

Form PTO-1594 (Rev. 10/02) OMB No. 0651-0027 (exp. 6/30/2005) Tab settings $\Rightarrow \Rightarrow \Rightarrow$	<b>RECORDATION FORM COVER SHEET</b> <b>TRADEMARKS ONLY</b>	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.

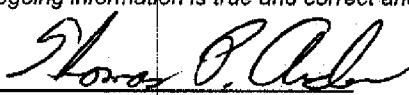
<p>1. Name of conveying party(ies): <u>Beta Brands Limited</u></p> <p> <input type="checkbox"/> Individual(s)                      <input type="checkbox"/> Association  <input type="checkbox"/> General Partnership              <input type="checkbox"/> Limited Partnership  <input checked="" type="checkbox"/> Corporation-State <u>Canada</u>  <input type="checkbox"/> Other _____                 </p> <p>Additional name(s) of conveying party(ies) attached? <input type="checkbox"/> Yes <input type="checkbox"/> No</p>	<p>2. Name and address of receiving party(ies) Name: <u>CIT Business Credit Canada Inc.</u></p> <p>Internal Address: _____</p> <p>Street Address: <u>207 Queens Quay West, Suite 700</u></p> <p>City: <u>Toronto</u> State: <u>Ontario, Canada</u> Zip: <u>M5J1A7</u></p> <p> <input type="checkbox"/> Individual(s) citizenship _____  <input type="checkbox"/> Association _____  <input type="checkbox"/> General Partnership _____  <input type="checkbox"/> Limited Partnership _____  <input checked="" type="checkbox"/> Corporation-State <u>Canada</u>  <input type="checkbox"/> Other _____                 </p> <p><small>If assignee is not domiciled in the United States, a domestic representative designation is attached: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No (Designations must be a separate document from assignment) Additional name(s) &amp; address(es) attached? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</small></p>
<p>3. Nature of conveyance:</p> <p> <input type="checkbox"/> Assignment                              <input type="checkbox"/> Merger  <input checked="" type="checkbox"/> Security Agreement                  <input type="checkbox"/> Change of Name  <input type="checkbox"/> Other _____                 </p> <p>Execution Date: <u>April 30, 2003</u></p>	

<p>4. Application number(s) or registration number(s):</p> <p>A. Trademark Application No.(s)</p>	<p>B. Trademark Registration No.(s)</p> <p><u>1,662,628 and 2,698,543</u></p>
Additional number(s) attached <input type="checkbox"/> Yes <input type="checkbox"/> No	

<p>5. Name and address of party to whom correspondence concerning document should be mailed:</p> <p>Name: <u>Thomas P. Arden</u></p> <p>Internal Address: <u>Holland &amp; Knight LLC</u></p> <p>Street Address: <u>131 S. Dearborn St., 30th Floor</u></p> <p>City: <u>Chicago</u> State: <u>IL</u> Zip: <u>60603</u></p>	<p>6. Total number of applications and registrations involved: <span style="border: 1px solid black; padding: 2px;">2</span></p> <p>7. Total fee (37 CFR 3.41).....\$ <u>65.00</u></p> <p> <input type="checkbox"/> Enclosed  <input type="checkbox"/> Authorized to be charged to deposit account                 </p> <p>8. Deposit account number: <u>13-0045</u></p> <p><small>(Attach duplicate copy of this page if paying by deposit account)</small></p>
--	--

**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.*

<u>Thomas P. Arden</u> Name of Person Signing	 Signature	<u>July</u> , 2003 Date
--	---	----------------------------

Total number of pages including cover sheet, attachments, and document: 29

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

CH \$40.00 130045 1662628

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

**WASHINGTON, D.C. 20231**

Mark: SWEET TOWN  
Registration No. 2,698,543  
Registrant: Beta Brands Limited  
1156 Dundas Street East  
London, Ontario N5W 5Y4  
CANADA

**DOMESTIC REPRESENTATIVE OF FOREIGN REGISTRANT**

The undersigned hereby appoints Thomas P. Arden, Peter J. Strand, and Elayna T. Pham, members of the Bar of the State of Illinois, and of the firm of Holland & Knight LLC, as domestic representatives of registrant, Beta Brands Limited; to file and receive all documents relating to Registration No. 2,698,543; and to transact all business in the Patent and Trademark Office in connection therewith, including filing and receiving notice of the recordal of the security agreement filed herewith.

Registrant requests that all correspondence be sent to Thomas P. Arden, whose postal address is Holland & Knight LLC, 131 S. Dearborn St., 30<sup>th</sup> Floor, Chicago, Illinois 60603, and who is designated as registrant's representative on whom notices or process in proceedings affecting the mark may be served.

All prior designations of domestic representation with respect to these trademark registrations are rescinded.

Dated: July 7, 2003

BETA BRANDS LIMITED

By: 

Name: Thomas P. Arden

Title: Attorney for Registrant

CHO1 #1290582 v1

**TRADEMARK**  
**REEL: 002679 FRAME: 0237**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

**WASHINGTON, D.C. 20231**

Mark: CHAMPAGNE  
Registration No. 1,662,628  
Registrant: Beta Brands Limited  
1156 Dundas Street East  
London, Ontario N5W 5Y4  
CANADA

**DOMESTIC REPRESENTATIVE OF FOREIGN REGISTRANT**

The undersigned hereby appoints Thomas P. Arden, Peter J. Strand, and Elayna T. Pham, members of the Bar of the State of Illinois, and of the firm of Holland & Knight LLC, as domestic representatives of registrant, Beta Brands Limited; to file and receive all documents relating to Registration No. 1,662,628; and to transact all business in the Patent and Trademark Office in connection therewith, including filing and receiving notice of the recordal of the security agreement filed herewith.

Registrant requests that all correspondence be sent to Thomas P. Arden, whose postal address is Holland & Knight LLC, 131 S. Dearborn St., 30<sup>th</sup> Floor, Chicago, Illinois 60603, and who is designated as registrant's representative on whom notices or process in proceedings affecting the mark may be served.

All prior designations of domestic representation with respect to these trademark registrations are rescinded.

Dated: July 7, 2003

BETA BRANDS LIMITED

By: 

Name: Thomas P. Arden

Title: Attorney for Registrant

CHO1 #1290582 v1

**TRADEMARK**  
**REEL: 002679 FRAME: 0238**

**TRADE-MARK SECURITY AGREEMENT**

**TO: CIT Business Credit Canada Inc.**  
287 Queens Quay West, Suite 700  
Toronto, Ontario M5J 1A7

**WHEREAS:**

- A. **BETA BRANDS LIMITED** (the "Borrower") is indebted or liable, or may become indebted or liable, to **CIT BUSINESS CREDIT CANADA INC.** (the "Lender") pursuant to a financing agreement dated with effect as of the date hereof among, *inter alia*, the Borrower and the Lender (the "Financing Agreement");
- B. To secure the payment and performance of all of the indebtedness, liabilities and obligations incurred by the Borrower, or to be incurred by the Borrower, to and in favour of the Lender, pursuant to the terms of the Financing Agreement, the Borrower has entered into, *inter alia*, a general security agreement in favour of the Lender dated with effect as of the date hereof (the "General Security Agreement"); and
- C. As additional security for the due payment and performance of all of the indebtedness, liabilities and obligations incurred by the Borrower, or to be incurred by the Borrower, to and in favour of the Lender, pursuant to the terms of the Financing Agreement, the Borrower has agreed to pledge, mortgage, hypothecate and grant a security interest in all of its right, title, interest and benefit in, to, under and in respect of the Trade-mark Collateral (as hereinafter defined) to the Lender, on the terms and conditions set forth below.

**NOW THEREFORE**, in consideration of the extension of credit by the Lender to the Borrower and other good and valuable consideration, the receipt and sufficiency of which is hereby conclusively acknowledged by the Borrower, the Borrower hereby agrees with and in favour of the Lender as follows:

**1. Defined Terms.**

In this Agreement, the following terms shall have the following meanings:

- (a) "Agreement" means this Agreement, including the Schedules, as the same may be amended, varied, supplemented, restated, renewed or replaced at any time and from time to time;
- (b) "Business Days" shall have the same meaning ascribed thereto in the Financing Agreement;
- (c) "Default" shall have the same meaning ascribed thereto in the Financing Agreement;
- (d) "Event of Default" shall have the same meaning ascribed thereto in the Financing Agreement;

\\CMPT\CLIENTS\CIT Business Credit (Canada) Inc\Beta Brands\Docs\Security Agreements\Trade-mark security agreement v04.doc

- (c) "Financing Agreement" has the meaning specified in Recital A to this Agreement;
- (f) "General Security Agreement" has the meaning specified in Recital B to this Agreement;
- (g) "Law" shall have the same meaning ascribed thereto in the Financing Agreement;
- (h) "Material Adverse Effect" shall have the same meaning ascribed thereto in the Financing Agreement;
- (i) "Obligations" shall have the same meaning ascribed thereto in the Financing Agreement;
- (j) "Permitted Encumbrances" shall have the same meaning ascribed thereto in the Financing Agreement;
- (k) "Person" shall have the same meaning ascribed thereto in the Financing Agreement";
- (l) "Trade-mark" and "Trade-marks" have the meanings specified in Section 2(a) of this Agreement; and
- (m) "Trade-mark Collateral" has the meaning specified in Section 2 of this Agreement.

## 2. Grant of Security.

As general and continuing collateral security for the payment and performance of all Obligations, the Borrower hereby grants a general continuing collateral lien, charge and security interest in all of the world-wide right, title, benefit and interest in and in respect of the following property and assets now existing, owned or used or hereafter existing, owned, acquired, adopted or used by the Borrower or any of its successors or assigns or to which the Borrower or any of its successors or assigns is or may hereafter otherwise become entitled (collectively, the "Trade-mark Collateral"):

- (a) all trade-marks, trade names, corporate names, company names, business names, fictitious business names, trade dress, service marks, certification marks, collective marks, logos and other forms of business identifiers, and all prints and labels on which any of the foregoing have appeared or appear and designs (all of the foregoing items in this Section 2(a) being hereinafter individually referred to as a "Trade-mark" and collectively referred to as the "Trade-marks"), all registrations and recordings thereof and all applications in connection therewith, whether pending or in preparation for filing, including registrations, recordings and applications with the Canadian Trade marks Office or in any office or agency of the United States of America or any foreign country, including those referred to in Item A of Schedule I hereto and all reissues, extensions or renewals thereof;

- (b) all Trade-mark licenses and other agreements providing the Borrower with the right to use and/or exploit any items of the type described in Section 2(a) including each Trade-mark licence referred to in Item B of Schedule I hereto;
- (c) all of the goodwill of the business connected with the use of, and symbolized by, any Trade-mark described in Section 2(a);
- (d) the right to sue third parties for past, present and future infringements of any Trade-mark Collateral described in Section 2(a) and, to the extent applicable, Section 2(b); and
- (e) all proceeds of, and rights associated with, the foregoing, including any claim by the Borrower against third parties for past, present or future infringement or dilution of any Trade-mark, Trade-mark registration or Trade-mark licence, including any Trade-mark, Trade-mark registration or Trade-mark licence referred to in Item A and Item B of Schedule I herein, or for any injury to the goodwill associated with the use of any such Trade-mark or for breach or enforcement of any Trade-mark licence and all rights corresponding thereto throughout the world.

### 3. Agreement for Security Purposes.

This Agreement has been executed and delivered by the Borrower for the purpose of recording the lien, charge and security interest of the Lender in the Trade-mark Collateral relating to the Trade-marks registered or pending in Canada and referred to in Item A to Schedule I with the Canadian Trade-marks Office and recording the lien, charge and security interest of the Lender in the Trade Mark Collateral relating to the Trade-marks registered or pending in the United States and referred to in Item I to Schedule A with the United States Patent and Trade Marks Office, in each case, to the extent such lien, charge and security interest may be so recorded therein. The lien, charge and security interest granted hereby have been granted as a supplement to, and not in limitation of, the lien, charge and security interest granted to the Lender under the General Security Agreement. The General Security Agreement (and all rights and remedies of the Lender provided for therein) shall remain in full force and effect in accordance with its terms.

### 4. Attachment of Liens.

The Borrower confirms that value has been given, that the Borrower has rights in the Trade-mark Collateral, and that the parties have not agreed to postpone the time for attachment of the lien, charge and security interest constituted hereby in any of the Trade-mark Collateral.

### 5. Limitations on Grant of Liens.

If the grant of any lien, charge and security interest in respect of any Trade-mark licence hereunder would result in the termination or breach of such licence, then the applicable Trade-mark licence shall not be subject to any lien, charge or security interest hereunder but shall, in the fullest extent permitted thereby, be held in trust by the Borrower for the Lender and on

exercise by the Lender of any of its rights under this Agreement following an Event of Default, assigned by the Borrower, as directed by the Lender.

#### 6. Enforcement; Remedies.

If an Event of Default occurs, the Lender may exercise all rights and remedies granted to it in this Agreement, the General Security Agreement and the Financing Agreement, and all rights and remedies of a secured party provided at Law. Without limitation, the Borrower hereby acknowledges and affirms that certain rights and remedies given to the Lender with respect to the lien, charge and security interest in the Trade-mark Collateral granted hereby are set forth in the General Security Agreement, the terms and provisions of which (and all rights and remedies of the Lender provided for therein) are incorporated by reference herein as if fully set forth herein.

#### 7. Representations and Warranties.

The Borrower hereby represents and warrants to the Lender, and acknowledges that the Lender is relying thereon, notwithstanding any investigation by the Lender or otherwise, that:

- (a) **Title; No Other Liens.** Except for Permitted Encumbrances, the Borrower owns all of the Trade-mark Collateral free and clear of any and all liens, charges and security interests of others (other than the liens, charges and security interests in favour of the Lender). No security agreement, financing statement or other current and valid like public notice with respect to all or any part of the Trade-mark Collateral is on file or on record in any public office, except such as may have been filed in respect of Permitted Encumbrances.
- (b) **First Priority Liens.** The lien, charge and security interest granted by the Borrower to the Lender pursuant to this Agreement constitute a first (subject to Permitted Encumbrances) priority and fully perfected lien, charge and security interest in the Trade-mark Collateral.
- (c) **Power and Authority; Authorization.** The Borrower has the power and authority and the legal right to execute and deliver, to perform its obligations under, and to grant the lien, charge and security interest in the Trade-mark Collateral pursuant to, this Agreement, and the Borrower has taken all necessary corporate action to authorize its execution, delivery and performance of, and grant of the lien, charge and security interest in the Trade-mark Collateral pursuant to, this Agreement.
- (d) **Enforceability.** This Agreement constitutes a legal, valid and binding obligation of the Borrower enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general principles of equity.
- (e) **No Conflict.** The execution, delivery and performance of this Agreement will not violate any provision of any requirement of Law or contractual obligation of the Borrower and will not result in the creation or imposition of any lien, charge or

security interest on any of the Trade-mark Collateral. No consent or authorization of, filing with, or other act by or in respect of, any arbitrator or governmental authority and no consent of any other Person (including any shareholder or Lender of the Borrower), is required in connection with the execution, delivery, performance, validity or enforceability of this Agreement, except for such as have been obtained or made and are in full force and effect, and the terms of which have been disclosed to the Lender.

(f) *Trade-mark Collateral.* With respect to the Trade-mark Collateral:

- (i) the Trade-marks are valid, subsisting, unexpired, enforceable and has not been abandoned, adjudged invalid or unenforceable, in whole or in part;
- (ii) except as set forth in Schedule I, no Trade-marks of the Borrower has been licensed or franchised to any other Person;
- (iii) the Borrower has made all necessary filings and recordings in Canada and the United States of America, as applicable, to protect its interest in the Trade mark Collateral, and in such other appropriate offices throughout the world;
- (iv) the Borrower is the exclusive owner of the entire right, title and interest in and to such Trade-marks owned by the Borrower and is entitled to use the Trade-marks leased or licensed to the Borrower and, to the Borrower's knowledge, no claim has been made that the use of such Trade-marks does or may violate the asserted rights of any other Person; and
- (v) no holding, decision or judgment has been rendered by any governmental authority in any litigation, action, investigation, or like proceeding in which the Borrower was or is a party which would limit, cancel or question the validity of any Trade-marks of the Borrower which has had or is likely to have, when aggregated with all other such holdings, decisions or judgments, a Material Adverse Effect upon the Borrower's business, property or financial condition and the Borrower is not aware of any action or proceeding which would limit, cancel or question the validity of any Trade-marks of the Borrower which has had or is likely to have, when aggregated with all other such actions or proceedings, a Material Adverse Effect upon the Borrower's business, property or financial condition.

## 8. Covenants.

The Borrower covenants and agrees with the Lender that:

- (a) *Further Documentation.* At any time and from time to time, upon the written request of the Lender, and at the sole expense of the Borrower, the Borrower will promptly and duly execute and deliver such further instruments and documents and take such further action as the Lender may reasonably request for the purpose



of obtaining or preserving the full benefits of this Agreement and of the rights and powers herein granted. The Borrower agrees that the Lender will have the right to require that this Agreement be amended or supplemented (i) to reflect any changes in Law, whether arising as a result of statutory amendments, court decisions or otherwise; (ii) to facilitate the creation and registration of appropriate security in all appropriate jurisdictions; or (iii) if the Borrower merges or amalgamates with any other Person or enters into any corporate reorganization, in each case in order to confer upon the Lender the lien, charge and security interest intended to be created hereby.

- (b) **Payment of Expenses; Indemnification.** The Borrower agrees to pay, and to indemnify and save the Lender harmless from, any and all liabilities, costs and expenses (including legal fees and expenses on a solicitor and his own client basis): (i) incurred by the Lender in the preparation, registration, administration or enforcement of this Agreement; (ii) with respect to, or resulting from, any delay by the Borrower in paying any and all excise, sales, goods and services or other taxes which may be payable or determined to be payable with respect to any of the Trade-mark Collateral; (iii) with respect to, or resulting from, any delay by the Borrower in complying with any requirement of Law applicable to any of the Trade-mark Collateral; or (iv) incurred by the Lender in connection with any of the transactions contemplated by this Agreement. The amount of all such liabilities, costs and expenses shall be deemed to form part of the Obligations, shall be payable on demand by the Lender and the payment of all such liabilities, costs and expenses shall be secured hereby.
- (c) **Limitation on Liens on Trade-mark Collateral.** The Borrower shall not create, incur or permit to exist, shall defend the Trade-mark Collateral against, and shall take such other action as is necessary to remove, any lien, charge or security interest or claim on or to the Trade-mark Collateral other than Permitted Encumbrances, and the Borrower shall defend the right, title, benefit and interest of the Lender in and to any of Trade-mark the Collateral against the claims and demands of all Persons.
- (d) **Limitations on Dispositions of Collateral.** The Borrower shall not sell, transfer, lease or otherwise dispose of any of the Trade-mark Collateral, or attempt, offer or contract to do so except as permitted in writing by the Lender.
- (e) **Trade-mark Collateral.**
- (i) The Borrower shall, with respect to each of its Trade-marks: (A) maintain the quality of products and services offered under such Trade-marks; (B) employ such Trade-marks with the appropriate notice of registration sufficient to obtain the benefit of such notice; (C) as soon as practicable after the filing of a Trade-mark application for any mark which is confusingly similar or a colourable imitation of such Trade-marks, grant to the Lender and cause to be perfected a lien, charge and security interest in such Trade-marks pursuant to this Agreement; and (D) not (and not permit

any licensee or sublicensee thereof (s) do any act or knowingly omit to do any act whereby any Trade-marks may become invalidated.

- (ii) The Borrower shall notify the Lender immediately if it knows, or has reason to know, that any application or registration relating to any Trade-mark may expire, become abandoned or dedicated to the public domain, or of any material adverse determination or development (including the institution of, or any such determination or development in, any proceeding in the Canadian Trade-mark Office or any court or tribunal in any country) regarding the Borrower's ownership of the Trade-marks or its right to register the same or to keep and maintain the same.
- (iii) Whenever the Borrower, either by itself or through any agent, employee, licensee or designee, will file an application for the registration of any Trade-mark with the Canadian Trade-mark Office or any similar office or agency in any other country or any political subdivision thereof or any similar office or agency in any other country or any political subdivision thereof, the Borrower shall report such filing to the Lender within three (3) Business Days after such filing occurs. Upon request of the Lender, the Borrower will execute and deliver any and all agreements, instruments, documents, and papers as the Lender may request to evidence the Lender's lien, charge and security interest in any Trade-mark and the goodwill of the business symbolized thereby of the Borrower connected with the use of and symbolized by the Trade-marks, and the Borrower hereby constitutes the Lender its attorney-in-fact to execute and file all such writings for the foregoing purposes, all acts of such attorney being hereby ratified and confirmed; such power being coupled with an interest is irrevocable until the Obligations have been indefeasibly paid and performed in full. Notwithstanding anything herein to the contrary, unless an Event of Default will have occurred, the Lender will from time to time execute and deliver, upon the reasonable written request of the Borrower, any and all instruments, certificates or other documents, in a form reasonably acceptable to the Lender, necessary or appropriate in the reasonable judgment of the Borrower for the Borrower to continue to exploit, licence, use, enjoy and protect the Trade-marks; provided, however, that any such instrument, certificate or other document will, in the reasonable judgment of the Lender, in no way impair, adversely alter, or otherwise adversely affect the lien, charge and security interest in the Trade-mark Collateral granted hereby.
- (iv) The Borrower shall take all reasonable and necessary steps, to the extent reasonably practicable, including, without limitation, in any proceeding before the Canadian Trade-mark Office, or any similar office or agency in any other country or any political subdivision thereof, to maintain and pursue each application (and to obtain the relevant registration) and to maintain each registration of the Trade-marks, including, without

limitation, filing of applications for renewal, affidavits of use and affidavits of incontestability. If any Trade-marks included in the Trade-mark Collateral is infringed, misappropriated or diluted by a third party in any manner which would have a Material Adverse Effect and would materially impair such Trade-mark Collateral, the Borrower shall promptly notify the Lender after it learns of such infringement, misappropriation or dilution and the Borrower shall promptly take such action (including entering into licences or covenants not to sue) as is appropriate under the circumstances to protect such Trade-mark.

9. **Lender's Appointment as Attorney-in-Fact.**

- (a) The Borrower hereby irrevocably constitutes and appoints the Lender and any officer or agent of the Lender, with full power of substitution from time to time, as the Borrower's true and lawful attorney-in-fact, with full irrevocable and unconditional power and authority in the place and stead of the Borrower and in the name of the Borrower or in its own name, to do on the Borrower's behalf anything which can lawfully be done by an attorney in connection with the security interest granted herein and, without limitation, to execute any and all documents and instruments and do any assignments, transfers, registrations, agreements, licenses, assurances and things which may be necessary or desirable to accomplish the purposes of this Agreement, under the covenants and provisions contained in this Agreement, the General Security Agreement and the Financing Agreement and to use the name of the Borrower in the exercise of all or any of the powers hereby conferred on the Lender and the Borrower declares this to be a general power of attorney in the widest respect. The Borrower hereby ratifies all that said attorneys will lawfully do or cause to be done by virtue hereof. This power of attorney is a power coupled with an interest and will be irrevocable until the Obligations have been indefeasibly paid and performed in full.
- (b) The Borrower also authorizes the Lender, at any time and from time to time, to execute any endorsements, assignments or other instruments or conveyance or transfer with respect to the Trade-mark Collateral in connection with any sale provided for herein or pursuant to the General Security Agreement or the Financing Agreement.

10. **Termination of this Agreement.**

Upon indefeasible payment and performance in full of all of the Obligations, this Agreement shall be and become fully ended and terminated and all right, title, benefit and interest in and in respect of the Trade-mark Collateral pledged, mortgaged, hypothecated and secured by the Borrower hereunder shall be released and all covenants and agreements of the Borrower hereunder shall be at an end and the Lender shall, upon the written request of the Borrower and at the expense of the Borrower, execute such instruments and other documents and give such notifications or assurances as may be necessary to fully release, cancel and discharge this Agreement in the circumstances.

**11. Performance by Lender of Borrower's Obligations.**

If the Borrower fails to perform or comply with any of its agreements contained herein and the Lender, as provided for by the terms of this Agreement, will itself perform or comply, or otherwise cause performance or compliance, with any such agreements, the expenses of the Lender incurred in connection with such performance or compliance shall be payable by the Borrower to the Lender on demand, shall be added to the Obligations and secured hereby.

**12. Severability.**

If any covenant, obligation or agreement contained in this Agreement, or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such covenant, obligation or agreement to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each covenant, obligation and agreement contained in this Agreement shall be separately valid and enforceable to the fullest extent permitted by Law.

**13. Interpretation.**

The paragraph headings used in this Agreement are for convenience of reference only and are not to affect the construction hereof or be taken into consideration in the interpretation hereof. When used in this Agreement, the word "including" means "including without limitation". Any reference in this Agreement to any statute will include all regulations made thereunder from time to time, and will include such statute as the same may be amended, supplemented or replaced from time to time.

**14. No Waiver.**

The Lender shall not by any act, delay, indulgence, omission or otherwise be deemed to have waived any right or remedy hereunder or to have acquiesced in any breach of any of the terms and conditions hereof. No failure to exercise, nor any delay in exercising, on the part of the Lender, any right, power or privilege hereunder will operate as a waiver thereof. No single or partial exercise of any right, power or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other right, power or privilege. A waiver by the Lender of any right or remedy hereunder on any one occasion will not be construed as a bar to any right or remedy which the Lender would otherwise have on any future occasion. Without limiting the generality of the foregoing, this Agreement may not be waived, amended, supplemented or otherwise modified except by a written instrument executed by the Borrower and the Lender.

**15. Rights and Remedies Cumulative.**

The rights or remedies given to the Lender hereunder are in addition to and not in substitution for any rights or remedies to which the Lender may be entitled under the Financing Agreement or the General Security Agreement provided to the Lender with respect to the Obligations or under statute or at Law and may be exercised whether or not any Lender has pursued or is then pursuing any other such rights and remedies.