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4/22/03

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



102427768

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):

BF PRODUCTS, LLC 4.27.03

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

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

3. Nature of conveyance:

- Assignment Merger Security Agreement Change of Name Other

Execution Date: 04/17/2003

2. Name and address of receiving party(ies)

Name: SBU BANK

Internal Address:

Street Address: 233 GENESEE STREET

City: UTICA State: NY Zip: 13501

- Individual(s) citizenship Association General Partnership Limited Partnership Corporation-State Other FEDERAL STOCK SAVINGS BANK

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

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

A. Trademark Application No.(s)

B. Trademark Registration No.(s) 208738, 286271, 346648, 695890, 1059314, 1109417

Additional number(s) attached Yes No

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

Name: F. PAUL VELLANO, JR.

Internal Address:

Street Address: 500 SOUTH SALINA STREET SUITE 500

City: SYRACUSE State: NY Zip: 13202

6. Total number of applications and registrations involved:

8

7. Total fee (37 CFR 3.41) \$ 215

- Enclosed Authorized to be charged to deposit account

8. Deposit account number:

DO NOT USE THIS SPACE

9. Signature.

SBU BANK, by its attorney in fact

F. PAUL VELLANO, JR.

Name of Person Signing

Signature

APRIL 21, 2003

Date

Total number of pages including cover sheet, attachments, and document: 39

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

04 23/2003 TDI A21 00000082 208738

01 FC:85:1 40.00 DP 02 FC:85:2 175.00 DP

TRADEMARK REEL: 002716 FRAME: 0457

Continuation of Item 4:

1206208 and 2314936

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**TRADEMARK**  
**REEL: 002716 FRAME: 0458**

## GENERAL SECURITY AGREEMENT

**GENERAL SECURITY AGREEMENT** dated as of April 17, 2003 made by **BF PRODUCTS, LLC**, a Delaware limited liability company, with a principal place of business located at 25 Garden Street, New York Mills, New York 13417 and **BLACK FLAG BRANDS, LLC**, a New York limited liability company, with a principal place of business located at 25 Garden Street, New York Mills, New York 13417 and (individually and collectively, the "Debtor") in favor of **SBU BANK**, a federal stock savings bank with principal offices located at 233 Genesee Street, Utica, New York 13501 ("Lender").

### WITNESSETH:

**WHEREAS**, Debtor has agreed to grant the security interests contemplated by this Agreement in order to secure the payment and performance of the "Secured Obligations" as defined herein and any and all guarantees thereof.

**NOW, THEREFORE**, in consideration of the premises, Debtor hereby agrees with the Lender as follows:

#### **SECTION 1. Definitions**

1.1 Certain Defined Terms. The following terms, as used herein, have the meanings set forth below:

**"Accounts"** means all "accounts" (as presently defined in the UCC) now owned or hereafter created or acquired by Debtor and all of the following now owned or hereafter created or acquired by Debtor: (a) accounts receivables, contract rights, book debts, notes, drafts and other obligations or indebtedness owing to Debtor arising from the sale, lease or exchange of goods or other property and/or the performance of services; (b)

Debtor's rights in, to and under all purchase orders for goods, services or other property; (c) Debtor's rights to any goods, services or other property represented by any of the foregoing (including returned or repossessed goods and unpaid sellers' rights of rescission, replevin, reclamation and rights to stoppage in transit); (d) monies due to or to become due to Debtor under all contracts for the sale, lease or exchange of goods or other property and/or the performance of services including the right to payment of any interest or finance charges with respect thereto (whether or not yet earned by performance on the part of Debtor); and (e) all collateral security and guaranties of any kind given by any person with respect to any of the foregoing.

**"Collateral"** has the meaning assigned to that term in Section 2.

**"Control"** means "control" as presently defined in the UCC.

**"Copyright License"** means any oral or written agreement now or hereafter in existence granting to Debtor any right to use any copyright, as the same may be amended and in effect from time to time.

**"Copyrights"** means collectively all of the following now owned or hereafter created or acquired by Debtor: (a) all copyrights, rights and interests in copyrights, works protectable by copyright, copyright registrations and copyright applications, including, without limitation, those listed in Schedule A; (b) all renewals of any of the foregoing; (c) all income, royalties, damages and payments now or hereafter due and/or payable under any of the foregoing or with respect to any of the foregoing, including, without limitation, damages or payments for past, present or future infringements of any of the foregoing; (d) the right to sue for past, present and future infringements of any of the foregoing; (e) all rights corresponding to any of the foregoing throughout the world; and (f) all goodwill

associated with and symbolized by any of the foregoing.

**"Depository Account"** has the meaning assigned to that term in Section 7.

**"Documents"** means all "documents" (as presently defined in the UCC) or other receipts covering, evidencing or representing goods now owned or hereafter acquired by Debtor including, without limitation, all bills of lading, dock warrants, dock receipts, warehouse receipts and orders for the delivery of goods, and any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers.

**"Equipment"** means all "equipment" (as presently defined in the UCC) now owned or hereafter acquired by Debtor including, without limitation, all machinery, motor vehicles, trucks, trailers, vessels, aircraft, rolling stock and all other tangible personal property (other than Inventory) and all parts thereof and all additions and accessions thereto and replacements therefor.

**"Event(s) of Default"** means any failure by Debtor to comply with any of the terms and conditions of this Agreement.

**"Fixtures"** means all "fixtures" (as presently defined in the UCC) now owned or hereafter acquired by Debtor including, without limitation, plant fixtures, trade fixtures and business fixtures, wherever located, and all additions and accessions thereto and replacements therefor.

**"General Intangibles"** means all "general intangibles" (as presently defined in the UCC) now owned or hereafter created or acquired by Debtor including, without limitation, (a) all agreements, leases, licenses and contracts to which Debtor is or may become a

party; (b) all obligations or indebtedness owing to Debtor (other than Accounts) or other rights to receive payments of money from whatever source arising and all collateral security therefor; (c) all tax refunds and tax refund claims; (d) all Intellectual Property; (e) all choses in action and causes of action; and (f) all trade secrets and other confidential information relating to the business of Debtor including, without limitation: the names and addresses of, and credit and other business information concerning, Debtor's past, present or future customers; the prices which Debtor obtains for its services or at which it sells merchandise; policies and procedures pertaining to the sale and design of equipment, components, devices and services furnished by Debtor; information concerning suppliers of Debtor; and information concerning the manner of operation, business plans, projections, and all other information of any kind or character, whether or not reduced to writing, with respect to the conduct by Debtor of its business not generally known by the public.

**"Instruments"** means all "instruments", "chattel paper" and "letters of credit" (each as presently defined in the UCC) in which Debtor now has or hereafter acquires any rights including, without limitation, all checks, drafts, notes, bonds, debentures and certificates of deposit.

**"Intellectual Property"** means collectively all of the following: Copyrights, Copyright Licenses, Patents, Patent Licenses, Trademarks and Trademark Licenses.

**"Inventory"** means all "inventory" (as presently defined in the UCC) now owned or hereafter acquired by Debtor, wherever located, including, without limitation, finished goods, raw materials, work in process and other materials and supplies (including packaging and shipping materials) used or consumed in the manufacture or production

thereof and goods which are returned to or repossessed by Debtor.

**"Investment Property"**, of any Debtor, means all "investment property" (as presently defined in the UCC) now owned or hereafter acquired by Debtor including, without limitation, all securities (certificated and uncertificated), securities accounts, securities entitlements, commodity contracts and commodity accounts (as each such term is presently defined in the UCC).

**"Patent License"** means any oral or written agreement now or hereafter in existence granting to Debtor any right to use any invention on which a patent is in existence, as the same may be amended and in effect from time to time.

**"Patents"** means collectively all of the following now owned or hereafter created or acquired by any Debtor: (a) all patents and patent applications including, without limitation, those listed in Schedule B and the inventions and improvements described and claimed therein, and patentable inventions; (b) the reissues, divisions, continuations, renewals, extensions and continuations-in-part of any of the foregoing; (c) all income, royalties, damages and payments now or hereafter due and/or payable under any of the foregoing or with respect to any of the foregoing, including, without limitation, damages and payments for past, present and future infringements of any of the foregoing; (d) the right to sue for past, present and future infringements of any of the foregoing; (e) all rights corresponding to any of the foregoing throughout the world; and (f) all goodwill associated with any of the foregoing.

**"Proceeds"** means all "proceeds" (as presently defined in the UCC) of, and all other profits, rentals or receipts, in whatever form, arising from the collection, sale, lease, exchange, assignment, licensing or other disposition of, or realization upon, any of Debtor's

Collateral including, without limitation, all claims of Debtor against third parties for loss of, damage to or destruction of, or for proceeds payable under, or unearned premiums with respect to, policies of insurance with respect to any Collateral, and any condemnation or requisition payments with respect to any such Collateral, in each case whether now existing or hereafter arising.

**"Secured Obligations"** has the meaning assigned to that term in Section 3.

**"Security Interests"** means the security interests granted pursuant to Section 2 hereof, as well as all other security interests created or assigned as additional security for the Secured Obligations pursuant to the provisions of this Agreement.

**"Trademark License"** means any oral or written agreement now or hereafter in existence granting to Debtor any right to use any trademark, as the same may be amended and in effect from time to time.

**"Trademarks"** means collectively all of the following now owned or hereafter created or acquired by Debtor: (a) all trademarks, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, logos, other business identifiers, prints and labels on which any of the foregoing have appeared or appear, all registrations and recordings thereof, and all applications in connection therewith including, without limitation, those listed in Schedule C; (b) all renewals thereof; (c) all income, royalties, damages and payments now or hereafter due and/or payable under any of the foregoing or with respect to any of the foregoing including, without limitation, damages and payments for past, present and future infringements of any of the foregoing; (d) the right to sue for past, present and future infringements of any of the foregoing; (e) all rights corresponding to any of the foregoing throughout the world; and (f) all goodwill



associated with and symbolized by any of the foregoing.

**"UCC"** means the Uniform Commercial Code as in effect on the date hereof in the State of New York, provided that if by reason of mandatory provisions of law, the perfection or the effect of perfection or non-perfection of the Security Interest in any Collateral or the availability of any remedy hereunder is governed by the Uniform Commercial Code as in effect on or after the date hereof in any other jurisdiction, "UCC" means the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such perfection or effect of perfection or non-perfection or availability of such remedy.

1.2 Other Definition Provisions. References to "Sections, " "subsections," "Exhibits" and "Schedules" shall be to Sections, subsections, Exhibits and Schedules, respectively, of this Agreement unless otherwise specifically provided. Any of the terms defined in subsection 1.1 may, unless the context otherwise requires, be used in the singular or the plural depending on the reference. All references to statutes and related regulations shall include (unless otherwise specifically provided herein) any amendments of same and any successor statutes and regulations.

## **SECTION 2. Grant of Security Interests.**

To secure the payment, performance and observance of the Secured Obligations, Debtor hereby grants to the Lender, a continuing security interest in, right of setoff against, and an assignment to Lender of, all right, title and interest of Debtor in all personal property (the "Collateral"), whether now owned or existing or hereafter acquired or arising and regardless of where located including, without limitation:

- (a) Accounts;

- (b) Inventory;
- (c) **General Intangibles;**
- (d) Documents;
- (e) Instruments;
- (f) Equipment;
- (g) Fixtures;
- (h) Investment Property;
- (i) All deposit accounts of Debtor maintained with any bank or financial institution (other than Depository Accounts) and the contents thereof;
- (j) All Depository Accounts, all cash and other property deposited therein from time to time and other monies and property of Debtor in the possession or under the control of any Lender or any affiliate, representative, agent or correspondent of any Lender;
- (k) Intellectual Property as described in Schedules A, B and C and in royalties and other payments due and to become due to the Debtor by reason of licensing and other agreements entered into from time to time in connection with such Intellectual Property;
- (l) To the extent not otherwise included, all claims, commercial tort claims, payment rights, judgments, and all other personal property, now or hereinafter defined in Article 9 of the UCC, including any revisions thereof;
- (m) All books, records, ledger cards, files, correspondence, computer programs, tapes, disks and related data processing software that at any time evidence or contain information relating to any of the property described in subparts (a) - (l) above or are otherwise necessary or useful in the collection thereof or realization thereon; and

(n) Proceeds of all or any of the property described in subparts (a) - (m) above.

**SECTION 3. Security for Obligations.**

This Agreement secures the payment and performance of all indebtedness, liabilities and obligations of Debtor to Lender of whatever kind or nature, whether now existing or hereafter created, or arising under this Agreement, and any notes and documents referenced therein, and including any post-petition interest accruing during any bankruptcy, reorganization or other similar proceeding (all such indebtedness, liabilities and obligations of Debtor being collectively referred to herein as the "Secured Obligations").

**SECTION 4. Debtor Remains Liable.**

Notwithstanding anything herein to the contrary: (a) Debtor shall remain liable under the contracts and agreements included in its Collateral to the extent set forth therein to perform all of its duties and obligations thereunder to the same extent as if this Agreement had not been executed; (b) the exercise by Lender of any of the rights hereunder shall not release Debtor from any of its duties or obligations under the contracts and agreements included in the Collateral; and (c) Lender shall not have any obligation or liability under the contracts and agreements included in the Collateral by reason of this Agreement, nor shall Lender be obligated to perform any of the obligations or duties of Debtor thereunder or to take any action to collect or enforce any claim for payment assigned hereunder.

**SECTION 5. Representations and Warranties.**

In order to induce Lender to enter into this Agreement, Debtor represents and warrants to the Lender as follows:

5.1 Binding Obligation. This Agreement is the legally valid and binding obligation of Debtor, enforceable against it in accordance with its terms, except as enforcement may

be limited by bankruptcy, insolvency, reorganization, moratorium, or similar laws or equitable principles relating to or limiting creditor's rights generally.

5.2 Location of Equipment and Inventory. All of the Equipment, Inventory and Fixtures of Debtor are located at the places specified on Schedule 5.2. All hereafter acquired Equipment, Inventory or Fixtures of Debtor will be located at the places specified on Schedule 5.2 hereto, except as otherwise permitted hereunder. None of said locations are leased by Debtor as lessee except those designated as such on Schedule 5.2.

5.3 Ownership of Collateral; Bailees. Except for matters disclosed on Schedule 5.3, Debtor owns its Collateral, and will own all after-acquired Collateral, free and clear of any lien or competing interest. No effective financing statement or other form of lien notice covering all or any part of its Collateral is on file in any recording office, except for those in favor of Lender and as disclosed on Schedule 5.3. Except as disclosed on Schedule 5.3, none of the Collateral is in the possession of any consignee, bailee, warehouseman, agent or processor. Debtor does not sell any Inventory to any customer on approval or on any other basis which entitles the customer to return, or which may obligate Debtor to repurchase, such Inventory.

5.4 Office Locations; Fictitious Names. The mailing address, principal place of business, chief executive office and office where Debtor keeps its books and records relating to its Accounts, Documents, General Intangibles, Instruments and Investment Property is located at the place specified on Schedule 5.2. Debtor has no other places of business except those separately specified on Schedule 5.2. Debtor does not do business and has not done business during the past five years under any trade-name or fictitious business name except as disclosed on Schedule 5.4.

5.5 Perfection. Upon execution and the delivery of this Agreement and filing of appropriate UCC-1 financing statements and with respect to certain Intellectual Property, upon the filing of a counterpart of this General Security Agreement in the United States Patent and Trademark Office, Lender will have a valid, perfected (except as set forth on Schedule 5.3) first priority security interest in the Collateral, securing the payment of the Secured Obligations, and such Security Interests are entitled to all of the rights, priorities and benefits afforded by the UCC or other applicable law as enacted in any relevant jurisdiction which relates to perfected security interests.

5.6 Governmental Authorizations; Consents. No authorization, approval or other action by, and no notice to or filing with, any domestic or foreign governmental authority or regulatory body or consent of any other person is required either (a) for the grant by Debtor of the Security Interests granted hereby or for the execution, delivery or performance of this Agreement by Debtor or (b) for the perfection of or the exercise by Lender of its rights and remedies hereunder (except as may have been taken by or at the direction of Debtor or the Lender, other than the filing of financing statements by the Lender).

5.7 Accounts. Each existing Account constitutes, and each hereafter arising account will constitute, the legally valid and binding obligation of the customer obligated to pay the same. The amount represented by Debtor to Lender as owing by each customer is, or will be, the correct amount actually and unconditionally owing, except for normal cash discounts and allowances where applicable. No customer has any defense, set-off, claim or counterclaim against Debtor that can be asserted against Lender, whether in any proceeding to enforce Lender's rights in the Collateral or otherwise except defenses,

setoffs, claims or counterclaims that are not, in the aggregate, material to the value of the Accounts. None of the Accounts is, nor will any hereafter arising Account be, evidenced by a promissory note or other Instrument other than a check.

5.8 Intellectual Property. Debtor's Copyrights, Patents and Trademarks listed on Schedules A, B and C constitute all of the federally registered Copyrights, Patents and Trademarks owned by Debtor. To the best of Debtor's knowledge, all federally registered Copyrights, Patents and Trademarks owned by Debtor are valid, subsisting and enforceable and all filings necessary to maintain the effectiveness of such registrations have been made.

5.9 Inventory. All Debtor's Inventory is of good and merchantable quality, free from any defects, such Inventory is not subject to any licensing, patent, trademark, trade name or copyright agreement with any person that restricts Debtor's ability to manufacture and/or sell its Inventory and the completion and manufacture of such Inventory by a person other than Debtor would be permitted under any contract to which Debtor is a party or to which such Inventory is subject.

5.10 Accurate Information. All information heretofore, herein or hereafter supplied to Lender by or on behalf of Debtor with respect to its Collateral is and will be accurate and complete in all material respects.

5.11 Place of Formation. Black Flag Brands, LLC is a limited liability company, duly organized and existing and in good standing under the laws of New York, without limit as to the duration of its existence; BF Products, LLC is a limited liability company, duly organized and existing and in good standing under the laws of Delaware, without limit as to the duration of its existence, and each Debtor is qualified to do business in New York.

Each Debtor has the powers and adequate authority, rights and franchises to own its respective property and to carry on its respective business as now conducted and to execute and deliver this General Security Agreement and all other documents contemplated thereby.

**SECTION 6. Further Assurances; Covenants.**

6.1 Other Documents and Actions. Debtor will, from time to time, at its sole expense, promptly execute and deliver all further instruments and documents and take all further action that may be necessary or desirable, or that Lender may request, in order to create, perfect and protect any security interests granted or purported to be granted hereby or pursuant to any other loan document relating to the Secured Obligations or to enable Lender to exercise and enforce its rights and remedies hereunder or under any other document with respect to the Collateral. Without limiting the generality of the foregoing, Debtor will: (a) execute and file such financing or continuation statements, or amendments thereto, and such other instruments, documents or notices, as may be necessary or desirable, or as Lender may request, in order to create, perfect and preserve the security interests granted or purported to be granted hereby or pursuant to any other loan document with respect to the Collateral; (b) at any reasonable time, upon demand by Lender after and during the continuance of an Event of Default, exhibit its Collateral to allow inspection of such Collateral by Lender or persons designated by Lender and to examine and make copies of the records of Debtor related thereto, and to discuss such Collateral and the records of Debtor with respect thereto with, and to be advised as to the same by, Debtor's officers and employees and, after the occurrence and during the continuance of an Event of Default, in the case of Debtor's Accounts, Documents, General

Intangibles, Instruments and Investment Property with any person which is or may be obligated thereon; and (c) upon Lender's request, appear in and defend any action or proceeding that may affect Debtor's title to or Lender's security interest in with respect to the Collateral. Without limiting the generality of the foregoing, Debtor shall use its reasonable best efforts to obtain a landlord waiver agreement (as defined herein) from its landlord with respect to the premises of Debtor located at 25 Garden Street, New York Mills, New York 13417. For purposes herein, the term "landlord waiver agreement" shall mean a written agreement from the landlord of such premises in favor of Lender, in form and substance reasonably satisfactory to Lender, pursuant to which such landlord will acknowledge Lender's security interest in the Collateral, waive any security interest, lien or other claim by such landlord to the Collateral and agree to permit Lender access to the premises in order to exercise Lender's rights and remedies and otherwise deal with the Collateral.

6.2 Lender Authorized. Debtor hereby authorizes Lender to file one or more financing or continuation statements, and amendments thereto (or similar documents required by any laws of any applicable jurisdiction), relating to all or any part of the Collateral and hereby affirms and confirms all previous statements filed. Debtor also hereby irrevocably appoints Lender as its attorney-in-fact to execute all required financing or continuation statements and other documents necessary in Lender's opinion to protect and perfect the Security Interests.

6.3 Name Change. Debtor will give Lender at least thirty (30) days prior written notice of any such change in Debtor's name, identity, mailing address or corporate structure. With respect to any change, Debtor will promptly execute and deliver such



documents and take such actions as Lender deems necessary or desirable to create, perfect and preserve the security interests of Lender in the Collateral. In the absence of taking such action, Lender is hereby authorized under Section 6.2 to execute and deliver all such documents on behalf of the Debtor as Debtor's attorney-in-fact.

6.4 Business Locations. Subject to the next sentence, Debtor will keep its Collateral (other than Collateral in the possession of Lender and cash on deposit in Depository Accounts and other permitted deposit accounts) at the locations specified on Schedule 5.2. Debtor will give Lender at least thirty (30) days prior written notice of any change in Debtor's chief executive office and principal place of business or of any new location of business or any new location for any of Debtor's Collateral. With respect to any new location (which in any event shall be within the continental United States), Debtor will execute such documents and take such actions as Lender deems necessary to perfect and preserve the security interest in Debtor's Collateral granted herein and Lender is authorized to execute such documents on Debtor's behalf as provided for in Section 6.2.

6.5 Bailees. Upon the occurrence and continuation of any Event of Default hereunder or any default under the terms of any of the Secured Obligations, the Debtor shall, upon the request of Lender, notify any warehouseman, bailee or any of Debtor's agents or processors in possession or control of any Collateral in excess of \$50,000, of the Security Interests created hereby and shall instruct such person to hold all such Collateral for Lender, subject to Lender's instructions.

6.6 Instruments. After and during the continuance of an Event of Default, Debtor will deliver and pledge to Lender all Instruments duly endorsed and accompanied by duly executed instruments of transfer or assignment, all in form and substance satisfactory to

Lender. Debtor will also deliver to Lender all security agreements securing any Instruments and execute UCC-3 financing statements assigning to Lender any UCC financing statements filed by Debtor in connection with such security agreements. Debtor will mark conspicuously all chattel paper with a legend, in form and substance satisfactory to Lender, indicating that such chattel paper is subject to the Security Interests.

6.7 Filing Requirements. None of the Equipment (other than motor vehicles) is covered by any certificate of title. Upon request of Lender, Debtor shall promptly deliver to Lender any and all certificates of title, applications for title or similar evidence of ownership of all Equipment and shall cause Lender to be named as lienholder on any such certificate of title or other evidence of ownership. None of the Collateral is of a type in which security interests or liens may be registered, recorded or filed under, or notice thereof given under, any federal statute or regulation except for Collateral described on Schedules A, B and C. Debtor shall promptly notify Lender in writing upon acquiring any interest hereafter in Collateral that is of a type where a security interest or lien may be registered, recorded or filed under, or notice thereof given under, any federal statute or regulation. Debtor shall promptly inform Lender of any deletions from (other than in the ordinary course of Debtor's business) its Equipment and shall not permit any such items to become fixtures to real estate other than real estate subject to mortgages or deeds of trust in favor of Lender and except if the aggregate value of the Equipment which becomes a Fixture after the date hereof does not exceed \$25,000 in each of Debtor's premises. The legal description and street address of the property on which any Fixtures are located is set forth on Schedule 5.2, together with the name and address of the record owner of each such property.

6.8 Account Covenants. Except as otherwise provided in this section, Debtor shall continue to collect, at its own expense, all amounts due or to become due Debtor under the Accounts and apply such amounts as are so collected to the outstanding balances thereof. In connection with such collections, Debtor may take (and, at Lender's direction while an Event of Default is continuing, shall take) such action as Debtor or Lender may deem necessary or advisable to enforce collection of the Accounts; provided, that Lender shall have the right at any time after the occurrence and during the continuance of an Event of Default to: (a) notify the customers or obligors under any Accounts of the assignment of such Accounts to Lender and to direct such customers or obligors to make payment of all amounts due or to become due directly to Lender; (b) enforce collection of any such Accounts; and (c) adjust, settle or compromise the amount or payment of such Accounts. After the occurrence and during the continuance of an Event of Default, all amounts and Proceeds received by Debtor with respect to its Accounts shall be received in trust for the benefit of Lender, shall be segregated from other funds of Debtor and shall be forthwith paid over to Lender in the same form as so received (with any necessary endorsement) to be held in the Depository Account pursuant to Section 7 or applied pursuant to Section 14. Debtor shall not adjust, settle or compromise the amount or payment of any Account, or release wholly or partly any customer or obligor thereof, or allow any credit or discount thereon (other than credits and discounts in the ordinary course of business and in amounts which are not material to Debtor) without the prior consent of Lender.

6.9 Intellectual Property Covenants. Debtor shall concurrently herewith deliver to Lender the counterparts of this Agreement and all other documents, instruments and

other items as may be necessary for Lender to file such agreements with the United States Copyright Office and the United States Patent and Trademark Office. If, before the Secured Obligations are paid in full, Debtor acquires any new federally registered Copyrights, Patents or Trademarks or rights thereto, Debtor shall give to Lender prompt written notice thereof, and shall amend the respective security agreements to include any such new federally registered Copyrights, Patents or Trademarks. Debtor shall: (a) prosecute diligently any copyright, patent or trademark application at any time pending; (b) make application for registration or issuance of all new copyrights, patents and trademarks as reasonably deemed appropriate by Debtor; (c) preserve and maintain all rights in its Intellectual Property including the renewal of any existing Trademark; and (d) use its best efforts to obtain any consents, waivers or agreements necessary to enable Lender to exercise its remedies with respect to Debtor's Intellectual Property. Debtor shall not abandon any material right to file a copyright, patent or trademark application nor shall Debtor abandon any material pending copyright, patent or trademark application, or Copyright, Patent, or Trademark without the prior written consent of Lender. Debtor represents and warrants to Lender that the execution, delivery and performance of this Agreement by Debtor will not violate or cause a default under any of its Intellectual Property or any agreement in connection therewith.

6.10 Equipment Covenants. Debtor shall cause its Equipment to be maintained and preserved in the same condition, repair and working order as when new, ordinary wear and tear excepted, and in accordance with any manufacturer's manual, and shall promptly make or cause to be made all repairs, replacements, and other improvements in connection therewith that are necessary or desirable to such end.

6.11 Protection of Collateral; Insurance. Debtor will do nothing to impair the rights of Lender in the Collateral. Debtor shall at all times maintain insurance with respect to the Collateral and keep the Collateral fully insured with responsible insurance companies acceptable to Secured Party and approved and licensed by the Superintendent of the New York State Department of Insurance or other applicable state departments of insurance as applicable against any and all such risks as such Collateral may be subject to, including but not limited to fire, theft, vandalism and loss in transit, or as Secured Party may request, under policies containing loss payable clauses naming Secured Party pursuant to a lender/loss payable clause as its interest may appear and otherwise in form and substance satisfactory to Secured Party and providing that: (1) all proceeds thereof shall be payable to Secured Party as its interest may appear; (2) such insurance shall not be affected by any act or neglect of Debtor or other owner or user of the property described in such policy; and (3) such policy and loss payable clause may not be cancelled or amended. Debtor assumes all liability and responsibility in connection with the Collateral acquired by it, and the liability of Debtor to pay the Secured Obligations shall in no way be affected or diminished by reason of the fact that such Collateral may be lost, stolen, damaged, or for any reason whatsoever unavailable to Debtor.

6.12 Taxes and Claims. Debtor will pay when due all property and other taxes, assessments and governmental charges imposed upon, and all claims against, Debtor's Collateral (including claims for labor, materials and supplies); provided that no such tax, assessment or charge need be paid if Debtor is contesting the same in good faith by appropriate proceedings promptly instituted and diligently conducted and if Debtor has established such reserve or other appropriate provision, if any, as shall be required in

conformity with generally accepted accounting principles, consistently applied; and provided further that the same can be contested without risk of loss or forfeiture or material impairment of the Collateral or the use thereof.

6.13 Collateral Description. Debtor will furnish to Lender, from time to time upon request, statements and schedules further identifying and describing its Collateral and such other information, reports and evidence concerning its Collateral (and in particular its Accounts) as Lender may reasonably request, all in reasonable detail.

6.14 Use of Collateral. Debtor will not use or permit its Collateral to be used unlawfully or in violation of any provision of applicable law, or any policy of insurance covering any of the Collateral.

6.15 Records of Collateral. Debtor shall keep full and accurate books and records relating to its Collateral and shall stamp or otherwise mark such books and records in such manner as Lender may reasonably request indicating that the Collateral is subject to the Security Interests.

6.16 Federal Claims. Debtor shall notify Lender of any Collateral which constitutes a claim against the United States government or any instrumentality or agency thereof, the assignment of which claim is restricted by federal law. Upon the request of Lender, Debtor shall take such steps as may be necessary to comply with any applicable federal assignment of claims laws.

6.17 Hot Goods. Debtor represents and covenants that none of its Inventory has been or will be produced in violation of any provision of the Fair Labor Standards Act, as amended, or in violation of any other law.

6.18 Inspection and Audit. The Debtor shall provide Lender or its representatives

with reasonable access to the Debtor's premises, books and records and to any place where the Collateral is located at such times specified by Lender, and during such examination, shall allow Lender or its representatives to inspect, copy and make extracts of any records relating to any of the foregoing. The cost of all such examinations shall be payable upon demand and shall be the sole responsibility of the Debtor.

**SECTION 7. Bank Accounts; Collection of Accounts and Payments.**

Upon request by Lender at any time after an Event of Default, Debtor shall enter into a bank agency agreement ("Bank Agency Agreement"), in a form specified by Lender, with each financial institution with which Debtor maintains from time to time any deposit accounts (general or special). Pursuant to the Bank Agency Agreements and pursuant hereto, Debtor grants and shall grant to Lender, a continuing lien upon, and security interest in, all such accounts and all funds at any time paid, deposited, credited or held in such accounts (whether for collection, provisionally or otherwise) or otherwise in the possession of such financial institutions, and each such financial institution shall act as Lender's agent in connection therewith. At any time after an Event of Default, Debtor shall not establish any deposit account with any financial institution unless prior thereto Lender and Debtor shall have entered into a Bank Agency Agreement with such financial institution.

Upon Lender's request at any time after an Event of Default, Debtor shall establish lock-box or blocked accounts (collectively, "Blocked Accounts") in Debtor's name with Lender or with such banks as are acceptable to Lender ("Collecting Banks"), subject to irrevocable instructions in a form specified by Lender, to which the obligors of all Accounts shall directly remit all payments on Accounts and in which Debtor will immediately deposit

all cash payments for Inventory or other cash payments constituting proceeds of Collateral in the identical form in which such payment was made, whether by cash or check. In addition, Lender may establish one or more depository accounts at each Collecting Bank or at a centrally located bank (collectively, the "Depository Account"). From and after receipt by any Collecting Bank of written notice from Lender to such Collecting Bank that an Event of Default has occurred and is continuing, all amounts held or deposited in the Blocked Accounts held by such Collecting Bank shall be transferred to the Depository Account. Subject to the foregoing, Debtor hereby agrees that all payments received by Lender whether by cash, check, wire transfer or any other instrument, made to such Blocked Accounts or otherwise received by Lender and whether on the Accounts or as proceeds of other Collateral or otherwise will be the sole and exclusive property of Lender. Debtor shall, acting as trustee for Lender receive, as the sole and exclusive property of Lender, any moneys, checks, notes, drafts or other payments relating to and/or constituting proceeds of Accounts or other Collateral which come into the possession or under the control of Debtor and immediately upon receipt thereof, Debtor or such persons shall deposit the same or cause the same to be deposited in kind, in a Blocked Account.

**SECTION 8. Lender Appointed Attorney-in-Fact.**

Debtor hereby irrevocable appoints Lender as Debtor's attorney-in-fact, with full authority in the place and stead of Debtor and in the name of Debtor, Lender or otherwise, from time to time in Lender's discretion to take any action and to execute any instrument that Lender may deem necessary or advisable after an Event of Default to accomplish the purposes of this Agreement, including, without limitation: (a) to obtain and adjust insurance required to be paid to Lender; (b) to ask, demand, collect, sue for, recover, compound,



receive and give acquittance and receipts for moneys due and to become due under or in respect of any of the Collateral; (c) to receive, endorse, and collect any drafts or other Instruments, Documents and chattel paper, in connection with clauses (a) and (b) above; (d) to file any claims or take any action or institute any proceedings that Lender may deem necessary or desirable for the collection of any of the Collateral or otherwise to enforce the rights of Lender with respect to any of the Collateral; (e) to pay or discharge taxes or liens levied or placed upon or threatened against the Collateral, the legality or validity thereof and the amounts necessary to discharge the same to be determined by Lender in its sole discretion, and such payments made by Lender to become obligations of Debtor to Lender, due and payable immediately without demand; (f) to sign and endorse any invoices, freight or express bills, bills of lading, storage or warehouse receipts, assignments, verifications and notices in connection with Accounts and other documents relating to the Collateral; and (g) generally to sell, transfer, pledge, make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though Lender were the absolute owner thereof for all purposes, and to do, at Lender's option and Debtor's expense, at any time or from time to time, all acts and things that Lender deems necessary to protect, preserve or realize upon the Collateral.

Debtor hereby ratifies and approves all acts of Lender made or taken pursuant to this Section 8. Neither Lender nor any person designated by Lender shall be liable for any acts or omissions or for any error of judgment or mistake of fact or law. This power, being coupled with an interest, is irrevocable so long as this Agreement shall remain in force.

#### **SECTION 9. Transfers and Other Liens.**

Except as otherwise permitted herein, Debtor shall not:

(a) sell, assign (by operation of law or otherwise) or otherwise dispose of, or grant any option with respect to, any of its Collateral, except that Debtor may sell Inventory in the ordinary course of business; or

(b) create or suffer to exist any lien, security interest or other charge or encumbrance upon or with respect to any of its Collateral to secure indebtedness of any person except for the security interest created by this Agreement.

**SECTION 10. Remedies.**

(a) If any Event of Default shall have occurred and be continuing, Lender may exercise in respect of the Collateral, in addition to all other rights and remedies provided for herein or otherwise available to it, all the rights and remedies of a secured party on default under the UCC (whether or not the UCC applies to the affected Collateral) and also may: (i) require Debtor to, and Debtor hereby agrees that it will, at its expense and upon request of Lender forthwith, assemble all or part of its Collateral as directed by Lender and make it available to Lender at any reasonable place or places designated by Lender in which event Debtor shall at its own expense (A) forthwith cause the same to be moved to the place or places so designated by Lender and thereby delivered to Lender, (B) store and keep any Collateral so delivered to Lender at such place or places pending further action by Lender, and (C) while 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 the Collateral in good condition; (ii) withdraw all cash in its Depository Accounts and apply such monies in payment of the Secured Obligations; and (iii) without notice except as specified below, sell, lease or otherwise dispose of its Collateral or any part thereof in one or more parcels at public or private sale, and without the necessity of

gathering at the place of sale of the property to be sold, at any of the Lender's offices or elsewhere, at such time or times, for cash, on credit or for future delivery, and at such price or prices and upon such other terms as Lender may deem commercially reasonable. Debtor agrees that, to the extent notice of sale shall be required by law, at least ten (10) days notice to Debtor of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification. At any sale of the Collateral, if permitted by law, Lender may bid (which bid may be, in whole or in part, in the form of cancellation of indebtedness) for the purchase of the Collateral or any portion thereof for the account of Lender. Lender shall not be obligated to make any sale of Collateral regardless of notice of sale having been given. Lender may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned. To the extent permitted by law, Debtor hereby specifically waives all rights of redemption, stay or appraisal which it has or may have under any law now existing or hereafter enacted.

(b) Upon the occurrence and during the continuance of an Event of Default, Lender or its agents or attorneys shall have the right without notice or demand or legal process (unless the same shall be required by applicable law), personally, or by agents or attorneys, (i) to enter upon, occupy and use any premises owned or leased by Debtor or where the Collateral is located (or is believed to be located) until the Secured Obligations are paid in full without any obligation to pay rent to Debtor, to render the Collateral useable or saleable and to remove the Collateral or any part thereof therefrom to the premises of Lender or any agent of Lender for such time as Lender may desire in order to effectively

collect or liquidate the Collateral and use in connection with such removal any and all services, supplies and other facilities of Debtor; (ii) to take possession of Debtor's original books and records, to obtain access to Debtor's data processing equipment, computer hardware and software relating to the Collateral and to use all of the foregoing and the information contained therein in any manner Lender deems appropriate; and (iii) to notify postal authorities to change the address for delivery of Debtor's mail to an address designated by Lender and to receive, open and dispose of all mail addressed to Debtor.

(c) Debtor acknowledges and agrees that a breach of any of the covenants contained in Sections 6, 7 and 9 hereof will cause irreparable injury to Lender and that Lender has no adequate remedy at law in respect of such breaches and therefore agrees, without limiting the right of Lender to seek and obtain specific performance of other obligations of Debtor contained in this Agreement, that the covenants of Debtor contained in the Sections referred to in this Section shall be specifically enforceable against Debtor.

#### **SECTION 11. Assignment of Intellectual Property.**

Debtor hereby assigns, transfers and conveys to Lender all Intellectual Property owned or used by Debtor to the extent necessary to enable Lender, effective upon the occurrence of any Event of Default, to realize on the Collateral and any successor or assign to enjoy the benefits of the Collateral. This right and assignment shall inure to the benefit of Lender and its successors, assigns and transferees, whether by voluntary conveyance, operation of law, assignment, transfer, foreclosure, deed in lieu of foreclosure or otherwise. Such right and assignment is granted free of charge, without requirement that any monetary payment whatsoever including, without limitation, any royalty or license fee, be made to Debtor or any other person by Lender.

## **SECTION 12. Assigned Agreements.**

If an Event of Default has occurred and is continuing, Debtor hereby irrevocably authorizes and empowers Lender, without limiting any other authorizations or empowerments contained in any of the Secured Obligations, to assert, either directly or on behalf of Debtor, any claims Debtor may have, from time to time, against any other party to any of the agreements to which Debtor is a party or to otherwise exercise any right or remedy of Debtor under any such agreements (including, without limitation, the right to enforce directly against any party to any such agreement all of Debtor's rights thereunder, to make all demands and give all notices and to make all requests required or permitted to be made by Debtor thereunder).

## **SECTION 13. Limitation on Duty of Lender with Respect to Collateral.**

Beyond the safe custody thereof, Lender shall have no duty with respect to any Collateral in its possession or control (or in the possession or control of any agent or bailee) or with respect to any income thereon or the preservation of rights against prior parties or any other rights pertaining thereto. Lender shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral in its possession if the Collateral is accorded treatment substantially equal to that which it accords its own property. Lender shall not be liable or responsible for any loss or damage to any of the Collateral, or for any diminution in the value thereof, by reason of the act or omission of any warehouseman, carrier, forwarding agency, consignee or other agent or bailee selected by Lender in good faith.

## **SECTION 14. Application of Proceeds.**

Upon the occurrence and during the continuance of an Event of Default, the proceeds

of any sale of, or other realization upon, all or any part of the Collateral and any cash held in the Depository Accounts shall be applied: first, to all fees, costs and expenses incurred by Lender with respect to this Agreement or the Collateral; second, to accrued and unpaid interest on the Secured Obligations (including any interest which but for the provisions of the Bankruptcy Code, would have accrued on such amounts); and third, to the principal amounts of the Secured Obligations outstanding. Any balance remaining shall be delivered to Debtor.

**SECTION 15. Expenses.**

Debtor shall pay all costs, fees and expenses of protecting, storing, warehousing, appraising, insuring, handling, maintaining and shipping its Collateral, all costs, fees and expenses of creating, perfecting, maintaining and enforcing the Security Interest, and any and all excise, property, sales and use taxes imposed by any federal, state, local or foreign authority on any of the Collateral, or with respect to periodic appraisals and inspections of its Collateral, or with respect to the sale or other disposition thereof. If Debtor fails to promptly pay any portion of the above costs, fees and expenses when due or to perform any other such obligation of Debtor under this Agreement, Lender may, at its option, but shall not be required to, pay or perform the same and charge Debtor's account for all fees, costs and expenses incurred therefor, and Debtor agrees to reimburse Lender therefor on demand. All sums so paid or incurred by Lender for any of the foregoing, any and all other sums for which a Debtor may become liable hereunder and all fees, costs and expenses (including attorneys' fees, legal expenses and court costs) incurred by Lender in enforcing or protecting the Security Interests or any of their rights or remedies under this Agreement shall be payable on demand, shall constitute Secured Obligations, shall bear interest until

paid at the highest rate provided for by law and shall be secured by the Collateral.

**SECTION 16. Notices.**

Except in the case of notices and other communications expressly permitted to be given by telephone, all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail as follows: (a) if to Debtor, to it at 25 Garden Street, New York Mills, New York 13417, Attention: John F. Romano, and (b) if to Lender, to SBU Bank, 233 Genesee Street, Utica, New York 13501, Attention: Daniel J. O'Toole or James H. Brockway. Any party hereto may change its address or telecopy number for notices and other communications hereunder by notice to the other parties hereto. All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt.

**SECTION 17. Successors and Assigns.**

This Agreement is for the benefit of the Lender and its participants, successors and assigns, and in the event of an assignment of or participation of all or any of the Secured Obligations, the rights hereunder, to the extent applicable to the Secured Obligations so assigned or participated, may be transferred with such Secured Obligations or in the case of a participation or assignment may be exercised by the Lender as agent for the assignee or participant. This Agreement shall be binding on Debtor and its successors and assigns; provided that Debtor may not delegate its obligations under this Agreement without Lender's prior written consent.

**SECTION 18. Changes in Writing.**

No amendment, modification, termination or waiver of any provision of this Agreement

shall be effective unless the same shall be in writing signed by the Lender.

**SECTION 19. Applicable Law.**

**THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK, EXCLUSIVE OF CONFLICTS OF LAWS, RULES AND PUBLIC POLICIES APPLICABLE TO SUCH RULES.**

**SECTION 20. Failure or Indulgence Not Waiver; Remedies Cumulative.**

No failure or delay on the part of Lender in the exercise of any power, right or privilege hereunder shall impair such power, right or privilege or be construed to be a waiver of any default or acquiescence therein, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or any other right, power or privilege. All rights and remedies existing under this Agreement are cumulative to, and not exclusive of, any rights or remedies otherwise available.

**SECTION 21. Headings.**

Section and subsection headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose or be given any substantive effect.

**SECTION 22. Counterparts.**

This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this Agreement by signing any such counterpart.

**SECTION 23. Survival.**

All representations and warranties of Debtor contained in this Agreement shall survive



the execution and delivery of this Agreement.

**SECTION 24. Waiver of Jury Trial.**

**DEBTOR WAIVES THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BETWEEN IT AND THE LENDER AND WAIVES THE RIGHT TO ASSERT IN ANY ACTION OR PROCEEDING WITH REGARD TO THIS AGREEMENT OR ANY OF THE SECURED OBLIGATIONS ANY OFFSETS OR COUNTERCLAIMS WHICH IT MAY OTHERWISE HAVE RELATING TO THE SAME.**


**SECTION 25. Joint and Several Liability .**

If this Agreement is executed by two or more entities, they shall be jointly and severally liable, and all provisions of this Agreement shall apply to each and all of them and each shall separately account for the information requested in the schedules herein. The termination of this Agreement as to one or more of such entities shall not terminate this Agreement as to any remaining entities.

**IN WITNESS WHEREOF**, the Debtor has executed this Agreement in favor of the Lender by its duly authorized officers as of the date first written above.

**BF PRODUCTS, LLC**

**By: THE FOUNTAINHEAD GROUP, INC., ITS SOLE MEMBER**

By:   
John F. Romano, President

**BLACK FLAG BRANDS, LLC**

By:   
John F. Romano, Authorized Agent

## **SCHEDULE A**

All copyrights, rights and interests in copyrights,  
works protectable by copyright, copyright registrations and  
copyright applications.

**None at the present time**

**SCHEDULE B**

All Patents and Patent Applications.

**None at the present time**

## **SCHEDULE C**

All trademarks, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, logos, other business identifiers, prints and labels on which any of the foregoing have appeared or appear, all registrations and recordings thereof, and all applications in connection therewith.

The United States "Black Flag®" and related trademarks that Borrower will purchase contemporaneously herewith from The Clorox Company and its affiliates including The Kingsford Products Company. Such trademarks are identified as registration numbers 208738, 286271, 346648, 695890, 1059314, 1109417, 1206208, 2314936.

## SCHEDULE 5.2

### Chief Executive Office; Locations of Books and Records, Equipment, Inventory and Fixtures

1. Chief Executive Office and Location of Books and Records: 25 Garden Street, New York Mills, New York 13417

2. Locations of Equipment, Inventory and Fixtures: Same as above and at the addresses listed below

NorthWest RDC  
c/o ServiceCraft, LLC  
3731 Finch Road, Ste.B  
Modesto, CA 95357  
phone: 209-544-7199  
Fax 209-572-7360

LARDC  
c/o ServiceCraft, LLC  
5600 E, Francis Street  
Ontario, CA 91761  
phone: 909-390-3566  
Fax: 909-390-9476

SouthWest RDC  
c/o ServiceCraft, LLC  
5800 W. Kiest Blvd.  
Dallas, TX 75236  
phone: 972-709-8100  
Fax: 972-298-0358

SouthEast RDC  
c/o Exel Logistics  
4795 Coates Drive  
Fairburn, GA 30213  
phone: 770-306-2600  
Fax: 770-306-2855

MidWest RDC  
The Clorox Sales Co.  
c/o Exel Logistics  
2540 Prospect Ct.  
Aurora, IL 60504  
phone: 630-236-2450  
Fax: 630-236-2458

NorthEast RDC  
c/o Michels Distribution  
500 Old Post Road  
Aberdeen, MD 21001  
phone: 410-994-1200  
Fax: 410-273-0844

Aerofil Technology  
225 Industrial Park Drive  
Sullivan, MO 63080

Clorox Products Manufacturing Co  
550 Gulf Line Rd, Pearl, MS 39208  
Puerto Rico  
#250 Street A  
Bayamón, Puerto Rico 00959

### SCHEDULE 5.3

Liens; Financing Statements; Goods in Possession  
of Consignees, Bailees, Warehousemen, Agents  
and Processors

**None at the present time, except inventory is in the possession of Consignees,  
Bailees, Warehousemen, Agents and Processors at locations indicated in Section  
5.2 other than 25 Garden Street, New York Mills, New York 13417**

**SCHEDULE 5.4**

**Tradenames and Fictitious Names  
(Present and Past Five Years)**

Black Flag  
Roach Motel