

**TRADEMARK ASSIGNMENT**

Electronic Version v1.1  
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT
------------------	----------------

NATURE OF CONVEYANCE:	SECURITY INTEREST
-----------------------	-------------------

CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
Enefco USA, Inc.		11/18/2003	CORPORATION: DELAWARE

RECEIVING PARTY DATA	
Name:	Fleet National Bank
Street Address:	750 Walnut Avenue
City:	Cranford
State/Country:	NEW JERSEY
Postal Code:	07016
Entity Type:	National Banking Association: UNITED STATES

PROPERTY NUMBERS Total: 9		
Property Type	Number	Word Mark
Serial Number:	76470912	E-Z
Serial Number:	76470913	E-Z
Registration Number:	2742854	ENCELL
Registration Number:	2387477	ENEFCO INTERNATIONAL, LTD. ENEFCO INTL.
Registration Number:	2419765	AQUACARD
Registration Number:	2443135	AQUACARD
Registration Number:	2419764	WONDERCARD
Registration Number:	2683341	NTI
Registration Number:	2764036	E-Z

CORRESPONDENCE DATA	
Fax Number:	(973)530-2225
	<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>
Phone:	973 530 2025
Email:	pnussbaum@wolffsamson.com
Correspondent Name:	Peter Nussbaum
Address Line 1:	One Boland Drive

OP \$240.00 76470912

Address Line 4: West Orange, NEW JERSEY 07052

ATTORNEY DOCKET NUMBER:

ENEFCO-3

NAME OF SUBMITTER:

Peter Nussbaum

**Total Attachments: 8**

source=Enefco - TrademarkSecAgmt#page1.tif

source=Enefco - TrademarkSecAgmt#page2.tif

source=Enefco - TrademarkSecAgmt#page3.tif

source=Enefco - TrademarkSecAgmt#page4.tif

source=Enefco - TrademarkSecAgmt#page5.tif

source=Enefco - TrademarkSecAgmt#page6.tif

source=Enefco - TrademarkSecAgmt#page7.tif

source=Enefco - TrademarkSecAgmt#page8.tif

## TRADEMARK SECURITY AGREEMENT

THIS TRADEMARK SECURITY AGREEMENT (this "Agreement") is dated as of November 18, 2003, by and between ENEFCO USA, INC., a Delaware corporation having its principal executive offices located at c/o Odyssey Bay Ventures, Inc., 3 Hitchcock Farm Road, Andover, Massachusetts 01810 (the "Assignor"), and FLEET NATIONAL BANK, a national banking association organized and existing under the laws of the United States of America and having an office at 750 Walnut Avenue, Cranford, New Jersey 07016 (the "Assignee").

### WITNESSETH:

WHEREAS, concurrently herewith the Assignor, Enefco International, Inc., a Delaware corporation ("Enefco International"), and Enefco Canada, Inc., a corporation organized under the laws of the Province of Ontario, Canada ("Enefco Canada" and together with the Assignor and Enefco International, the "Borrower") and the Assignee are entering into a Loan and Security Agreement (the "Loan Agreement"), pursuant to which the Assignee is making available to the Borrower, on the terms and conditions contained therein, (i) a revolving credit loan in the maximum principal amount of \$2,500,000 (the "Revolving Credit Loan"), (ii) a term loan in the original principal amount of \$1,725,000 (the "Term Loan A"), and (iii) a term loan in the original principal amount of \$1,193,635 (the "Term Loan B" and together with the Revolving Credit Loan and Term Loan A, the "Loans"); and

WHEREAS, the Assignor is the owner of or applicant for certain trademarks and trademark applications listed on Schedule A attached hereto; and

WHEREAS, the Assignor desires to mortgage, pledge and grant to the Assignee a security interest in all of its right, title and interest in, to and under the Marks (as hereinafter defined), including the trademarks listed on Schedule A, together with any renewal or extension thereof, and all proceeds thereof, to secure the payment of all principal, interest and other amounts under the Loans and all other Obligations (as such terms are defined in the Loan Agreement); and

WHEREAS, in order to induce the Assignee to enter into the Loan Agreement and make the Loans thereunder, the Assignor has agreed to execute and deliver this Agreement.

NOW THEREFORE, in consideration of the premises and of the mutual covenants of the parties hereto and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, it is hereby agreed as follows:

1. Definitions. Capitalized terms used herein without definition shall have the meanings ascribed to them in the Loan Agreement.

2. Assignment of Marks. To secure the complete and timely payment and satisfaction of all of the Obligations, the Assignor hereby grants, assigns and conveys to the Assignee a security interest in, to and under all trademarks (whether registered, unregistered or for which any application to register has been filed), service marks (whether registered, unregistered or for which any application to register has been filed) of the Assignor, including, but not limited to, the marks listed in Schedule A attached hereto (as the same may be amended

pursuant hereto from time to time), including, without limitation, all renewals thereof and all proceeds thereof (such as, by way of example, license royalties and proceeds of infringement suits), the right to sue for past, present and future infringements, all rights owned by the Assignor corresponding thereto throughout the world (all of the foregoing are collectively called the "Marks"), together with the goodwill of the business symbolized by each Mark and the registrations thereof and registration applications therefor.

3. Warranties and Representations. The Assignor hereby covenants and warrants that: (a) the Assignor is the sole and exclusive owner of the entire right, title and interest in and to the Marks, free and clear of any liens, pledges, assignments or other encumbrances on the Marks; (b) the Marks constitute all of the trademarks and service marks used by the Assignor in the conduct of the Borrower's business and registered with any federal governmental or public offices, including without limitation, the United States Patent and Trademark Office (the "USPTO"), and (ii) all of the trademark and service mark applications filed with any federal governmental or public offices, including without limitation, the USPTO; (c) the Assignor has the unqualified right to enter into this Agreement and perform all of its obligations hereunder; (d) the Marks are subsisting and have not been abandoned, suspended, voluntarily terminated or canceled by the Assignee, and have not, to the Assignor's knowledge, been adjudged invalid or unenforceable; (e) the Marks are valid and enforceable; (f) the Assignor has not received notice of any claim that the use of the Marks does or may violate the rights or interests of any third person; and (g) the Assignor has used and, subject to the provisions of Section 8 below, will continue to use for the duration of this Agreement, consistent standards of quality in its products and services sold or provided under the Marks. The Assignor shall, in any event, indemnify and hold the Assignee harmless from all losses, damages, reasonable out-of-pocket costs and expenses, including legal costs and counsel fees, incurred by the Assignee as the direct or indirect result of any action, claim or demand, whether or not groundless, alleging that the Marks infringe any trademarks, service marks or tradenames or any other intellectual property held by third parties.

4. Filings and Registration; Right To Inspect.

(b) The Assignor hereby authorizes the Assignee to make any and all filings or registrations relating to this Agreement with any governmental or public offices, including without limitation, the USPTO.

(b) The Assignor hereby grants to the Assignee and its employees and agents the right, upon reasonable prior notice, to visit the Assignor's premises, including warehouses, stores and other facilities, where products sold or services provided under the Marks are manufactured, packaged, inspected, stored or provided, and to inspect and review the products and quality control records relating thereto during normal business hours. The Assignor shall do any and all acts reasonably required by the Assignee to ensure the Assignor's compliance with Section 3(f) above.

5. Right to Benefits. If, before the Obligations shall have been satisfied in full, the Assignor shall become entitled to the benefit of any additional trademark, service mark registration or any registration applications therefor, or any renewal or affidavit of any Mark, the

provisions of Section 3 hereof shall automatically apply thereto, and the Assignor shall give the Assignee prompt written notice thereof.

6. Future Marks. The Assignor authorizes the Assignee to modify this Agreement by amending Schedule A to include any future trademarks or service marks which are Marks under Section 2 or Section 5 hereof, and to make any filings or registrations relating thereto in accordance with Section 4(a) hereof.

7. Default. The term "Default", as used herein, shall mean: (a) any Event of Default (as defined therein) under the Loan Agreement or any other Loan Document; (b) if any representation or warranty made by the Assignor herein proves to be false or inaccurate in any material respect at the time when made; or (c) any breach or violation by the Assignor of any obligation, agreement, or covenant contained in this Agreement which is not waived or cured and remedied within ten (10) calendar days after the occurrence of such breach or violation.

8. Assignor's Right to Use Marks. Unless a Default shall occur and be continuing, the Assignor shall retain the legal and equitable title to the Marks and shall have the right to use the Marks in the ordinary course of its business but shall not be permitted to sell, assign, transfer or otherwise encumber the Marks or any part thereof; provided, however, that nothing herein contained shall prohibit the Assignor from failing to renew or otherwise abandoning any item included within the Marks if, in the Assignor's reasonable judgment, the retention of such item is not material to the proper conduct of its business; and provided, further, that the Assignor shall give the Assignee thirty (30) days' prior written notice of any abandonment of or failure to renew any item included within the Marks.

9. Assignee's Rights as Secured Party. If a Default shall have occurred and be continuing, the Assignee shall have, in addition to all other rights and remedies given it by this Agreement and the other Loan Documents, those allowed by law and the rights and remedies of a secured party under the Uniform Commercial Code as enacted in any jurisdiction in which the Marks may be located and, without limiting the generality of the foregoing, the Assignee may immediately, without demand of performance and without advertisement, sell at public or private sale or otherwise realize upon, in New Jersey or elsewhere, the whole or from time to time any part of the Marks and the goodwill associated therewith, or any interest which the Assignor has therein, and after deducting from the proceeds of said sale or other disposition of the Marks all expenses (including all reasonable expenses for brokers' fees and legal services), shall apply the residue of such proceeds to the payment of the Obligations. Notice of any sale or other disposition of the Marks shall be given to the Assignor at least ten (10) calendar days before the time of any intended public or private sale or other disposition of the Marks is to be made, which the Assignor hereby agrees shall be reasonable notice of such sale or other disposition. At any such sale or other disposition, the Assignee may, to the extent permissible under applicable law, purchase the whole or any part of the Marks sold, free from any right of redemption on the part of the Assignor, which right is hereby waived and released.

10. Power of Attorney. The Assignor hereby authorizes and empowers the Assignee to make, constitute and appoint any officer or agent of the Assignee as the Assignee may select in its reasonable discretion, as the Assignor's true and lawful attorney-in-fact, with the power to endorse the Assignor's name on all applications, documents, papers and instruments necessary

for the Assignee to modify this Agreement by amending Schedule A and to make any filings or registrations relating thereto in accordance with the provisions of Section 6 hereof. If a Default shall have occurred and be continuing, the Assignor hereby authorizes and empowers the Assignee to make, constitute and appoint any officer or agent of the Assignee as the Assignee may select in its reasonable discretion, as the Assignor's true and lawful attorney-in-fact, with the power to endorse the Assignor's name on all applications, documents, papers and instruments necessary for the Assignee to use the Marks, or to grant or issue any exclusive or non-exclusive license under the Marks to any third person, or necessary for the Assignee to assign, pledge, convey or otherwise transfer title in or dispose of the Marks and the goodwill associated therewith, to any third person. The Assignor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof, except for any actions constituting gross negligence or willful misconduct. This power of attorney shall be irrevocable for the life of this Agreement and coupled with an interest.

11. Termination. At such time as the Borrower shall completely satisfy all of the Obligations and the Assignee shall have no further obligation to extend credit under the Loan Agreement, the Assignee shall execute and deliver to the Assignor all deeds, assignments and other instruments as may be necessary or proper to re-vest in the Assignor the full unencumbered title to the Marks and the goodwill associated therewith, subject to any disposition thereof which may have been made by the Assignee pursuant hereto.

12. Fees and Expenses of Assignee. Any and all fees, costs and expenses, of whatever kind or nature, including reasonable attorneys' fees and legal expenses, incurred by the Assignee in connection with the payment or discharge of any taxes, counsel fees, maintenance fees, encumbrances or otherwise in protecting, maintaining or preserving the Marks, or in defending or prosecuting any actions or proceedings arising out of or related to the Marks, shall be borne and paid by the Assignor on demand by the Assignee, and until so paid shall be added to the principal amount of the Obligations and shall bear interest at a rate equal to the Default Rate specified in the Revolving Credit Note.

13. Protection of Marks. Subject only to the provisions of Section 8 hereof, the Assignor shall take all actions reasonably necessary to protect and defend the Marks and shall institute such proceedings to enforce the Marks as it, in its reasonable business judgment, deems appropriate. The Assignee shall, upon the reasonable request of the Assignor, do any and all lawful acts and execute all proper documents in aid of such protection, defense and enforcement, and the Assignor shall promptly, upon demand, reimburse and indemnify the Assignee for all costs and expenses incurred by the Assignee in connection therewith.

If a Default shall have occurred and be continuing, the Assignee shall have the right, but shall in no way be obligated, to bring suit in its own name to enforce the Marks, in which event the Assignor shall at the request of the Assignee do any and all lawful acts and execute any and all proper documents required by the Assignee in aid of such enforcement, and the Assignor shall promptly, upon demand, reimburse and indemnify the Assignee for all costs and expenses incurred by the Assignee in the exercise of its rights under this Section 13.

14. No Waiver. No course of dealing between the Assignor and the Assignee nor any failure to exercise, nor any delay in exercising, on the part of the Assignee, any right, power or

privilege hereunder or under any of the other Loan Documents shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or thereunder preclude any other or further exercise or the exercise of any other right, power or privilege.

15. Severability. The provisions of this Agreement are severable, and if any clause or provision shall be held invalid or unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, in such jurisdiction, and shall not in any manner affect such clause or provision in any other jurisdiction, or any other clause or provision of this Agreement in any jurisdiction.

16. Product Sale. The parties understand and agree that the collateral assignment of the Marks as provided for in this Agreement, together with other collateral provided to the Assignee pursuant to the Loan Agreement and the other Loan Documents, will permit the Assignee, upon the happening of a Default, to make use of all rights to the Marks and the goodwill associated therewith, all of which will permit the Assignee to sell the products for which the use of the Marks is associated and maintain substantially the same product specifications and quality as maintained by the Assignor.

17. Amendment. This Agreement is subject to modification only by a writing signed by the parties hereto, except as provided in Sections 5 and 6 hereof.

18. Successors and Assigns. The benefits and burdens of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties hereto.

19. Governing Law. The validity and interpretation of this Agreement and the rights and obligations of the parties shall be governed by the laws of the State of New Jersey without regard to its choice or conflict of laws principles.

20. Judicial Proceedings. AFTER CONSULTATION WITH COUNSEL, THE ASSIGNOR AND THE ASSIGNEE HEREBY WAIVE THEIR RIGHT TO A TRIAL BY JURY IN CONNECTION WITH LITIGATION INVOLVING THE SUBJECT MATTER OF THIS AGREEMENT AND HEREBY AGREE THAT, IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT. THE ASSIGNOR AND THE ASSIGNEE HEREBY CONSENT TO THE EXCLUSIVE JURISDICTION OF THE NEW JERSEY SUPERIOR COURT AND THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY IN ANY LITIGATION ARISING HEREUNDER, AND IRREVOCABLY WAIVE ALL DEFENSES TO THE PERSONAL JURISDICTION OF SUCH COURTS, INCLUDING, WITHOUT LIMITATION, DEFENSES BASED UPON THE INCONVENIENCE OF SUCH FORUMS AND HEREBY CONSENT TO THE GRANTING OF SUCH LEGAL OR EQUITABLE RELIEF AS IS DEEMED APPROPRIATE BY SUCH COURT. THE ASSIGNOR HEREBY WAIVES PERSONAL SERVICE OF THE SUMMONS, COMPLAINT AND OTHER PROCESS ISSUED IN ANY SUCH ACTION OR SUIT AND FURTHER AGREES THAT SERVICE OF ANY SUCH PROCESS MAY BE EFFECTED, IN ADDITION TO ANY OTHER MEANS PERMITTED BY THE APPLICABLE RULES OF COURT, BY MAILING SUCH PROCESS CERTIFIED MAIL, RETURN RECEIPT REQUESTED OR BY REPUTABLE OVERNIGHT COURIER PROVIDING A RECEIPT AGAINST DELIVERY TO THE ASSIGNOR AT THE ADDRESS

SET FORTH IN PAGE 1 OF THIS AGREEMENT AND THAT SERVICE SO MADE SHALL BE DEEMED COMPLETED UPON THE EARLIER OF THE ASSIGNOR'S ACTUAL RECEIPT THEREOF OR THREE (3) DAYS AFTER DEPOSIT IN THE U.S. MAILS, PROPER POSTAGE PREPAID. NOTHING IN THIS AGREEMENT SHALL BE DEEMED OR OPERATE TO AFFECT THE RIGHT OF THE ASSIGNEE TO SERVE LEGAL PROCESS IN ANY OTHER MANNER PERMITTED BY LAW, OR TO PRECLUDE THE ENFORCEMENT BY THE ASSIGNEE OF ANY JUDGMENT OR ORDER OBTAINED IN SUCH FORUM OR TAKING OF ANY ACTION UNDER THIS AGREEMENT TO ENFORCE THE SAME IN ANY OTHER APPROPRIATE FORUM OR JURISDICTION.

21. Counterparts. This Agreement may be executed in any number of duplicate originals or counterparts, each of such duplicate originals or counterparts shall be deemed to be an original and all taken together shall constitute one and the same instrument.

22. Notices. All notices, demands, requests and other communications provided for or permitted under this Agreement shall be made in accordance with Section 10.1 of the Loan Agreement.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties hereto have executed this Agreement the day and year first above written.

ENEFCO USA, INC.

By: Bradley A. Yount  
Bradley A. Yount  
President

FLEET NATIONAL BANK

By: Michael P. O'Sullivan  
Name: MICHAEL P. O'SULLIVAN  
Title: SVP





**SCHEDULE A**

**TRADEMARKS AND TRADEMARK APPLICATIONS**

**REGISTRATIONS:**

<u>Mark</u>	<u>Registration No.</u>	<u>Issue Date</u>
ENCELL (stylized)	2,742,854	7/29/03
ENEFCO INTERNATIONAL, LTD. (and design)	2,387,477	9/19/00
AQUACARD	2,419,765	1/9/01
AQUACARD (stylized)	2,443,135	4/10/01
WONDERCARD	2,419,764	1/9/01
NTI (and design)	2,683,341	2/4/03
EZ (stylized)	76-470,911	11/25/02

**PENDING REGISTRATIONS:**

<u>Mark</u>	<u>Application No.</u>	<u>Filing Date</u>	<u>Applicant</u>
EZ (stylized)	76-470,912	11/25/02	Company
EZ (stylized)	76-470,913	11/25/02	Company