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

06-16-2003

J.S. DEPARTMENT OF COMMERCE U.S. Patent and Trademark Office



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To the Honorable Commissioner of Patents

al documents or copy thereof.

1. Name of conveying party(ies): Aviagen Inc.

6-10-03

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

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

3. Nature of conveyance:

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

Execution Date: 5/30/03

2. Name and address of receiving party(ies)

Name: The Royal Bank of Scotland plc Internal Address:

Street Address: 135 Bishopsgate City: London, England State: Zip: EC2M 3UR

- Individual(s) citizenship, Association, General Partnership, Limited Partnership, Corporation-State, Other Public Limited Company

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) 76468695; 76468692

B. Trademark Registration No.(s) 2694850; 2697241; 2099855; 0708576; 0713316

Additional number(s) attached Yes No

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

Name: Allen & Overy

Internal Address: Mr. Ethan A. Heinz

Street Address: 1221 Avenue of the Americas

City: New York State: NY Zip: 10020

6. Total number of applications and registrations involved: 7

7. Total fee (37 CFR 3.41) \$ 190.00

- Enclosed, Authorized to be charged to deposit account

8. Deposit account number:

DO NOT USE THIS SPACE

9. Signature.

Ethan A. Heinz Name of Person Signing

[Signature] Signature

June 9, 2003 Date

Total number of pages including cover sheet, attachments, and document: 25

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

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# SECURITY AGREEMENT

DATED 30th MAY, 2003

between

**AVIAGEN INC.,  
a Delaware corporation,  
Debtor**

and

**THE ROYAL BANK OF SCOTLAND PLC,  
as Security Trustee**

**ALLEN & OVERY**

New York

11398-01515 NY:80889.7

29/05/03

**TRADEMARK  
REEL: 002754 FRAME: 0227**

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**THIS SECURITY AGREEMENT** (this "**Agreement**") is made this 30<sup>th</sup> day of May, 2003.

**BETWEEN:**

- (1) **AVIAGEN INC. ("Debtor")**, a corporation registered in the State of Delaware, U.S.A., whose chief executive office is at 5015 Bradford Drive, Huntsville, Alabama 35805, U.S.A., and
- (2) **THE ROYAL BANK OF SCOTLAND PLC**, as Security Trustee under the Inter-Creditor Agreement ("**Secured Party**"), The Royal Bank of Scotland plc, 135 Bishopsgate, London, England EC2M 3UR.

**WHEREAS:**

- (A) Contemporaneously with the execution and delivery of this Agreement,
  - (i) Aviagen International Finance Limited, a company registered in England and Wales, Aviagen International Finance Four Limited, a company registered in England and Wales, Aviagen Inc., a Delaware corporation, Aviagen Group Inc., a Delaware corporation, Aviagen Limited, a company registered in England and Wales, and Nicholas Europa Limited, a company registered in Scotland (collectively, the "**Obligors**") have entered into a Facilities Agreement dated as of the date of this Agreement (the "**Facilities Agreement**") with The Royal Bank of Scotland plc for itself and as Agent for the other Lenders and Finance Parties (as those terms are defined in the Facilities Agreement), pursuant to which the Lenders have agreed to lend, and certain of the Obligors have agreed to borrow, certain funds in the amounts and subject to the terms and conditions set forth in the Facilities Agreement, as well as to engage in certain Hedge Transactions and Ancillary Hedging Transactions (as those terms are defined in the Facilities Agreement) (collectively, the "**Hedge Transactions**");
  - (ii) Aviagen International Finance Limited and Aviagen International Finance Two Limited, a company registered in England and Wales (the "**Mezzanine Borrower**"), have entered into a mezzanine loan agreement dated as of the date of this Agreement (the "**Mezzanine Loan Agreement**") with The Royal Bank of Scotland plc, for itself and as Agent for the other Lenders (as that term is defined in the Mezzanine Loan Agreement) (collectively, the "**Junior Lenders**"), pursuant to which the Junior Lenders have agreed to lend, and the Mezzanine Borrower thereunder has agreed to borrow, certain funds on the terms set out therein; and
  - (iii) Debtor, together with certain Obligors, the Mezzanine Borrower, and certain other companies (together, the "**Guarantors**"), has executed and delivered a Composite Guarantee dated as of the date of this Agreement (as such document may be amended, supplemented, replaced, or novated from time to time, including as may be amended by the Supplemental Guarantee (as defined in the Facilities Agreement)) (the "**Guaranty**") to Secured Party for itself and for the benefit of the Finance Parties and the Junior Lenders (collectively, the "**Beneficiaries**") pursuant to which, among other things, Debtor has, subject to the terms thereof, unconditionally guaranteed the full and timely payment and performance of all the obligations of the Obligors under the Facilities Agreement (including all obligations arising from Hedge Transactions), all of the obligations of the Mezzanine Borrower under the Mezzanine Loan Agreement, and all of the obligations of all other guarantors under the Guaranty.
- (B) The Mezzanine Borrower, Aviagen International Finance Limited, Secured Party, the Finance Parties, and the Junior Lenders, inter alia have entered into an Inter-Creditor Agreement dated as

of the date of this Agreement (the "**Inter-Creditor Agreement**"), pursuant to which, among other things, the Junior Lenders have agreed that the indebtedness evidenced and governed by the Mezzanine Loan Agreement, and the security interests in and pledges of collateral as security for such indebtedness, shall be subordinate in all respects to the indebtedness evidenced and governed by the Facilities Agreement, and the security interests in and pledges of collateral as security for such indebtedness, to the extent provided in the Inter-Creditor Agreement.

- (C) Each of the other Obligors and the Mezzanine Borrower is an affiliate of Debtor, and Debtor hereby acknowledges that it will obtain a direct and tangible benefit from the loans made under, and the other financial facilities and transactions (including hedging transactions) governed by, the Facilities Agreement, the other Credit Documents (as defined in the Facilities Agreement), and the Mezzanine Loan Agreement; and
- (D) As security for all of the Secured Obligations (as defined in Clause 2 hereto), including, without limitation, all obligations of Debtor and the other Obligors under the Facilities Agreement and the other Credit Documents (including all obligations arising from Hedge Transactions), and of the Mezzanine Borrower under the Mezzanine Loan Agreement, and all other Guaranteed Liabilities (as defined in the Guaranty), Debtor desires to grant to Secured Party, for the ratable benefit of all of the Beneficiaries (subject to the terms and conditions contained in the Inter-Creditor Agreement), a security interest in, and lien on, certain collateral, as more particularly described herein, and to enter into the other agreements provided for herein.

**NOW, THEREFORE**, in consideration of the foregoing, and intending to be legally bound hereby, Debtor hereby agrees with Secured Party for the benefit of all of the Beneficiaries as follows:

**1. SECURITY INTEREST IN THE COLLATERAL.**

For valuable consideration, receipt of which is hereby acknowledged, and in further consideration of the Secured Obligations (as hereinafter defined), Debtor hereby grants, bargains, sells, assigns, and sets over to Secured Party, for itself and as Security Trustee for all other Beneficiaries, a security interest in the following property and rights of Debtor:

- (a) all Inventory and Farm Products of Debtor, whether now owned or hereafter acquired by Debtor, and whether located at the address above or any other location now or hereafter used by Debtor, including, without limitation, all Pedigree/Elite/Pureline breeding stock, and all other broiler breeding stock, and all other goods, merchandise, raw materials, work in process, finished goods, and other tangible personal property held for sale or lease or furnished or to be furnished under contracts of service or used or consumed in Debtor's business; all Documents now or hereafter evidencing any such Inventory or Farm Products; all returned and repossessed Goods; and all proceeds and products of the foregoing; and
- (b) all Accounts, Deposit Accounts, General Intangibles, Instruments, and Chattel Paper, whether now owned or hereafter acquired by Debtor and whether now existing or hereafter arising, including, without limitation, all trademarks, trade names, and service marks of Debtor and the goodwill associated therewith, all patents and other intellectual property, and all proceeds of any or all of the foregoing, whether cash or non-cash; and
- (c) all Equipment, including motor vehicles, and Fixtures, whether now owned or hereafter acquired by Debtor and wherever located, and all proceeds thereof (but inclusion of

proceeds shall not be deemed to imply that Secured Party authorizes the sale or other transfer or disposition of any such Equipment or Fixtures).

(All of the property and rights described in (a), (b) and (c) above are sometimes hereinafter referred to collectively as the "Collateral".)

## 2. THE SECURED OBLIGATIONS

This Agreement, and the security interest herein granted, secures: (a) the full and timely payment and performance by Debtor, the other Obligor, the Mezzanine Borrower, and the Guarantors, of all obligations and liabilities now or hereafter due (whether due because of stated maturity, acceleration, mandatory prepayment, or otherwise), owing or incurred by any one or more of them under or pursuant to the Facilities Agreement, the other Credit Documents, the Mezzanine Loan Agreement and the Security Documents (as defined in the Facilities Agreement), or any of the foregoing; (b) any extension or renewals of any of the foregoing; (c) all finance charges and late payment charges due or to become due to Secured Party or the Beneficiaries, as the case may be, on each such obligation; (d) every note or other writing now or hereafter evidencing the obligation of Debtor, the other Obligor, the Mezzanine Borrower, or the Guarantors to repay any such foregoing obligation and/or the finance charges or other charges thereon; (e) the timely payment and performance of all of Debtor's obligations under this Agreement; and (f) all sums paid to Secured Party or any one or more of the Beneficiaries, as the case may be, for Debtor's account or for the other Obligor's, Mezzanine Borrower's, or Guarantors' account by Debtor or any one or more of the other Obligor, Mezzanine Borrower, or Guarantors, or any other person which are later recovered back from Secured Party or the Beneficiaries, as the case may be, by Debtor or any one or more of the other Obligor, Mezzanine Borrower, or Guarantors, or any representative of Debtor or any one or more of the other Obligor, Mezzanine Borrower, or Guarantors, or of Debtor's or any one or more of the other Obligor's, Mezzanine Borrower's, or Guarantors' creditors, such as a trustee in bankruptcy, and any intended cash sale where the cash consideration was not actually received by Secured Party or the Beneficiaries, as the case may be; whether any of the foregoing debts and other obligations are express or implied, joint or several, incurred as principal or surety, otherwise secured or unsecured, originally owing to Secured Party or the Beneficiaries, or any of them, or purchased or otherwise acquired by it or them, whether denominated in U.S. Dollars, Sterling (as defined in the Facilities Agreement) or in any other currency, or incurred on any banking account or in any other manner whatsoever. (All of the debts and other obligations described in the preceding sentence are hereinafter referred to collectively as the "Secured Obligations".)

## 3. DEBTOR'S REPRESENTATIONS AND WARRANTIES

Debtor represents and warrants to Secured Party that:

- (a) Except for motor vehicles, Inventory in transit and Equipment temporarily in transit, Debtor's Inventory, Fixtures, Farm Products, and Equipment are kept or stored only at the address shown below Debtor's name at the beginning of this Agreement and at the addresses shown on Schedule 1 hereto.

(Failure to list any address where Inventory, Fixtures, Farm Products, or Equipment are kept shall not limit Secured Party's security interest, which covers all Inventory, Fixtures and Equipment of Debtor, wherever located.)

- (b) The address where the records concerning Debtor's Accounts are kept and the address of Debtor's chief executive office is the address shown below Debtor's name at the beginning of this Agreement.
- (c) Debtor is duly organized and validly existing in good standing under the laws of the state of Delaware and is duly qualified and in good standing in every other state in which the nature of its business or the ownership of its properties makes qualification necessary, except where the failure to be so qualified would not have a Material Adverse Effect or Change (as defined in the Facilities Agreement).
- (d) The execution and delivery of this Agreement, and the performance of its terms, will not
  - (i) contravene any existing applicable law, statute, rule or regulation or any judgment, decree or permit to which Debtor is subject, (ii) conflict with, or result in any breach of any of the terms of, or constitute a default under, any agreement or other instrument to which Debtor is a party or is subject or by which any of its property is bound which would be reasonably likely to have a Material Adverse Effect or Change (as defined in the Facilities Agreement or the Mezzanine Loan Agreement), (iii) contravene or conflict with any provision of the articles or certificate of incorporation or bylaws of Debtor, or (iv) result, other than pursuant to the provisions of the Finance Documents (as defined in the Facilities Agreement), in the creation or imposition of, or oblige Debtor or any other Obligor to create any Encumbrance, except for a Permitted Encumbrance (as such terms are defined in the Facilities Agreement), on any of the assets, rights or revenues of Debtor or any other Obligor, Mezzanine Borrower, or Guarantor.
- (e) Debtor does not do business under any trade name or name style other than its corporate name and the names set forth on Schedule 2 hereto.
- (f) Debtor does not have any subsidiaries other than those set forth on Schedule 3 hereto, and is not affiliated with any other corporation by common ownership or control, except that Debtor is affiliated with (i) the members of the Group (as defined in the Facilities Agreement) and (ii) the Persons set forth on Schedule 4 hereto.
- (g) The Collateral is not subject to any lien or security interest except that granted to Secured Party herein and as set forth on Schedule 5 hereto and except for Permitted Encumbrances (as defined in the Facilities Agreement), and no financing statement with respect to any of the Collateral is on file in any public office, except as set forth on Schedule 5 hereto.
- (h) Schedule 6 hereto contains a complete and correct list and description (including the registration number) of each patent issued or trademark registered by the United States Patent and Trademark Office that is, as of the date of this Agreement, subsisting, in full force and effect, and owned by the Debtor.

(Failure to list any patent or trademark shall not limit Secured Party's security interest in the intellectual property, and the proceeds thereof, of the Debtor.)

#### 4. **INSURANCE**

Debtor agrees with Secured Party that Debtor will maintain insurance at all times with respect to all Inventory, Farm Products, Fixtures, and Equipment, with underwriters or insurance companies

of repute to such extent and against such risks (including, without limitation, product liability risks) as prudent companies engaged in businesses similar to that of Debtor normally insure, and on request by Secured Party, Debtor will produce copies of all such insurance policies from time to time effected by it (or by any other member of the Group (as defined in the Facilities Agreement) on behalf of Debtor or insuring Debtor's assets) and copies of receipts for the premiums payable under such policies. In the event Debtor fails to provide any insurance as required herein and in the Facilities Agreement, Secured Party may, at its option, purchase such insurance or, at Secured Party's option and upon ten (10) days' notice to Debtor, insurance covering only Secured Party's interest in the Inventory, Farm Products, Fixtures, and Equipment, but Secured Party shall not be under any duty to purchase any such insurance. Debtor agrees to reimburse Secured Party on demand for the cost of all such insurance purchased by Secured Party. Debtor hereby assigns all insurance policies at any time covering the Inventory, Fixtures, or Equipment and all return or unearned premiums thereon to Secured Party as additional collateral for the Secured Obligations.

## 5. DEBTOR'S COVENANTS

Debtor agrees with Secured Party as follows:

- (a) Debtor will keep the Fixtures and Equipment in reasonable repair and working order and condition and will not waste or destroy any of the same. Debtor will not do or cause or permit to be done anything which may in any way depreciate, jeopardize or otherwise prejudice the value or marketability of any of the Collateral or Debtor's other assets or properties, in each case which would be reasonably likely to affect materially and adversely the value of the Collateral, taken as a whole, or the value of Debtor's assets and properties, taken as a whole. Debtor will allow Secured Party and any of its officers, agents, attorneys, or accountants to examine or inspect the Inventory, Fixtures, and Equipment wherever located at all reasonable times to the extent permitted by the Facilities Agreement or the Mezzanine Loan Agreement. Debtor will not use the Inventory, Fixtures, or Equipment in violation of any statute or ordinance or any policy of insurance thereon.
- (b) Until the Enforcement Date (as defined in Clause 7 hereto), Debtor may use the Inventory, Farm Products, Fixtures, and Equipment in any lawful manner not inconsistent with this Security Agreement or with the terms or conditions of any policy of insurance thereon and may sell the Inventory and Farm Products in the ordinary course of business. Until such Enforcement Date, Debtor may also use and consume any raw materials or supplies, the use and consumption of which are necessary in order to carry on Debtor's business.
- (c) Unless the Obligors have provided this information to Secured Party in accordance with the Facilities Agreement or the Mezzanine Loan Agreement, Debtor will, upon Secured Party's request, deliver to Secured Party lists or copies of all Accounts promptly after they arise. If and only to the extent Secured Party is expressly permitted by the terms of the Facilities Agreement or the Mezzanine Loan Agreement to make such a request, then upon request of Secured Party, whether before or after the Enforcement Date (as defined in Clause 7 hereto), Debtor will deliver to Secured Party, promptly upon receipt, all proceeds of the Collateral received by Debtor, in precisely the form received by Debtor, except for the endorsement of Debtor where necessary to permit the collection of such proceeds (which endorsement Debtor hereby agrees to make). Debtor agrees to comply



in all respects with the cash management provisions of the Facilities Agreement and the Mezzanine Loan Agreement, including, without limitation, Section 10.2(v) thereof and, to the extent it holds proceeds of the Collateral from time to time, to hold such proceeds upon express trust for Secured Party until delivery thereof is made to Secured Party in accordance with applicable provisions of the Finance Documents (as defined in the Facilities Agreement). Upon and after the Enforcement Date (as defined in Clause 7 hereto), Secured Party shall have the full power and authority to collect, compromise, endorse, sell, or otherwise deal with proceeds in its own name or that of Debtor. Secured Party in its discretion may apply cash proceeds to the payment of any of the Secured Obligations (whether or not due) or may release such cash proceeds to Debtor for use in the operation of Debtor's business.

- (d) With respect to Collateral in the form of Instruments, Accounts, Deposit Accounts, General Intangibles, and Chattel Paper, Secured Party may at any time after the Enforcement Date (as defined in Clause 7 hereto) notify account debtors that the Instruments, Accounts, Deposit Accounts, General Intangibles, and Chattel Paper have been assigned to Secured Party and shall be paid to Secured Party. Upon request of Secured Party on or after such Enforcement Date, Debtor will so notify such account debtors and will indicate on all invoices to such account debtors that their obligations are payable to Secured Party.
- (e) Debtor agrees to keep all records concerning the Collateral in a fireproof and safe place and, upon request of Secured Party, to promptly make such records available to Secured Party, its agents, attorneys, and accountants, at any reasonable time and without hindrance to allow Secured Party to inspect, audit, check or make extracts from such records.
- (f) All of Debtor's existing Inventory and Farm Products have been, and all of Debtor's Inventory and Farm Products hereafter produced or acquired will be, produced in accordance with the requirements of the federal Fair Labor Standards Act.
- (g) Except upon not less than ten (10) days' advance notice in writing to Secured Party, Debtor will not keep or store any Inventory, Farm Products, Fixtures, or Equipment at any address other than the addresses set forth above and on Schedule 1 hereto.
- (h) Unless Secured Party shall give its advance consent in writing, Debtor will not:
  - (i) change the address of Debtor's chief executive office;
  - (ii) change its name;
  - (iii) change its jurisdiction of incorporation;
  - (iv) except as expressly permitted by the Facilities Agreement and the other Finance Documents, merge with, consolidate with, or enter into any corporate reorganization with, any other corporation or entity, whether or not Debtor is the surviving or resulting corporation;

- (v) except as expressly permitted by the Facilities Agreement and the other Finance Documents, sell, lease, or otherwise transfer or dispose of, or agree to sell, lease, or otherwise transfer or dispose of, any of its Equipment or Fixtures; or
- (vi) except as expressly permitted by the Facilities Agreement and the other Finance Documents, sell any of its Inventory or Farm Products, or collect any of its Accounts, General Intangibles, Instruments or Chattel Paper, other than in the ordinary course of business. A sale in the ordinary course of business does not include a transfer in partial or total satisfaction of a debt, or a credit sale or consignment to a subsidiary or an affiliated company.
- (i) Debtor will notify Secured Party within ninety (90) days of filing with the United States Patent and Trademark Office any application for a patent, application for registration of a trademark, or correction of any patent or registered trademark.

## 6. FURTHER ASSURANCES

- (a) Debtor shall do, make, execute, and deliver to Secured Party all such additional and further acts, things, assignments, assurances, and instruments as Secured Party may reasonably require to more completely vest in and assure to Secured Party its rights hereunder and in or to the Collateral and the proceeds and products thereof. Debtor will deliver all Instruments, Documents, and Chattel Paper which constitute a part of the Collateral to Secured Party upon request, duly indorsed by Debtor to the order of Secured Party or in blank in form satisfactory to Secured Party. Debtor agrees to deliver to the Secured Party, no later than sixty (60) days from the date of this Agreement, certificates of title with respect to all vehicles pledged as Collateral pursuant to this Agreement.
- (b) Debtor will pay promptly when due all taxes and assessments upon the Collateral or any part thereof, upon its use or operation thereof, upon the proceeds or products thereof, upon this Agreement, and upon any note or notes evidencing the Secured Obligations. At its option, Secured Party may, if Debtor fails to do so, discharge any taxes, liens, security interests or other encumbrances at any time levied or placed on the Collateral or any part thereof and may pay for the maintenance and preservation of the Collateral, but Secured Party shall not be under any duty to exercise any such authority. Debtor agrees to reimburse Secured Party, upon demand, for any payment made or any expense incurred by Secured Party pursuant to the foregoing authorization.
- (c) All sums expended by Secured Party which Debtor is obligated to reimburse Secured Party under this Agreement shall bear interest from the date reimbursement is due until the date paid at the rate which is the rate provided for in Clause 5.4 of the Facilities Agreement, the provisions of which are incorporated herein by this reference (but excluding the "Additional Cost" defined therein), as such rate shall change from time to time, but in any event not more than the maximum rate allowed by law. All such sums and the interest thereon shall be secured by the security interest granted in this Agreement.
- (d) Debtor authorizes Secured Party to prepare and file, at Debtor's expense, financing statements describing the Collateral, as well as continuation statements and amendments in respect of those financing statements. Debtor expressly authorizes Secured Party, if it so elects, to file financing statements with the collateral description "all assets of the

Debtor", "all personal property of the Debtor" or other words to that effect; provided, that, except as set forth below, Secured Party shall not file, and shall not request Debtor to file, any financing statement in any jurisdiction in which a tax or fee, calculated or based upon the amount secured or the value of the collateral covered by such financing statement would be imposed, other than in the Debtor's state of incorporation. Debtor also authorizes Secured Party to prepare and file, at Debtor's expense, all additional instruments as Secured Party may reasonably deem necessary to fully secure its rights in the Collateral, including, but not limited to, recordation forms with the United States Patent and Trademark Office (provided that Secured Party shall afford Debtor a reasonable opportunity to review each such recordation form prior to any such filing) and fixture filings in all jurisdictions where Debtor maintains real property subject to a mortgage in favor of the Security Trustee. In addition to the foregoing, upon and after the Enforcement Date (as defined in Clause 7 hereto), the limitations on the filing of financing statements set forth in this Section 6(d) shall become void and of no further effect. Debtor agrees that, subject to the limitations set forth above, a carbon or photostatic copy of this Agreement may be filed as a financing statement in any public office. If certificates of title are issued or outstanding with respect to any of the Collateral, Debtor will cause the interest of Secured Party to be properly noted thereon at Debtor's expense.

- (e) In addition to the foregoing, Debtor hereby agrees, promptly upon the request of Secured Party made in accordance with this Section 6(e), (1) to take all actions as may be necessary, in the reasonable discretion of Secured Party, to grant to Secured Party, as the security trustee for and for the ratable benefit of the Beneficiaries (subject to the provisions of the Inter-Creditor Agreement), a first priority mortgage, lien and security interest in and to all real property and improvements which are described on Schedule 7 hereto (the "Real Property") in which Debtor holds an ownership interest, and (2) to use all reasonable efforts to obtain all required consents to, and otherwise take all actions as may be reasonably necessary (to the extent Debtor is legally able to do so) to grant to Secured Party, as the security trustee for and for the ratable benefit of the Beneficiaries (subject to the provisions of the Inter-Creditor Agreement) a first priority leasehold mortgage in the Real Property designated on Schedule 7 as the "Alabama Feedmill", in each case, pursuant to documentation to be prepared, in form and substance, and containing such terms and conditions, as may be reasonably acceptable in all respects to Secured Party and its counsel. In furtherance, and not in limitation, of the foregoing, Debtor hereby agrees that, from and after the date hereof, it will not incur or otherwise suffer to exist any mortgage, deed to secure debt, lien or other encumbrance (other than Permitted Encumbrances, to the extent applicable) on or with respect to any parcel of real property described on Schedule 7 attached hereto, unless the prior written consent of Secured Party is obtained. Any such mortgages shall provide that they are granted as additional security for the Secured Obligations; provided, that the mortgages shall provide that (i) the maximum principal amount of indebtedness secured by the mortgage on the property designated on Schedule 7 as the "Oklahoma Hatchery" shall be limited to the sum of Four Million and no/100 Dollars (\$4,000,000.00) of the Secured Obligations outstanding from time to time, (ii) the maximum principal amount of indebtedness secured by the mortgage on the property designated on Schedule 7 as the "Talladega Hatchery" shall be limited to the sum of Two Million and no/100 Dollars (\$2,000,000.00) of the Secured Obligations outstanding from time to time, (iii) the maximum principal amount of indebtedness secured by the mortgage on the property designated on Schedule

7 as the "Alabama Feedmill" shall be limited to the sum of Four Million and no/100 Dollars (\$4,000,000.00) of the Secured Obligations outstanding from time to time, and (iv) notwithstanding any provision contained in this Agreement or in any of such mortgages to the contrary, each such mortgage shall secure the last remaining unpaid portion of the Secured Obligations, and therefore (A) the mortgage lien and security interest granted in each such mortgage shall not be diminished by any prepayment or repayment of the Secured Obligations, and (B) each of the mortgages shall remain in full force and effect until all of the Secured Obligations are paid and performed in full. Without limiting the foregoing, Debtor hereby agrees, upon Secured Party's request, to promptly supply Secured Party with (x) policies of title insurance with respect to each parcel of the Real Property which shall reflect Debtor's ownership of a fee simple interest in such Real Property (or a leasehold interest in the case of the Alabama Feedmill Real Property), subject to no encumbrances, liens or claims whatsoever, except as otherwise permitted by this Section 6(e), and (y) such inspection or evaluation reports with respect to environmental conditions on or affecting each parcel of the Real Property as Secured Party may reasonably request from time to time (and to effect in a timely manner any and all remediation or other clean-up activity with respect to such Real Property as may be required by applicable law). It is hereby acknowledged that Secured Party shall be entitled to request the grant of the mortgages described in this Section 6(e) only if, in the good faith judgment of Secured Party, the commitments to lend under the Facilities Agreement cannot be syndicated on reasonable terms and conditions unless the additional collateral, in the form of the mortgages described herein, is provided to further secure the Secured Obligations. Debtor acknowledges that the covenants contained in this paragraph are a material inducement to the Beneficiaries to provide the financing governed by the Facilities Agreement and the Mezzanine Loan Agreement, and that the Beneficiaries are relying on Debtor's covenants contained in this paragraph in making such financial accommodations available to Debtor and its affiliates pursuant to the Facilities Agreement and the Mezzanine Loan Agreement and the related loan and security documents.

- (f) In addition to the foregoing, in the event that (1) Debtor acquires after the date hereof an interest, as owner or tenant, in any real property (including all improvements located thereon) that is a Core Property (as that term is defined in the Facilities Agreement) and (2) the mortgages on the Oklahoma Hatchery Real Property and the Talladega Hatchery Real Property have been requested and obtained in the manner set forth in Section 6(e) above (unless the failure to obtain either of such mortgages is the result of any failure on the part of Debtor to comply with its obligations under such Section 6(e)), Debtor hereby agrees, promptly upon the request of Secured Party made in accordance with this Section 6(f), to take all actions as may be necessary or desirable, in the reasonable discretion of Secured Party, to grant to Secured Party, as the security trustee for and for the ratable benefit of the Beneficiaries (subject to the provisions of the Inter-Creditor Agreement), a first priority mortgage, lien and security interest in and to all of Debtor's right, title and benefit in and to each such Core Property, pursuant to documentation to be prepared, in form and substance, and containing such terms and conditions, as may be reasonably acceptable in all respects to Secured Party and its counsel. In furtherance, and not in limitation, of the foregoing, Debtor hereby agrees that it will not incur or otherwise suffer to exist any mortgage, deed to secure debt, lien or other encumbrance (other than Permitted Encumbrances, to the extent applicable) on or with respect to any such Core Property acquired after the date hereof, unless the prior written consent of Secured Party

is obtained. Any such mortgages shall provide that they are granted as additional security for the Secured Obligations; provided, that each such mortgage shall provide that (i) the maximum principal amount of indebtedness secured by such mortgage shall not exceed an amount of the Secured Obligations equal to the fair market value of the property subject to such mortgage as of the date of execution thereof, as reasonably determined by Secured Party, (ii) such mortgage shall secure the last remaining portion of the Secured Obligations, (iii) the mortgage lien and security interest granted therein shall not be diminished by any prepayment or repayment of the Secured Obligations, and (iv) the mortgage lien and security interest granted by such mortgage shall remain in full force and effect until all of the Secured Obligations are paid and performed in full. Debtor hereby agrees, upon Secured Party's request with respect to each such Core Property on which a mortgage is requested in accordance with this Section 6(f), to promptly supply Secured Party with (i) policies of title insurance with respect to each such Core Property which shall reflect Debtor's ownership or leasehold interest in such Core Property, subject to no encumbrances, liens or claims whatsoever, except as otherwise permitted by this Section 6(f), and (ii) such inspection or evaluation reports with respect to environmental conditions on or affecting each such Core Property as Secured Party may reasonably request from time to time (and to effect in a timely manner any and all remediation or other clean-up activity with respect to such Core Property as may be required by applicable law). Debtor acknowledges that the covenants contained in this paragraph are a material inducement to the Beneficiaries to provide the financing governed by the Facilities Agreement and the Mezzanine Loan Agreement, and that the Beneficiaries are relying on Debtor's covenants contained in this paragraph in making such financial accommodations available to Debtor and its affiliates pursuant to the Facilities Agreement and the Mezzanine Loan Agreement and the related loan and security documents.

## 7. **DEFAULT**

Any or all of the Secured Obligations shall, at the option of Secured Party and notwithstanding the stated maturity date of any Secured Obligation or of any instrument evidencing any such Secured Obligation, become immediately due and payable without notice or demand upon the occurrence of either the Enforcement Date (as defined in the Facilities Agreement) or the Enforcement Date (as defined in the Mezzanine Loan Agreement) (the "**Enforcement Date**").

## 8. **SECURED PARTY'S REMEDIES**

- (a) Upon or at any time after the Enforcement Date, Secured Party shall have the right, at its election, (i) to take possession of the Collateral, and with or without taking possession thereof, to sell the Collateral or any part thereof at one or more public or private sales, at Secured Party's option, and to take possession of and collect the Accounts, Instruments, Chattel Paper, and General Intangibles which are a part of the Collateral, (ii) upon such notice to Debtor as is required by law and cannot be waived, to accept the Collateral in satisfaction of the Secured Obligations, and/or (iii) to proceed against Debtor and the Collateral by judicial means. At Secured Party's request, Debtor agrees to assemble the Collateral and to make it available to Secured Party at a place to be designated by Secured Party which is reasonably convenient to both parties. Debtor waives any notice of sale or other disposition or acceptance of the Collateral and agrees that notice of sale or other disposition of the Collateral hereunder, or of any part thereof, which cannot be

waived shall be sufficient if such notice is delivered to Debtor or mailed, postage prepaid, to the address of Debtor shown at the beginning of this Agreement, or such other address as Debtor shall have furnished Secured Party in writing for such purpose, at least five (5) days before the time of the sale or disposition. Debtor agrees to pay Secured Party on demand any and all expenses, including reasonable attorneys' fees, incurred or paid by Secured Party in protecting or enforcing the Secured Obligations and the rights of Secured Party hereunder, including Secured Party's right to take possession of and sell or dispose of the Collateral, and in repossessing and storing the Collateral, collecting the Collateral, preparing the Collateral for sale, advertising and conducting such sale, and collecting the proceeds of such sale. Payment of all such expenses and the interest thereon as set forth in Section 6(c) shall be secured by the security interest granted in this Agreement.

- (b) Debtor hereby irrevocably authorizes and empowers Secured Party (i) upon and after the Enforcement Date, or otherwise as permitted by this Agreement, the Facilities Agreement, the other Credit Documents, the other Security Documents (as defined in the Facilities Agreement) or the Mezzanine Loan Agreement, to receive and give receipt for any amount or amounts due or to become due to Debtor on account of the Collateral and to endorse and negotiate in the name of Debtor any check or other item issued in payment or on account thereof, and in the name of Secured Party or of Debtor to enforce by suit or otherwise, compromise, settle, discharge, extend the time of payment, file claims or otherwise participate in bankruptcy proceedings, and otherwise deal in and with the Collateral and any proceeds thereof; (ii) upon and after the Enforcement Date, or otherwise as permitted by this Agreement, the Facilities Agreement, the other Credit Documents, the other Security Documents (as defined in the Facilities Agreement) or the Mezzanine Loan Agreement, to open mail addressed to Debtor, remove any Collateral or proceeds of the Collateral therefrom, and deliver the remainder of such mail to Debtor; and (iii) to do all acts and things deemed by Secured Party to be appropriate to protect, preserve and realize upon Secured Party's security interest hereunder; but Secured Party shall not be under any duty to exercise such authority or power or in any way responsible for collecting or realizing upon the Collateral.

## 9. MISCELLANEOUS

- (a) Secured Party's rights and remedies hereunder, under other agreements or instruments, and under law, are cumulative and may be exercised successively or concurrently. Secured Party shall not be deemed to have waived any of its rights hereunder, under any other agreement or instrument, or under law except in a writing signed by Secured Party. No delay or omission on the part of Secured Party in exercising any right or remedy shall operate as a waiver thereof, and a written waiver on any one occasion shall not be construed as a bar or waiver of any right or remedy on any future occasion. In furtherance, and not in limitation, of the foregoing, (i) this Agreement and the security interest herein granted are in addition to, and shall not prejudice or otherwise affect, the Debenture (as defined in the Facilities Agreement) or any other present or future Collateral Instrument (as defined in the Debenture) or Encumbrance created thereby or any rights or remedies available thereunder, and (ii) this Agreement and the security interest herein granted shall not merge with or be in any way prejudiced or affected by the existence of any such Collateral Instruments, Encumbrances, rights or remedies, or by any of the foregoing being or becoming wholly or in part void, voidable or unenforceable

on any ground whatsoever, or by the Beneficiaries or Secured Party dealing with, exchanging, releasing, varying or failing to perfect or enforce any of the foregoing, including, without limitation, the release of any other party to any of the foregoing Collateral Instruments from their respective obligations thereunder.

- (b) At any time when no Secured Obligations remain outstanding and unperformed and there exists no commitment on the part of Secured Party or any of the Beneficiaries to enter into any other or future Secured Obligation, upon written demand of Debtor, Secured Party will deliver to Debtor evidence of Secured Party's release of its liens hereunder and file, or at Secured Party's election will furnish to Debtor for filing, a termination statement with respect to its security interest in the Collateral. Upon the filing, or furnishing to Debtor for filing, of such a termination statement which has been duly executed on behalf of Secured Party, this Agreement shall terminate. Prior to such termination, this shall be a continuing agreement in every respect.
- (c) This Agreement and all rights and obligations hereunder, including matters of construction, validity and performance, shall be governed by the laws of the State of New York. Debtor waives notice of acceptance of this Agreement. This Agreement is effective when signed by Debtor and delivered to Secured Party, and binds Debtor and inures to the benefit of Secured Party and the Beneficiaries and their respective heirs, successors, and assigns. The provisions of this Agreement are severable, and the invalidity or unenforceability of any provision hereof shall not affect the remaining provisions of this Agreement.
- (d) Debtor hereby acknowledges and agrees that the security interest granted pursuant to this Agreement, all rights and remedies of Secured Party hereunder, and all moneys, property and assets paid or otherwise delivered to Secured Party in accordance with this Agreement are granted and held by Secured Party subject to the terms and conditions contained in, and on the terms of the trusts declared in, Clause 11.1 of the Inter-Creditor Agreement.
- (e) Debtor acknowledges and agrees that the rights, powers and remedies of Secured Party hereunder, and the security interest granted pursuant to this Agreement, may be assigned and transferred to a successor Secured Party in the manner provided in Clause 10 of the Inter-Creditor Agreement, and Debtor acknowledges further that (i) no such transfer, retirement or appointment of a successor shall impair or otherwise affect the rights of Secured Party hereunder and (ii) upon any such transfer, retirement and appointment, the successor to Secured Party's rights and powers under the Inter-Creditor Agreement shall succeed to all of the rights, powers and remedies of Secured Party hereunder.
- (f) All capitalized terms used in this Agreement which are not expressly defined herein shall have the meaning, if any, assigned to them in Article 9 of the Uniform Commercial Code, as in effect in the State of New York. If not defined in such Article 9, capitalized terms used in this Agreement which are not expressly defined herein shall have the meaning, if any, assigned to them in the Facilities Agreement. Upon the Final Cross-over Date (as defined in the Inter-Creditor Agreement), all capitalized terms defined herein by reference to the Facilities Agreement shall have the meaning, if any, assigned to them in the Mezzanine Loan Agreement.

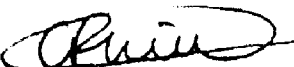
- (g) The section headings in this Agreement are included for ease of reference only and shall not be deemed to limit the terms of this Agreement.



**SIGNATORIES**

**IN WITNESS WHEREOF**, the officer of Debtor thereunto duly authorized has executed this Agreement on behalf of Debtor on the date set forth above.

**AVIAGEN, INC.**

By:  \_\_\_\_\_

Its: \_\_\_\_\_

## SCHEDULE 1

Additional places of business or addresses where Inventory, Farm Products, Fixtures or Equipment are kept or stored (include County as part of the address):

- a. All properties listed on Schedule 7, and
- b. Leased property:

Name of Property	Address of Property	County
Corporate Headquarters	5015 Bradford Drive, Huntsville, Alabama	Madison
AL Egg Depot	17710 Morris Road, Elkmont, Alabama	Limestone
Feed Decontamination Unit	1815 Wilkinson, Athens, Alabama	Limestone
Tennessee Vet Lab	256 Genesis Road, Suite 102, Crossville, Tennessee	Cumberland
AL Vet Lab	Highway 127 (19780 Sandlin), Elkmont, Alabama	Limestone

- c. Breeding stock, feed, supplies and medication are kept at the following contract farms:

See attached Rider 1.

## SCHEDULE 2

Trade names or name styles under which Debtor does business:

Arbor Acres Farm

ARBOR ACRES

AA ARBOR ACRES & Design (or Device)

FSY

YIELD MASTER & Design

FLOCK TRACKING SYSTEM & Design

FTS & Design

AVIAGEN

AVIAGEN & Design

**SCHEDULE 3**

**Subsidiaries of Debtor:**

Ross Breeders FSC Inc. VI (U.S.V.I.)

Arbor Acres BV (Holland)

## SCHEDULE 4

### Affiliates of Debtor:

Arbor Acres Thailand Limited (50%)

Arbor Acres Taiwan Co., Ltd. (32%)

## SCHEDULE 5

Other liens and security interests: (Give name of creditor and describe collateral)

NEC American, Inc. -- telephone system lease

Amsouth Leasing Limited -- nine equipment leases

Financing statements on file: (Give name of creditor and office where filed)

UCC 20718795 filed 03/01/02 by NEC American, Inc. at Delaware Secretary of State

UCC 23021460 filed 11/20/02 by Amsouth Leasing Limited at Delaware Secretary of State

UCC 30321717 filed 1/22/03 by Amsouth Leasing Limited at Delaware Secretary of State

UCC 30673510 filed 2/27/03 by Amsouth Leasing Limited at Delaware Secretary of State

UCC 30684491 filed 3/19/03 by Amsouth Leasing Limited at Delaware Secretary of State

UCC 30684509 filed 3/19/03 by Amsouth Leasing Limited at Delaware Secretary of State

UCC 30798887 filed 3/27/03 by Amsouth Leasing Limited at Delaware Secretary of State

UCC 30909195 filed 4/8/03 by Amsouth Leasing Limited at Delaware Secretary of State

UCC 30947278 filed 4/11/03 by Amsouth Leasing Limited at Delaware Secretary of State

UCC 30947385 filed 4/11/03 by Amsouth Leasing Limited at Delaware Secretary of State

**SCHEDULE 6**

Patents and trademarks in which Debtor holds an ownership interest:

<b>U.S. TRADEMARKS</b>					
<b>Mark</b>	<b>Reg. No. or Serial No.</b>	<b>Int'l Class</b>	<b>Reg. Date or Filing Date</b>	<b>Status</b>	<b>Owner of Record</b>
<b>FLOCK TRACKING SYSTEM &amp; Design</b>	76/468,695	009	Filed Nov. 20, 2002	Pending	Aviagen Inc.
<b>FTS &amp; Design</b>	76/468,692	009	Filed Nov. 20, 2002	Pending	Aviagen Inc.
<b>AVIAGEN</b>	76/289,986	031	Reg. March 11, 2003	Section 8/15 due: March 11, 2009 Renewal date: March 11, 2013	Aviagen Inc.
<b>AVIAGEN &amp; Design</b>	76/289,985	031	Reg. March 18, 2003	Section 8/15 due: March 18, 2009 Renewal date: March 18, 2013	Aviagen Inc.
<b>FSY</b>	2,099,855	031	Reg. Sept. 23, 1997	Section 8/15 due: Sept 23, 2003 Renewal date: Sept. 23, 2007	Aviagen Inc.
<b>ARBOR ACRES (Stylized)</b>	708,576	031	Reg. Dec. 20, 1960	Renewal date: Dec 20, 2010	Aviagen Inc.
<b>ARBOR ACRES AA &amp; Design</b>	713,316	031	Reg. Date April 4, 1961	Renewal date April 4, 2011	Aviagen Inc.

<b>U.S. ISSUED PATENTS</b>					
<b>Title</b>	<b>Filing Date</b>	<b>Issue Date</b>	<b>U.S. Patent No.</b>	<b>Status</b>	<b>Owner of Record</b>
Method for the microaerosol fumigation of newly hatched poultry	Sept. 29, 1992	Feb. 9, 1999	5,868,998	Expired on February 10, 2003 due to failure to pay a maintenance fee. Revivable for up to one year if the failure to pay the fee was unintentional and revivable for an additional year or more after that first anniversary if the abandonment was	Aviagen Inc.

**U.S. ISSUED PATENTS**

<b>Title</b>	<b>Filing Date</b>	<b>Issue Date</b>	<b>U.S. Patent No.</b>	<b>Status</b>	<b>Owner of Record</b>
				unavoidable	



**SCHEDULE 7**

Real property in which Debtor holds an ownership interest:

<b>Name of Property</b>	<b>Address of Property</b>	<b>County</b>
Talladega Hatchery	245 Stockdale Road, Munford, Alabama	Talladega
Elkmont Hatchery	19780 Sandlin Road, Elkmont, Alabama	Limestone
Sallisaw Hatchery	500 Houster Industrial Blvd., Sallisaw, Oklahoma	Sequoyah
TN Hatchery	188 Industrial Blvd., Crossville, Tennessee	Cumberland
Conley Pedigree Farm	350 Button Road, Crossville, Tennessee	Cumberland
Stone Pedigree Farm	394 Christian Road, Crossville, Tennessee	Cumberland
Potato Pedigree Farm	484 Potato Farm Road, Crossville, Tennessee	Cumberland
Plateau Pedigree Farm	3045 Plateau Road, Crossville, Tennessee	Cumberland
Fredonia Pedigree Farm	1087 Fredonia Road, Crossville, Tennessee	Cumberland
Linder Pedigree Farm	46 Old Mt. Zion Road, Crossville, Tennessee	Cumberland
Lowe Pedigree Farm	429 North Lowe Road, Crossville, Tennessee	Cumberland
Pomona Pedigree Farm	1893 Old Hwy 70, Crossville, Tennessee	Cumberland
Elmore Pedigree Farm	689 Clear Creek Road, Crossville, Tennessee	Cumberland
Cherry Branch GGP Farm	724 Cherry Branch Road, Crossville, Tennessee	Cumberland
Barnett GGP Farm	396 Wood Ridge Road, Crossville, Tennessee	Cumberland
Horton GGP Farm	1377 Horton Road, Crossville, Tennessee	White
Country Line GGP Farm	12294 Crossville Highway, Crossville, Tennessee	Cumberland
Woody Farm	521 Rector Road, Crossville, Tennessee	Cumberland
Eastland Farm	296 Roberts Rose Lane, Sparta, TN 38583	White
Moore's Cove Farm	941 Moore Cove Rd., Quebec, TN 38579	White
Mountain View Farm	5451 Hebbertsburg Rd., Crab Orchard, TN 37723	Cumberland
Pageland Hatchery	Route 1 Box 340 Hatchery Road, Pageland, South Carolina	Chesterfield
Blairsville Farms & Hatchery	1470 Arbor Acres Road, Blairsville, GA 30514	Union
Albertville Testing Facility	South Side of Brasher Chapel Road, Albertville, Alabama	Marshall
Sigler Farm	Kimsey Carr Road, Athens, Alabama	Limestone
Maples Farm (Witty, Mill, Road)	17720 Witty Mill Road, Elkmont, Alabama	Limestone
Blairsville Hatchery B	970 Beasley Street, Blairsville, GA 30514	Union