 Commerce Road, Rockland, Massachusetts 02370 (the "Debtor"), and CITIZENS CAPITAL, INC., a Massachusetts corporation having a place of business at 28 State Street, Boston, Massachusetts 02108 (the "Secured Party").

WHEREAS, the Debtor and the Secured Party entered into a Senior Subordinated Loan Agreement dated as of the date hereof (as amended from time to time, the "Loan Agreement"), pursuant to which the Secured Party has agreed, subject to the terms and conditions thereof, to make a loan the Debtor:

WHEREAS, it is a condition precedent to the effectiveness of the Loan Agreement that the Debtor execute and deliver to the Secured Party a trademark collateral agreement in substantially the form hereof; and

WHEREAS, this Agreement is supplemental to that certain Security Agreement by and between the Debtor and the Secured Party dated as of the date hereof (the "Security Agreement");

NOW, THEREFORE, in consideration of the premises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### §1. Definitions.

(a) All capitalized terms used herein without definitions shall have the respective meanings provided therefor in the Loan Agreement.

(b) The following terms shall have the specific meanings set forth below:

"Associated Goodwill" shall mean all goodwill of the Debtor or its business, products and services appurtenant to, associated with or symbolized by the Trademarks and/or the use thereof.

"Licensed Trademarks" shall mean all Trademarks other than owned Trademarks, including but not limited to those referenced in Schedule A attached hereto.

"Owned Trademarks" shall mean all Trademarks in or to which the Debtor has or shall in the future have title or an ownership interest, including but not limited to those U.S. applications and registrations referenced in Schedule B attached hereto, and foreign applications and registration referenced in Schedule C attached hereto.

"Obligations" shall mean all of the following liabilities and obligations of the Debtor: (a) the aggregate outstanding principal balance of and interest on the Loan (including, without limitation, interest occurring at the then applicable rate provided in the Loan Agreement after the maturity of the Loan and interest occurring at the then applicable rate provided herein

after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding relating to the Company, whether or not a claim for a post-filing or post-petition interest is allowed in such proceeding); (b) any and all other obligations (including all Obligations as defined by the Loan Agreement) of the Debtor to the Secured Party under the Loan Agreement, the Security Documents, the other Transaction Documents or under any agreement, document or instrument relating thereto, all as amended from time to time and whether executed on or after the date hereof; and (c) any and all other indebtedness or obligations of the Debtor to the Secured Party, whether direct or indirect, absolute or contingent, due or to become due or now existing or hereafter arising.

“Proceeds” shall mean any consideration received from the sale, exchange, license, lease or other transfer or disposition of any right, interest, asset or property which constitutes Trademark Collateral, any value received as a consequence of the ownership, possession, or use of any Trademark Collateral, and any payment received from any insurer or other person or entity as a result of the destruction, loss, theft or other involuntary conversion of whatever nature of any right, interest, asset or property which constitutes Trademark Collateral.

“PTO” shall mean the United States Patent and Trademark Office.

“Related Assets” shall mean all assets, rights and interests of the Debtor which uniquely reflect or embody the Associated Goodwill, including but not limited to the following: all patents, copyrights, trade secrets, confidential information, methods, processes, know-how, operating systems, drawings, descriptions, formulations, quality control procedures, product and service specifications, catalogs and advertising materials, relating to the production, delivery, provision, licensing and sale of goods or services under or in association with any of the Trademarks, and all books and records describing or used in connection with any or all of the foregoing; and the following documents and things in the possession or under the control of the Debtor, or subject to its demand for possession or control, related to the production, delivery, provision, licensing and sale by the Debtor, or any affiliate, licensee or contractor, of products or services sold by or under the authority of the Debtor in connection with the Trademarks or Trademark Rights, whether prior to, on or subsequent to the date hereof:

(i) All lists, contracts, ancillary documents and other information which identify, describe or provide information with respect to any customers, dealers or distributors of the Debtor, its affiliates or licensees or contractors, for products or services sold under or in connection with the Trademarks or Trademark Rights, including but not limited to all lists and documents containing information regarding each customer's, dealer's or distributor's name and address, credit, payment, discount, delivery and other sale terms, and history, pattern and total of purchases by brand, product, style, size and quantity;

(ii) all agreements, product and service specification documents, technical specifications and information, and operating, production and quality control manuals relating to or used in the design, manufacture, production, delivery, provision, licensing, and sale of products or services under or in connection with the Trademarks or Trademark Rights;

(iii) all documents and agreements relating to the identity and locations of all sources of supply, all terms of purchase and delivery, for all materials, components, raw materials and other supplies and services used in the manufacture, production, provision, delivery, licensing and sale of products or services under or in connection with the Trademarks or Trademark Rights; and

(iv) all agreements and documents constituting or concerning the present or future, current or proposed advertising and promotion by the Debtor (or any of its affiliates, licensees or contractors) of products or services provided, licensed or sold under or in connection with the Trademarks or Trademark Rights.

“Trademarks” shall mean all of the trademarks, service marks, designs, logos, indicia, trade names, corporate names, company names, business names, fictitious business names, trade styles, elements of package or trade dress, and/or other source and/or product or service identifiers, and general intangibles of like nature, used or associated with or appurtenant to the products, services and business of the Debtor, which include, but are not limited to those Trademarks that (i) are set forth on Schedules A, B and C attached hereto, or (ii) have been adopted, acquired, owned, held or used by the Debtor and are now owned, held or used by the Debtor, in the Debtor’s business, or with the Debtor’s products and services, or in which the Debtor has any right, title or interest, or (iii) are in the future adopted, acquired, owned, held and/or used by the Debtor in the Debtor’s business or with the Debtor’s products and services, or in which the Debtor in the future acquires any right, title or interest.

“Trademark Collateral” shall mean all of the Debtor’s right, title and interest in and to all of the Trademarks, the Trademark Registrations, the Trademark License Rights, the Trademark Rights, the Associated Goodwill, the Related Assets, and all additions, improvements and accessions to, substitutions for, replacements of, and all products and Proceeds (including insurance proceeds) of any and all of the foregoing.

“Trademark License Rights” shall mean any and all past, present or future rights and interests of the Debtor pursuant to any and all past, present and future, licensing agreements in favor of the Debtor, or to which the Debtor is a party, pertaining to any Trademarks (whether Owned Trademarks or Licensed Trademarks), Trademark Registrations, or Trademark Rights owned or used by third parties in the past, present or future, including the right in the name of the Debtor or the Secured Party to enforce, and sue and recover for, any past, present or future breach or violation of any such agreement. Such agreements shall include but not be limited to those set forth on Schedule A attached hereto. Notwithstanding the foregoing, Trademark License Rights shall not include those trademark or trade name rights which are held by the Debtor as licensee, to the extent that such items are not assignable or capable of being encumbered as a matter of law or without the consent of the licensor thereof under the terms of such license (but solely to the extent that any such provision of any license or other agreement shall be enforceable under applicable law).

“Trademark Registrations” shall mean all past, present or future federal, state, local and foreign registrations of the Trademarks (and all renewals and extensions of such registrations), all past, present and future applications for any such registrations of the Trademarks (and any such registrations thereof upon approval of such applications), together

with the right (but not the obligation) to apply for such registrations (and prosecute such applications) in the name of the Debtor or the Secured Party, and to take any and all actions necessary or appropriate to maintain such registrations in effect and/or renew and extend such registrations.

"Trademark Rights" shall mean any and all past, present or future rights in, to and associated with the Trademarks throughout the world, whether arising under federal law, state law, common law, foreign law or otherwise, including but not limited to the following: all such rights arising out of or associated with the Trademark Registrations; the right (but not the obligation) to register claims under any state, federal or foreign trademark law or regulation; the right (but not the obligation) to sue or bring opposition, cancellation or concurrent use proceedings in the name of the Debtor for any and all past, present and future infringements or dilution of or any other damages or injury to the Trademarks, the Trademark Rights, or the Associated Goodwill, and the rights to damages or profits due or accrued arising out of or in connection with any such past, present or future infringement, dilution, damage or injury; and the Trademark License Rights.

"Use" of any Trademark shall include all uses of such Trademark by, for or in connection with the Debtor or its business or for the direct or indirect benefit of the Debtor or its business, including but not limited to all such uses by the Debtor itself, by any of the affiliates of the Debtor, or by any licensee or contractor of the Debtor which use inures to the benefit of the Debtor.

## §2. Grant of Security Interest.

(a) The Debtor hereby unconditionally grants to the Secured Party (to the extent legally and contractually permitted) a continuing security interest in and perfected lien on the Trademark Collateral, and pledges, mortgages and hypothecates (but does not transfer title to) the Trademark Collateral to the Secured Party as continuing security for the Obligations.

(b) In addition to, and not by way of limitation of, the grant, pledge, mortgage and hypothecation of the Trademark Collateral provided in §2(a), the Debtor hereby grants, assigns, transfers, conveys and sets over to the Secured Party its entire right, title and interest in and to the Trademark Collateral; provided, however, that such grant, assignment, transfer and conveyance shall be and become of force and effect only (i) upon or after the occurrence and during the continuance of an Event of Default under the Loan Agreement and (ii) either (A) upon the written demand of the Secured Party at any time during such continuance or (B) immediately and automatically (without notice or action of any kind by the Secured Party) upon an Event of Default specified in §§8.1(g) or 8.1(h) of the Loan Agreement or upon the sale or other disposition of or foreclosure upon the Trademark Collateral pursuant to the Security Agreement and Article 9 of the Uniform Commercial Code as in effect in Massachusetts from time to time (including the transfer or other disposition of the Trademark Collateral by the Debtor to the Secured Party in lieu of foreclosure). The foregoing grant, assignment, transfer and conveyance shall be referred to from time to time herein as the "§2(b) Assignment."

(c) The Debtor acknowledges and agrees that, upon the effectiveness of the §2(b) Assignment, the Secured Party shall have the cumulative rights in and to the Trademark

Collateral as are provided in this Agreement and in the Security Agreement, and shall have the rights in and to the Collateral (other than the Trademark Collateral) as are provided in the Security Agreement.

(d) The parties expressly acknowledge and agree that they have executed and delivered to the Secured Party certain other Security Documents (as defined in the Loan Agreement), pursuant to which the Debtor has unconditionally granted to the Secured Party a continuing security interest in and lien on the Collateral. Such Security Documents and all rights and interests of the Secured Party in and to the Collateral thereunder, are hereby ratified, confirmed, adopted and approved. In no event shall this Agreement, the §2(b) Assignment of the Trademark Collateral hereunder, or the recordation of any Notice of Security Interest with the PTO or with any other trademark office or registry, domestic or foreign, adversely affect or impair, in any way or to any extent, any other Security Document, the security interest of the Secured Party in the Collateral pursuant to any other Security Document, the attachment and perfection of such security interest under the Uniform Commercial Code, or the present or future rights and interests of the Secured Party in and to the Collateral under or in connection with this Agreement, any other Security Document, and/or the Uniform Commercial Code. Any and all rights and interests of the Secured Party in and to the Collateral (and any and all obligations of the Debtor with respect to any of the Collateral) provided herein, or arising hereunder or in connection herewith, shall only supplement and be cumulative and in addition to the rights and interests of the Secured Party (and the obligations of the Debtor) in, to or with respect to the Collateral provided in or arising under or in connection with the other Security Documents. In the event of any conflict between this Agreement and the Security Agreement, the provisions of the Security Agreement shall control.

§3. Effect of §2(b) Assignment - Secured Party's Rights. Upon the effectiveness of the §2(b) Assignment, the Secured Party shall own to the extent legally or contractually permitted, the entire right, title and interest in and to the Trademark Collateral, free and clear of any lien, charge, encumbrance or claim of the Debtor or any other party. Upon such effectiveness, in addition to all other rights and remedies of the Secured Party, whether under law, the Loan Agreement, any Security Document, or otherwise (all such rights and remedies being cumulative, not exclusive, and enforceable alternatively, successively or concurrently, without notice to or consent by the Debtor except as expressly provided otherwise herein), the Secured Party's rights and remedies with respect to the Trademark Collateral shall include but not be limited to the following to the extent legally or contractually permitted, without payment of royalty or compensation of any kind to the Debtor except as expressly provided otherwise herein:

(a) The Secured Party may exercise, in respect of the Trademark Collateral, all the rights and remedies of a secured party under the Uniform Commercial Code (whether or not such Code applies to the affected Trademark Collateral).

(b) The Secured Party may operate the business of the Debtor using the Trademark Collateral.

(c) The Secured Party may, to the same extent that the Debtor has the right to do so immediately prior to the effectiveness of the §2(b) Assignment, license or sublicense,

whether general, special or otherwise, and whether on an exclusive or nonexclusive basis, any of the Trademark Collateral, throughout the world for such term or terms, on such conditions, and in such manner, as the Secured Party shall in its sole discretion determine.

(d) The Secured Party may (without assuming any obligations or liability thereunder), at any time, enforce (and shall have the exclusive right but not the obligation to enforce) against any licensor, licensee or sublicensee all Trademark License Rights of the Debtor, and take or refrain from taking any such action.

(e) The Secured Party may assign, sell, transfer or otherwise dispose of the Trademark Collateral and exercise any and all of its rights and remedies pursuant to §8 hereof.

(f) In addition to the foregoing, in order to implement the assignment, sale, transfer or other disposition of any of the Trademark Collateral pursuant to §8 hereof, the Secured Party may, pursuant to the authority granted in the power of attorney provided in §7 hereof (such authority becoming effective upon the occurrence and during the continuation of an Event of Default), execute and deliver on behalf of the Debtor one or more instruments of assignment of the Trademark Collateral, in form suitable for filing, recording or registration in any jurisdiction or country.

§4. Effect of §2(b) Assignment - Debtor's Obligations.

(a) Upon the effectiveness of the §2(b) Assignment, the Debtor shall have no further right, title or interest in or to any of the Trademark Collateral, and the Debtor shall immediately cease and desist in the use of the Trademarks or any colorable imitation thereof, and shall, upon written demand of the Secured Party, deliver to the Secured Party (or the Secured Party's designee) all unused or unsold goods owned by the Debtor bearing the Trademarks.

(b) In addition, upon the effectiveness of the §2(b) Assignment, and upon the written demand of the Secured Party, the Debtor shall execute and deliver to the Secured Party an assignment or assignments of the Trademark Collateral and such other documents as may be necessary or appropriate to carry out the intent and purposes of this Agreement: provided that the failure of the Debtor to comply with such demand will not impair or affect the validity of the §2(b) Assignment. The Debtor agrees that any such assignment (including a §2(b) Assignment) and/or any recording thereof shall be applied to reduce the Obligations outstanding only to the extent that the Secured Party actually receives cash proceeds in respect of the assignment, sale or disposition of, or other realization upon, the Trademark Collateral.

(c) In the event of any such license, assignment, sale, transfer or other disposition of the Trademark Collateral, or any of it, after the occurrence and during the continuation of an Event of Default, whether to or by the Secured Party, the Debtor shall supply to the Secured Party (or the Secured Party's designee) the Debtor's know how and expertise relating to the products and services sold and provided under the Trademarks, and other records relating to the Trademark Collateral and to the production, marketing, delivery and sale of said products and services. Without limiting the generality of the foregoing, within five (5) Business Days of written notice thereof from the Secured Party, the Debtor shall use its best efforts to make available to the Secured Party such personnel in the Debtor's employ on the date of the



Event of Default as the Secured Party may reasonably designate, by name, title or job responsibility, to permit the Debtor (or if the Secured Party so elects, the Secured Party or the Secured Party's designee) to continue, directly or indirectly, to manufacture, produce, supply, advertise, provide, license, sell and deliver the products or services sold by the Debtor under the Trademarks, such persons to be available to perform their prior functions on the Secured Party's behalf and, if the Secured Party so elects to utilize their services, to be compensated by the Secured Party on a per diem, pro rata basis consistent with the wages and salary structure applicable to each as of the date of such Event of Default.

**§5. Representations, Warranties and Covenants.** The Debtor represents and warrants to, and covenants and agrees with the Secured Party as follows:

(a) The Debtor is and will continue to be the sole and exclusive owner of the entire legal and beneficial right, title and interest in and to the Trademarks and the Trademark Collateral (other than ownership and other rights reserved by the owners of the Licensed Trademarks), free and clear of any lien, charge, security interest or other encumbrance, except for the security interest and conditional assignment created by this Agreement and the other Security Documents, liens and encumbrances expressly permitted pursuant to the Loan Agreement. The Debtor will defend its right, title and interests in and to the Trademarks and the Trademark Collateral against any and all claims of any third parties.

(b) Schedules A, B and C together comprise true and complete lists of all Trademarks and Trademark Registrations now owned, licensed, controlled or used by the Debtor. All material license and other agreements applicable to the Trademarks are the valid and binding obligations of all of the parties thereto, enforceable against each such parties in accordance with their respective terms.

(c) The Owned Trademarks and the Trademark Registrations and Trademark Rights related thereto are valid, enforceable and subsisting and have not been adjudged invalid or unenforceable. The Debtor has not received any written claim by any third party that any of the Owned Trademarks and the Trademark Registrations and Trademark Rights related thereto are invalid or unenforceable.

(d) There is not on file in any governmental or regulatory authority, agency or recording office, in the United States or in any foreign country, any effective financing statement, security agreement, assignment, license or transfer or notice of any of the foregoing (other than those that have been filed in favor of the Secured Party) covering any of the Trademark Collateral, and the Debtor is not aware of any such filing other than as set forth in the Schedules to the Loan Agreement. So long as this Agreement shall be in effect, the Debtor shall not execute and shall not knowingly permit to be on file (other than as set forth in the Schedules to the Loan Agreement) in any such office or agency, any such financing statement or other document or instrument (except financing statements, documents or instruments filed or to be filed in favor of the Secured Party).

(e) To the best of the Debtor's knowledge, no claim has been made that the Debtor's use of any of the owned Trademarks does or may violate the rights of any third parties. There has been no decision adverse to the Debtor's claim of ownership rights and or exclusive

rights to use the owned Trademarks or any material part of the Trademark Collateral associated therewith, or to its right to use and register the owned Trademarks in any jurisdiction or to keep and maintain such registration in full force and effect, and there is no proceeding involving said rights, threatened, or pending in the PTO or any similar office or agency of the United States, any state or foreign country or in any court.

(f) This Agreement will create in favor of the Secured Party a valid and perfected security interest (subject only to the prior existing Liens permitted under the Senior Subordinated Loan Agreement) in the Trademarks existing on the date on which this representation is made upon making the filings referred to in subsection (g) below.

(g) With respect to the United States Trademark Collateral, except for the filing of financing statements under the Uniform Commercial Code (to be filed in connection with the execution and delivery of the Security Agreement) and the filing with the PTO, no authorization, approval or other action by, and no notice to or filing with, any governmental or regulatory authority, agency or office is required either (1) for the grant by the Debtor or the effectiveness of the security interest granted hereby or for the execution, delivery and performance of this Agreement by the Debtor, or (2) for the perfection of or the exercise by the Secured Party of any of its rights and remedies hereunder. The Debtor acknowledges that an executed counterpart of this Agreement will also be recorded by the Secured Party with the PTO.

#### §6. Assurances.

(a) The Debtor shall do, make, execute and deliver all such additional and further acts, things, deeds, assurances and instruments as the Secured Party may reasonably require more completely to vest in and assure to the Secured Party its rights hereunder or in any of the Trademark Collateral, including without limitation execution and delivery of financing statements, continuation statements, and amendments which the Secured Party deems appropriate to perfect and continue the assignment and security interest hereby granted.

(b) The Debtor agrees that, upon its commencement of use or acquisition of any right, title or interest in or to any Trademark, Trademark Registration or Trademark Right other than the Trademarks, Trademark Registrations or Trademark Rights set forth in Schedules A, B and C hereto (including any variation or new versions of such scheduled Trademarks, Trademark Registrations and Trademark Rights), or upon commencement of use of any Trademark (or the addition to any Trademark Registration of), the Debtor shall promptly notify the Secured Party in writing thereof and the provisions of this Agreement shall automatically apply thereto. The Secured Party shall be authorized to amend such Schedules A, B and C as appropriate to include such additional Trademarks, Trademark Registrations and Trademark Rights, without the necessity for the Debtor's approval of or signature to such amendment, and the Debtor shall do all such other acts (at its own expense) deemed necessary or appropriate by the Secured Party to implement and preserve the Secured Party's interest therein (including, but not limited to, executing and delivering and recording in all places where this Agreement or notice thereof is recorded, an appropriate counterpart of or supplement to this Agreement). Such additional Trademarks, Trademark Registrations and Trademark Rights shall be automatically included in the definition of the terms "Trademarks", "Trademark Registrations" and "Trademark Rights", as such terms are used herein.

§7. Power of Attorney.

(a) The Debtor hereby irrevocably constitutes and appoints the Secured Party (or the Secured Party's designee), with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of the Debtor and in the name of the Debtor or in the secured Party's own name (or the Secured Party's designee), upon the occurrence and during the continuance of an Event of Default, for the purpose of carrying out the term of this Agreement, to take any and all appropriate action and to execute any and all documents and instruments that may be necessary or desirable to accomplish the purposes of this Agreement and, without limiting the generality of the foregoing, hereby gives the Secured Party the power and right, on behalf of the Debtor, without notice to or assent by the Debtor, to do the following:

(i) Generally to sell, transfer, pledge, make any agreement with respect to or otherwise deal with any of the Trademark Collateral in such manner as is consistent with the Uniform Commercial Code as enacted by The Commonwealth of Massachusetts from time to time and as fully and completely as though the Secured Party were the absolute owner thereof for all purposes, and to do at the Debtor's expense, at any time, or from time to time, all acts and things which the Secured Party deems reasonably necessary to protect, preserve or realize upon the Trademark Collateral and the Secured Party's security interest therein, in order to effect the intent of this Agreement, all as fully and effectively as the Debtor might do, including, without limitation, (A) execution and delivery of any and all agreements, documents, instruments of assignment, licenses or transfers of any of the Trademark Collateral, and do all other acts, which the Debtor is obligated to execute or deliver or perform under any provision of this Agreement and which the Debtor fails to execute, deliver or perform, and (B) execution of any and all documents, statements, certificates, instruments or agreements deemed necessary or advisable by the Secured Party (or the Secured Party's designee) to effect any purpose set forth herein; and

(ii) To file and/or prosecute such financing statements, continuation statements, and amendments with respect hereto, with or without the Debtor's signature, or a photocopy of this Agreement in substitution for a financing statement, as the Secured Party may deem appropriate and to execute such financing statements, continuation statements, and amendments which may require the Debtor's signature.

(b) To the extent permitted by law, the Debtor hereby ratifies all that said attorneys shall lawfully do or cause to be done by virtue hereof. This power of attorney is a power coupled with an interest and shall be irrevocable.

(c) The powers conferred on the Secured Party hereunder are solely to protect its interests in the Trademark Collateral and shall not impose any duty upon it to exercise any such powers. The Secured Party shall be accountable only for the amounts that it actually receives as a result of the exercise of such powers and neither it nor any of its officers, directors, employees or agents shall be responsible to the Debtor for any act or failure to act, except for their own gross negligence or willful misconduct.

**§8. Remedies.** If an Event of Default shall have occurred and be continuing, the Secured Party may, without notice or demand to the Debtor, declare this Agreement to be in default, and the Secured Party shall thereafter have in any jurisdiction in which enforcement hereof is sought, in addition to the right to collect, enforce and settle claims in respect of the Trademark Collateral and all other rights and remedies of a holder of the Trademark collateral, the rights and remedies of a secured party under the Uniform Commercial Code. The Secured Party shall give to the Debtor at least ten Business Days' prior written notice of the time and place of any public sale of any of the Trademark Collateral, including negotiable or non-negotiable instruments, securities, investment property or other writings evidencing any of the Trademark Collateral, or of the time after which any private sale or any other intended disposition is to be made. The Debtor hereby acknowledges that ten Business Days' prior written notice is reasonable notice. In addition, the Debtor waives any and all rights that it may have to judicial hearing in advance of the enforcement of any of the Secured Party's rights hereunder.

**§9. Enforcement of Trademark Rights.**

(a) Except as otherwise provided in §3 hereof, and notwithstanding §2(b) hereof, the Debtor shall have the right and the obligation to commence and prosecute in its own name, as a real party in interest, for its own benefit and at its own expense, such suits, proceedings or other actions to restrain, prevent or recover for infringement, misuse, unfair competition, dilution or other damage as are in its reasonable business judgment necessary or appropriate to maintain, protect and enforce the Trademarks, Trademark Registrations, Trademark Rights and Associated Goodwill. The Debtor shall indemnify and hold harmless the Secured Party from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, judgments, suits, costs, expenses or disbursements (including but not limited to attorneys' fees) of any kind whatsoever which may be imposed on, incurred or suffered by or asserted against the Secured Party in connection with or in any way arising out of such suits, proceedings or actions.

(b) Upon the occurrence and during the continuance of an Event of Default, the Secured Party shall have the right, but in no way shall be obligated, to bring suit in the name of the Debtor or the Secured Party (in the sole discretion of the Secured Party) to protect, maintain or enforce any of the Debtor's rights or interest in, to or under the Trademark Collateral or any part thereof, in which event the Debtor shall at the request of the Secured Party (and at the Debtor's expense) do any and all lawful acts and things, and execute any and all documents and instruments requested by the Secured Party, in furtherance of such protection, maintenance or enforcement; the Debtor shall promptly upon demand indemnify and reimburse the Secured Party for all liabilities, obligations, costs, expenses or disbursements imposed on, incurred or suffered by or asserted against the Secured Party in the exercise of its rights under this §9(b) and any unreimbursed amounts shall constitute Obligations for all purposes hereof. In the event the Secured Party shall elect not to bring suit to protect, maintain or enforce any such rights or interests of the Debtor, the Debtor shall use all reasonable measures, whether by action, suit, proceeding or otherwise, to protect, maintain and enforce such rights and interests, and for that purpose shall diligently maintain any such action, suit or proceeding necessary or appropriate for such protection, maintenance or enforcement.

**§10. Indemnification.** The Debtor shall indemnify and hold harmless the Secured Party from and against, and shall pay to the Secured Party on demand, any and all claims, actions, suits, judgments, penalties, losses, damages, costs, disbursements, expenses, obligations or liabilities of any kind or nature (except those resulting from the Secured Party's gross negligence or willful misconduct) arising in any way out of or in connection with this Agreement, the Trademark Collateral, custody, preservation, use, operation, sale, license (or other transfer or disposition) of the Trademark collateral, any alleged infringement of the intellectual property rights of any third party, the production, marketing, delivery and sale of the goods and services provided under or in connection with any of the Trademarks or the Trademark Collateral, the sale of, collection from or other realization upon any of the Trademark Collateral, the failure of the Debtor to perform or observe any of the provisions hereof, or matters relating to any of the foregoing, in all cases prior to the effectiveness of the §2(b) Assignment. The Debtor shall also indemnify and hold harmless the Secured Party from and against any and all claims, actions, suits, judgments, penalties, losses, damages, costs, disbursements, expenses, obligations or liabilities arising out of or in connection with any fault, negligence, act or omission of the Debtor (regardless of whether such fault, negligence, act or omission occurred or occurs prior to or after such effectiveness). The amounts of any unpaid indemnity provided for in this **§10** shall constitute Obligations for all purposes hereof. The Debtor shall not make any claim against the Secured Party for or in connection with the exercise or enforcement by the Secured Party of any right or remedy granted to it hereunder, or any action taken or omitted to be taken by the Secured Party hereunder (except for the gross negligence or willful misconduct of the Secured Party).

**§11. No Obligation of the Secured Party.** The rights granted to the Secured Party hereunder are solely for the protection of the Secured Party and nothing herein contained shall impose on the Secured Party any duties or obligations with respect to the Trademark Collateral or any property of the Debtor received hereunder beyond reasonable care in its custody and preservation while in the Secured Party's possession.

**§12. Termination of Agreement.** The obligations of the Debtor and the rights and powers granted to the Secured Party hereunder shall continue in full force and effect until the Obligations have been indefeasibly paid or satisfied in full, at which time such obligations, rights and powers shall terminate and be of no further force and effect, provided, however, that this Agreement shall continue to be effective or shall be reinstated, as the case may be, if at any time payment or other satisfaction of any of the obligations is rescinded or must otherwise be restored or returned upon the bankruptcy, insolvency, or reorganization of the Debtor, or otherwise, as though such payment had not been made or other satisfaction occurred. No invalidity, irregularity or unenforceability by reason of the Bankruptcy Code or any insolvency or other similar law, or any law or order of any government or agency thereof purporting to reduce, amend or otherwise affect, the Obligations, shall impair, affect, be a defense to or claim against the Obligations of the Debtor under this Agreement.

**§13. GOVERNING LAW.** THIS AGREEMENT IS INTENDED TO TAKE EFFECT AS A SEALED INSTRUMENT, SHALL BE BINDING UPON THE DEBTOR, ITS SUCCESSORS AND ASSIGNS, SHALL INURE TO THE BENEFIT OF THE SECURED PARTY, ITS SUCCESSORS AND ASSIGNS AND SHALL BE CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE COMMONWEALTH OF MASSACHUSETTS (WITHOUT REFERENCE TO CONFLICTS OF LAWS PRINCIPLES).

**§14. Jurisdiction.** The Debtor agrees that any suit for the enforcement of this Agreement may be brought in the courts of The Commonwealth of Massachusetts or any federal court sitting therein and consents to the non-exclusive jurisdiction of such court and to service of process in any such suit being made upon the Debtor by certified or registered mail at the address specified in the Loan Agreement. The Debtor hereby waives any objection that it may now or hereafter have to the venue of any such suit or any such court or that such suit is brought in an inconvenient court.

**§15. Waiver of Jury Trial.** THE DEBTOR WAIVES ITS RIGHT TO A JURY TRIAL WITH RESPECT TO ANY ACTION OR CLAIM ARISING OUT OF ANY DISPUTE IN CONNECTION WITH THIS AGREEMENT, ANY RIGHTS OR OBLIGATIONS HEREUNDER OR THE PERFORMANCE OF ANY SUCH RIGHTS OR OBLIGATIONS.

**§16. Assignment.** In the event of a sale or assignment by the Secured Party of all or any of the obligations held by it in accordance with the provisions of the Loan Agreement, the Secured Party may assign or transfer its rights and interests under this Agreement in whole or in part to the purchaser or purchasers of such Obligations, whereupon such purchaser or purchasers shall become vested with all of the powers and rights of the Secured Party hereunder, and the Secured Party shall thereafter be forever released and fully discharged from any liability or responsibility hereunder with respect to the rights and interests so assigned.

**§17. Miscellaneous.** The headings of this Agreement are for convenience only and shall not define or limit the provisions thereof. This Agreement and all rights and obligations hereunder shall be binding upon the Debtor and its respective successors and assigns, and shall inure to the benefit of the Secured Party and its successors and assigns. If any term of this Agreement shall be held to be invalid, illegal or unenforceable, the validity of all other terms hereof shall in no way be affected thereby, and this Agreement shall be construed and be enforceable as if such invalid, illegal or unenforceable term had not been included herein. This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which shall be an original, but all of which together shall constitute one instrument. The Debtor acknowledges receipt of a copy of this Agreement.

**§18. Notices.** All notices and other communications made or required to be given pursuant to this Agreement shall be made or given, and shall take effect, in accordance with the manner specified in the Loan Agreement.

**§19. Waivers.** No course of dealing between the Debtor and the Secured Party, nor any failure to exercise, nor any delay in exercising, on the part of the Secured Party, any right, power or privilege hereunder or under the Security Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or thereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

**§20. Cumulative Remedies.** All of the Secured Party's rights and remedies with respect to the Trademarks, whether established hereby or by the Security Agreement or by any other agreements or by law, shall be cumulative and may be exercised singularly or concurrently. This

Agreement is supplemental to the Security Agreement, and nothing contained herein shall in any way derogate from any of the rights or remedies of the secured Party contained therein.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as a sealed instrument as of the date first above written.

MIJA INDUSTRIES, INC.

By: 

Name: John J. McSheffrey,  
Title: President

CITIZENS CAPITAL, INC.

By: 

Name: David G. Morris  
Title: Director



CERTIFICATE OF ACKNOWLEDGMENT

COMMONWEALTH OF MASSACHUSETTS )  
 )  
 ) ss  
 )  
COUNTY OF SUFFOLK )

Before me, the undersigned, a Notary Public in and for the county aforesaid, on this 24<sup>th</sup> day of June, 2003 personally appeared John J McSheffrey to me known personally, and who, being by me duly sworn, deposes and says that he is the President of MIJA Industries, Inc. and that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and said John J. McSheffrey acknowledged said instrument to be the free act and deed of said corporation.

*Benedette A LeBlanc*  
Notary Public  
My commission expires: May 7, 2010

COMMONWEALTH OF MASSACHUSETTS )  
 )  
 ) ss  
 )  
COUNTY OF SUFFOLK )

Before me, the undersigned, a Notary Public in and for the county aforesaid on this 24<sup>th</sup> day of June, 2003 personally appeared David G. Morris to me known personally, and who, being by me duly sworn, deposes and says that he is the Director of Citizens Capital, Inc., and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and said David G. Morris acknowledged said instrument to be the free act and deed of said corporation.

*Benedette A LeBlanc*  
Notary Public  
My commission expires: May 5, 2010

Schedule A

Licensed Trademarks

None

**Schedule B****U.S. Registrations**

<b><u>Trademark</u></b>	<b><u>Registration Number</u></b>	<b><u>Current Status</u></b>
"MIJA" (and Design)	1,748,311	Renewed January 26, 2003

**Pending U.S. Applications**

<b><u>Trademark</u></b>	<b><u>Serial Number</u></b>	<b><u>Filing Date</u></b>
"EN-GAUGE"	76/395,309	April 15, 2002
"M" (and Design)	76/424,741	June 21, 2002
"M" (and Design)	76/424,740	June 21, 2002

Schedule C

Foreign Applications and Registrations

None