

MATHEWS, COLLINS, SHEPHERD & MCKAY, P.A.

ATTORNEYS AT LAW

100 THANET CIRCLE, SUITE 306  
PRINCETON, NEW JERSEY 08540-3074

(609) 924-8555

FACSIMILE: (609) 924-3036

WEB SITE: www.mathewslaw.com

E-MAIL: attorneys@mathewslaw.com

ROBERT G. SHEPHERD  
DIANE DUNN MCKAY  
BROOKS R. BRUNEAU  
PHILIP B. ABRAMOWITZ\*  
TODD A. DENYS  
DAVID P. KRIVOSHIK  
KRISTINE BUTLER-HOLSTON  
PATRICK H. HIGGINS\*\*  
GREGORY HOUGHTON

RONALD GOULD, Of Counsel

H. HUME MATHEWS (1911-1989)

\*ADMITTED IN NEW YORK, NEVADA & FLORIDA  
\*\*ADMITTED IN PENNSYLVANIA & CALIFORNIA

09-24-2003



102556808

LICENSING  
COMPUTER AND HIGH  
TECHNOLOGY MATTERS  
RELATED LITIGATION

9-22-03

September 17, 2003

OFFICE OF PUBLIC RECORDS  
2003 SEP 22 AM 9:49  
FINANCE SECTION

**Via First Class Mail**

Mail Stop Assignment Recordation Services  
Director of the U.S. Patent and Trademark Office  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

RE: Recordal of Trademark Security Agreement For:  
U.S. Trademark Registration Nos. 1,804,884; 2,430,596;  
1,325,104; 1,326,397; and, 2,087,818  
Our File No.: 3482-120US

Dear Sir or Madam:

Enclosed please find a true copy of a Trademark Security Agreement memorializing the parties in interest in the above-captioned U.S. Trademark Registrations. This Agreement is between Weigh to Live, LLC and Commerce Bank, N.A. Please record and index this document against the above-captioned U.S. Trademark Registrations identified as the collateral in Exhibit "A" to the Agreement.

1. The Name of the Party conveying an interest:

WEIGH TO LIVE LLC  
2130 Highway 35  
Suite 224B  
Sea Girt, New Jersey 08750

Entity:

- Individual  Association
- General Partnership  Limited Partnership
- Corporation German corporation
- Other – a New Jersey Limited Liability Company

09/23/2003 ECDPER 00000117 1004884

01 FC:0521 40.00 BP  
02 FC:0522 100.00 BP

TRADEMARK  
REEL: 002828 FRAME: 0823

2. Name and Address of Party Receiving an Interest:

COMMERCE BANK, N.A.  
1701 Route 70 East  
Cherry Hill, New Jersey 08034

Entity:

- |                                     |   |                          |                     |
|-------------------------------------|---|--------------------------|---------------------|
| <input type="checkbox"/>            | Individual                                    | <input type="checkbox"/> | Association         |
| <input type="checkbox"/>            | General Partnership                           | <input type="checkbox"/> | Limited Partnership |
| <input type="checkbox"/>            | Corporation – a German corporation            |                          |                     |
| <input checked="" type="checkbox"/> | Other – <u>a National Banking Association</u> |                          |                     |

If not domiciled in the United States, a domestic representative designation is attached:

- Yes  
 No

3. Interest Conveyed:

- |                                     |                    |                          |                |
|-------------------------------------|--------------------|--------------------------|----------------|
| <input type="checkbox"/>            | Assignment         | <input type="checkbox"/> | Change of Name |
| <input checked="" type="checkbox"/> | Security Agreement | <input type="checkbox"/> | Merger         |

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

Additional sheet attached:  Yes  No

**A. APPLICATION SERIAL NO.(s)**

**B. TRADEMARK REGISTRATION NO.(s)**

**1,804,884**  
**2,430,596**  
**1,325,104**  
**1,326,397**  
**2,087,818**

5. Name and Address of party of whom correspondence concerning document should be mailed.

Robert G. Shepherd, Esq.  
**MATHEWS, COLLINS, SHEPHERD & MCKAY, PA**  
100 Thanet Circle, Suite 306  
Princeton, NJ 08540-3674  
Tel. No. (609) 924-8555

6. Number of applications and registrations involved:

Five(5)

7. Amount of fee enclosed or authorized to be charged:

\$140.00

8. Deposit account number (Attach duplicate copy of this form if paying by deposit account):

**13-2165**

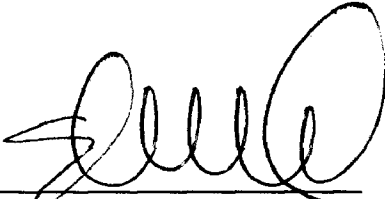
Your prompt attention to expediting the recordation of this Trademark Security Agreement is greatly appreciated.

If you have any questions, please do not hesitate to telephone me directly at (609) 924-8555.

9. Date of execution of attached document: September 8, 2003

10. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on:

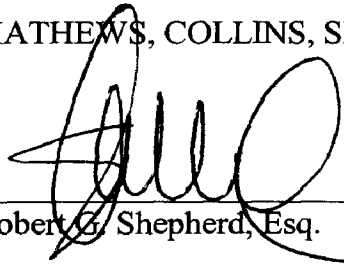
9/17/03  
Date

  
\_\_\_\_\_  
Signature

Robert G. Shepherd  
Name of Person Signing

Very truly yours,

MATHEWS, COLLINS, SHEPHERD & MCKAY

By:   
\_\_\_\_\_  
Robert G. Shepherd, Esq.

RGS:fem

- Encls.
1. A true copy of Trademark Security Agreement
  2. Schedule A
  3. Special Power of Attorney
  4. Check in the amount of \$140.00
  5. This Official Letter of Transmittal
  6. Acknowledgement Postcard

cc: Taylor & Colicchio

## TRADEMARK SECURITY AGREEMENT

THIS Trademark Security Agreement (the "Security Agreement") is made as of this 29<sup>th</sup> day of August, 2003 by WEIGH TO LIVE, LLC, a New Jersey limited liability company with its principal place of business located at 2130 Highway 35, Suite 224B, Sea Girt, New Jersey 08750 ("Borrower") in favor of COMMERCE BANK, N.A., a national banking association with its principal place of business located at 1701 Route 70 East, Cherry Hill, New Jersey, 08034 ("Lender").

### WITNESSES:

WHEREAS, Borrower is the owner and holder of the Trademarks listed on Schedule A annexed hereto and made a part hereof, together with all of the goodwill of the business symbolized by each of the Trademarks; and

WHEREAS, Borrower and Lender are about to enter into a certain Loan and Security Agreement of even date herewith (said Agreement, as it may hereafter be amended, supplemented, restated or otherwise modified from time to time being referred to as the "Loan and Security Agreement") (any capitalized terms used, but not specifically defined, herein shall have the meaning provided for such terms in the Loan and Security Agreement); and

WHEREAS, to induce Lender to enter into the Loan and Security Agreement and to grant the loans, advances and extensions of credit to Borrower in accordance with the Loan and Security Agreement, Borrower has offered to execute and deliver this Security Agreement to Lender, granting and conveying to Lender a security interest, first in priority, upon the Collateral (as such term is hereinafter defined);

NOW, THEREFORE, in consideration of the foregoing, in consideration of the promises set forth in the Loan and Security Agreement and in order to induce Lender to grant the loans, advances and extensions of credit to Borrower in accordance with the Loan and Security Agreement, Borrower hereby agrees with Lender for its benefit as follows:

1. Certain Defined Terms. As used in this Security Agreement, unless the context otherwise requires:

(a) "Collateral": Shall mean, collectively and individually—

(i) each of the Trademarks listed on Schedule A and Schedule B annexed hereto and made a part hereof and the goodwill of the business symbolized by each of those Trademarks;

(ii) Any and all Licenses;

(iii) all accounts, contract rights and general intangibles of Borrower arising under or relating to the Licenses, whether now existing or hereafter arising, including, without limitation, (1) all moneys due and to become due under any License, (2) any damages arising out of or for breach or default in respect of any such License, (3) all other amounts from time to time paid or payable under or in connection with any such License, and (4) the right of Borrower to terminate any such License or to perform under the terms of said License and to exercise all remedies thereunder;

(iv) any claims by Borrower against third parties, and all proceeds of suits, for infringement of the Trademarks, and the rights to sue for past, present and future infringements and all rights corresponding thereto; and

(v) as to all of the foregoing (i) through (iv) inclusive, and any and all cash proceeds, non-cash proceeds and products thereof, additions and accessions thereto, replacements and substitutions therefor, and all related books, records, journals, computer print-outs and data, of Borrower.

(b) "Licenses": Shall mean, collectively and individually, any and all Trademark license agreements granted by Borrower to third parties or granted by third parties to Borrower, whether now existing or hereafter arising, as any of same may from time to time be amended or supplemented.

(c) "Obligations": Shall mean, all loans, advances, indebtedness, notes, liabilities, overdrafts, outstanding letters of credit not drawn upon, letters of credit drawn upon and not yet reimbursed, outstanding acceptances, and other amounts, liquidated or unliquidated, of every kind, nature and description, whether arising under the Loan and Security Agreement or otherwise, including, without limitation, principal and interest, and whether secured or unsecured, direct or indirect, absolute or contingent, due or to become due, now existing or hereafter contracted.

(d) "Trademarks": Shall mean, collectively and individually, all--

(i) trademarks, trade names, trade dress, service marks, and the goodwill of the business associated therewith; prints and labels on which said trademarks, trade names, trade dress and service marks have appeared or appear; designs and general intangibles of like nature, now existing or hereafter adopted or acquired; all right, title and interest therein and thereto; all applications thereof filed under Sections 1(a) and 1(b) of the Lanham Act (15 U.S.C.A. § 1051(a) and § 1051(b)); and all registrations and recordings of any of the foregoing, including, without limitation, registrations and recordings in the United States Patent and Trademark Office or in any similar office or agency of the United States, any State thereof, or any other country or any political subdivision thereof, all whether now or hereafter owned or licensable by any company, including, but not limited to, those listed on Schedule A annexed hereto and made a part hereof; and

(ii) trademarks, trade names, trade dress and service marks, whether now or hereafter owned by Borrower which has not registered or recorded in any jurisdiction; and

(iii) reissues, extensions or renewals thereof.

2. Grant of Security. To secure payment and performance of all of the Obligations of Borrower to Lender, Borrower hereby mortgages to and pledges to Lender and grants and conveys to Lender a security interest in all of Borrower's right, title and interest in and to the Collateral, which security interest shall remain in full force and effect until all of the Obligations of Borrower to Lender are fully paid and satisfied; provided, however, anything herein, in the Loan and Security Agreement or in any other document, instrument, writing or agreement related thereto to the contrary notwithstanding, the maximum liability of Borrower secured by the Collateral hereunder and under the Loan and Security Agreement shall in no event exceed an amount equal to the largest amount that would not render Borrower's obligations hereunder subject to avoidance under Section 548 of the Title 11 of the U.S. Code, as amended, or any equivalent provision of the law of any state.

3. Representations, Warranties and Covenants of Borrower. Borrower hereby represents, warrants, covenants and agrees as follows:

(a) Title to the Trademarks. Borrower has sole, exclusive, full, clear and unencumbered right, title and interest in and to the registered Trademarks and the registrations of the registered Trademarks are valid and subsisting and in full force and effect. The registered Trademarks have not been abandoned, suspended, voluntarily terminated or canceled by Borrower, have not been adjudged invalid or unenforceable and, to the best of Borrower's knowledge, there is no reason why the registered Trademarks should be adjudged invalid or unenforceable.

(b) Use of the Trademarks. Except to the extent that (i) Lender, upon prior written notice by Borrower shall consent, or (ii) Borrower determines in its reasonable business judgment that the termination or abandonment of a Trademark would not be likely to materially adversely affect the Borrower economically or the Collateral hereunder and such Trademark is no longer utilized in the ordinary course of Borrower's business, Borrower (either itself or through licensee(s)) has used and will continue to use the Trademarks on each and every trademark class of goods applicable to its current line as reflected in its current catalogs, brochures and price lists and with each and every trademark class of services applicable to the services it currently promotes or provides in order to maintain the Trademarks in full force free from any claim of abandonment for nonuse and Borrower will not (and will not permit any licensee thereof to) do any act or knowingly omit to do any act whereby any of the Trademarks may become invalidated, abandoned, unenforceable, avoided, avoidable or otherwise diminished in value, and shall notify Lender immediately if it knows of any reason or has reason to know of any ground under which any of the foregoing may occur.

(c) License or Assignment of Trademarks. Without the prior written consent of Lender, Borrower shall not license or assign any of the registered Trademarks to any party, except that the Borrower may license the registered trademarks to third parties in the ordinary course of business without the Lender's consent.

(d) Further Assurances. Borrower will perform all acts and execute all further instruments and documents, including, without limitation, assignments for security in a form

suitable for filing with the United States Patent and Trademark Office, reasonably requested by Lender at any time to evidence, perfect, maintain, record and enforce Lender's interest in the registered Trademarks or otherwise in furtherance of the provisions of this Security Agreement, and Borrower hereby authorizes Lender to execute and file (with or without the signature of Borrower) one or more financing statements (and similar documents) or copies thereof or this Security Agreement with respect to the Collateral signed only by Lender.

(e) Costs and Expenses. Borrower shall pay on demand all reasonable and necessary expenses and expenditures of Lender, including, without limitation, reasonable attorney's fees and expenses, incurred or paid by Lender in protecting, enforcing or exercising its interests, rights or remedies created by, connected with or provided in this Security Agreement, or performance pursuant to this Security Agreement.

(f) Pledge of Additional Trademarks. In the event Borrower, either itself or through any agent, employee, licensee or designee shall:

(i) file or record an application for the registration of any Trademark with the United States Patent and Trademark Office or any similar office or agency of the United States, any State thereof, or any other country or any political subdivision thereof; or

(ii) file or record any assignment of any Trademark which Borrower may acquire, own or license from a third party, with the United States Patent and Trademark Office or any similar office or agency of the United States, any State thereof or any other country or any political subdivision thereof;

Borrower shall promptly, but in no event more than thirty (30) days subsequent to such filing, notify Lender thereof, and, upon request of Lender shall promptly, but in no event more than forty (40) days subsequent to such notice, execute and deliver any and all assignments, agreements, instruments, documents and papers as Lender may reasonably request to evidence Lender's interest in such Trademark and the goodwill of Borrower relating thereto or represented thereby. Borrower hereby grants Lender a power of attorney, irrevocable until the Obligations of Borrower to Lender are fully paid and satisfied, to modify this Security Agreement by amending Schedule A, as applicable, to include any future Trademarks or Licenses, including, without limitation, registrations or applications appurtenant thereto, covered by this Security Agreement.

(g) Borrower's Authority, Etc. Borrower has the right and power to mortgage and pledge the Collateral and to grant the security interest in the Collateral herein granted; and the Collateral is not now, and at all times hereafter will not be subject to any liens, licenses (other than as permitted under subparagraph 3(c) of this Security Agreement), pledges, assignments, registered license agreement, covenants not to sue by Borrower or other encumbrance of any nature whatsoever (other than the unregistered trademarks to which to Borrower has no knowledge and the Permitted Indebtedness as defined in the Loan and Security Agreement), and Borrower has not received any notice from any third party claiming any right or interest in and to any of the Collateral or that Borrower's use thereof infringes the rights of any third party.

(h) Negative Pledge. Borrower will not, without the prior written consent of Lender, assign (by operation of law or otherwise), sell, mortgage, lease, transfer, pledge,



hypothecate, grant a security interest in or lien upon, grant an exclusive or non-exclusive license upon (other than any existing Licenses), or otherwise encumber, grant rights to any other person upon or dispose of any of the Collateral (other than Permitted Indebtedness as defined in the Loan and Security Agreement), and nothing in this Security Agreement shall be deemed a consent by Lender to any such action except as expressly permitted herein. Borrower shall defend the Collateral against and shall take such other action as is necessary to remove any lien, security interest, claim, right or other encumbrance of any nature whatsoever in or to the Collateral, and will defend the right, title and interest of Lender in and to any of Borrower's rights under the Collateral against the claims or demands of all persons whomsoever.

(i) No Additional Trademarks. As of the date hereof, Borrower does not own any registered Trademarks, or have any registered Trademarks registered in or the subject of pending applications in the United States Patent and Trademark Office or any similar office or agency in any other country or any political subdivision thereof, other than those grants, registrations or applications for registrations listed on Schedule A annexed hereto and made a part hereof.

(j) Additional Further Assurances. Subject to Borrower exercising its rights under Provision 3(b)(ii), Borrower will take all necessary steps in any proceeding before the United States Patent and Trademark Office or any similar office or agency in any other country, or any political subdivision thereof, (i) to maintain each registration and grant of the Trademarks and Licenses, unless in the Borrower's reasonable business judgement such termination would not be likely to materially adversely affect the Borrower economically or the Collateral hereunder, and (ii) in accordance with its reasonable business judgment and at its expense, to halt any infringement of the Trademarks and shall properly exercise its duty to control the nature and quality of the goods offered by any licensees in connection with the Licenses.

(k) Responsibility and Liability. Borrower assumes all responsibility and liability arising from the use of the Trademarks and Licenses, and hereby indemnifies and holds Lender and each director, officer, employee, affiliate and agent thereof, harmless from and against any claim, suit, loss, damage or expense (including reasonable attorneys' fees and expenses) arising out of any alleged defect in any product manufactured, promoted or sold by Borrower in connection with any of the Trademarks or otherwise arising out of Borrower's operation of its business from the use of the Trademarks. In any suit, proceeding or action brought by Lender under any License for any sum owing thereunder, or to enforce any provisions of such License, Borrower will indemnify and keep Lender harmless from and against all reasonable expense, loss or damage suffered by reason of any defense, set off, recoupment, claim, counterclaim, reduction or liability whatsoever of the obligee thereunder or arising out of a breach of Borrower of any material obligation thereunder or arising out of any other material agreement, including but not limited to any and all security agreements in favor of Lender, indebtedness or liability at any time owing to or in favor of such obligee or its successors from Borrower, and all such obligations of Borrower shall be and remain enforceable against and only against Borrower and shall not be enforceable against Lender.

(l) Lender's Rights. Lender may, in its sole discretion, upon prior written notice to Borrower, pay any amount or do any act required of Borrower hereunder or requested by Lender to preserve, defend, protect, maintain, record or enforce Borrower's obligations

contained herein, the Obligations of Borrower to Lender, the Collateral, or the right, title and interest granted Lender herein, and which Borrower fails to do or pay, and any such payment shall be deemed an advance by Lender to Borrower and shall be payable on demand together with interest thereon at the default rate as specified in the Loan and Security Agreement.

(m) Protection of the Trademarks. Borrower agrees that if it learns of any use by any person of any term or design likely to cause confusion with any Trademark, or of any claim of any lien, security interest, claim, right or other encumbrance of any nature whatsoever in or to the Collateral, Borrower shall promptly notify Lender of such use, lien, security interest, claim, right or other encumbrance and, if requested by Lender, shall join with Lender, at Borrower's expense, in such action as Lender, in its reasonable discretion, may deem advisable for the protection of Lender's interest in and to the Trademarks, it being understood that the foregoing shall not preclude Borrower from bringing an action against a person for the protection of Borrower's interest in and to such Trademarks.

4. Lender's Appointment as Attorney-in-Fact.

(a) Borrower hereby irrevocably constitutes and appoints Lender, and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of Borrower and in the name of Borrower or in its own name, from time to time in Lender's discretion, for the purposes of carrying out the terms of this Security Agreement, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary or desirable to perform Borrower's obligations under this Security Agreement and/or confirm or protect the security interest in the Collateral, and, without limiting the generality of the foregoing, hereby gives Lender the power and right, on behalf of Borrower, to do the following:

(i) To pay or discharge taxes, liens, security interests or other encumbrances levied or placed on or threatened against the Collateral, to effect any repairs or any insurance called for by the terms of this Security Agreement or the Loan and Security Agreement and to pay all or any part of the premiums therefor and the costs thereof;

(ii) Upon the occurrence and during the continuance of an Event of Default:

(1) to ask, demand, collect, receive and give acquittances and receipts for any and all moneys due and to become due under any Licenses and, in the name of Borrower or in its own name or otherwise, to take possession of and endorse and collect any checks, drafts, notes, acceptances or other instruments for the payment of moneys due under any License and to file any claim or to take any other action or proceeding in any court of law or equity or otherwise deemed appropriate by Lender for the purpose of collecting any and all such moneys due under any License whatsoever;

(2) to direct any party liable for any payment under any of the Licenses to make payment of any and all moneys due and to become due thereunder directly to Lender or as Lender shall direct;

(3) to receive payment of and receipt for any and all moneys, claims and other amounts due and to become due at any time in respect of or arising out of any Collateral;

(4) to commence and prosecute any suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect the Collateral or any part thereof and to enforce any other right in respect of any Collateral;

(5) to defend any suit, action or proceeding brought against Borrower with respect to any Collateral;

(6) to settle, compromise, or adjust any suit, action or proceeding described above and, in connection therewith, to give such discharges or releases as Lender may deem appropriate;

(7) 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, all acts and things which Lender deems necessary to protect, preserve or realize upon the Collateral and Lender's security interest therein, in order to effect the intent of this Security Agreement, all as fully and effectively as Borrower might do.

(b) This power of attorney is a power coupled with an interest and shall be irrevocable. Notwithstanding the foregoing, Borrower further agrees to execute any additional documents which Lender may require in order to confirm this power of attorney, or which Lender may deem necessary to enforce any of its rights contained in this Security Agreement.

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

(d) Borrower also authorizes Lender to execute, in connection with any sale provided for in this Security Agreement, any endorsements, assignments or other instruments of conveyance or transfer with respect to the Collateral.

5. Event of Default. The occurrence of any one or more of the following shall constitute an Event of Default under this Security Agreement:

(a) The occurrence of any Default or Event of Default under the Loan and Security Agreement.

(b) A breach by Borrower of any covenant contained in this Security Agreement;

(c) Lender's discovery that a warranty or representation made by Borrower and contained in this Security Agreement or the Loan and Security Agreement, including, without limitation, the warranties and representations contained in Section 3 of this Security Agreement, is incorrect in any material respect.

6. Remedies.

(a) Upon the occurrence of an Event of Default, in addition to all other rights and remedies of Lender, whether under law, in equity or otherwise (all such rights and remedies being cumulative, not exclusive and enforceable alternatively, successively or concurrently):

(i) Lender shall have all of the rights and remedies set forth in the Loan and Security Agreement;

(ii) immediately upon Lender's written request, Borrower shall not make any further use of the Trademarks or any mark similar thereto for any purposes;

(iii) Lender may, at any time and from time to time, license, whether general, special or otherwise, and whether on an exclusive or nonexclusive basis, any of the Trademarks, throughout the world for such term or terms, on such conditions, and in such manner, as Lender shall in its sole discretion determine;

(iv) Lender may (without assuming any obligations or liability thereunder), at any time, enforce (and shall have the exclusive right to enforce) against any licensee or sublicensee all rights and remedies of Borrower in, to and under any license agreements with respect to the Collateral, including, without limitation taking or refraining from taking any action under any license or sublicense thereof, and Borrower hereby releases Lender from, and agrees to hold Lender free and harmless from and against, any claims arising out of any action taken or omitted to be taken with respect to any such license agreements;

(v) Lender may foreclose upon the Collateral for the purpose of using, assigning, selling or otherwise disposing of the Collateral or any of it, either with or without special or other conditions or stipulations, and record any documents with the United States Patent and Trademark Office necessary to evidence Lender's ownership in the Collateral;

(vi) Lender may appear before the United States Patent and Trademark Office as owner of the Collateral, without recording or filing any documents to evidence Lender's ownership in the Collateral;

(vii) whether or not Lender forecloses upon the Collateral in accordance with this Security Agreement, Lender may, at any time and from time to time, assign, sell, or otherwise dispose of, the Collateral or any of it either with or without special or other conditions or stipulations, with power to buy the Collateral or any part of it, and with power also to execute assurances, and do all other acts and things for completing the assignment, sale or disposition which Lender shall, in its sole discretion, deems appropriate or proper; and

(viii) in addition to the foregoing, in order to implement the assignment, sale or other disposal of any of the Collateral, Lender may, at any time, pursuant to the authority

granted in the Special Power of Attorney (such authority becoming effective on the occurrence of an Event of Default), execute and deliver on behalf of Borrower, one or more instruments of assignment of the Trademarks (or any application or registration thereof), in form suitable for filing, recording or registration in any country. Borrower agrees to pay when due all reasonable costs and expenses incurred in any such transfer of the Trademarks, including any taxes, fees and reasonable attorneys' fees, and all such costs shall be added to the Obligations of Borrower to Lender. Lender may apply the proceeds actually received from any such license, assignment, sale or other disposition to the payment of the Obligations of Borrower to Lender as provided for in the Loan and Security Agreement. Borrower shall remain liable for any deficiency with respect to the Obligations of Borrower to Lender, which shall bear interest and be payable at the Default Rate under the Loan and Security Agreement. The rights of Borrower to receive any surplus shall be subject to any duty of Lender imposed by law to the holder of any subordinate security interest in the Collateral known to Lender. Nothing contained herein shall be construed as requiring Lender to take any such action at any time.

(b) Notwithstanding anything contained in this Security Agreement to the contrary, Lender shall not foreclose upon, dispose of or be deemed the owner of any Trademark unless and until Lender has provided Borrower with ten (10) days' advance written notice of its intent to foreclose upon, dispose of or take an ownership interest in any Trademark. Any writing given by Lender to Borrower under this paragraph 6 must make explicit reference to this Security Agreement and of Lender's intent to exercise its rights and remedies hereunder.

7. Execution of Special Power of Attorney. Concurrently with the execution and delivery of this Security Agreement, Borrower is executing and delivering to Lender a certain Special Power of Attorney for the implementation of the sale, assignment, licensing or other disposition of the Collateral pursuant to this Security Agreement.

8. Amendments and Modification. No provision hereof shall be modified, altered, waived or limited except by a written instrument expressly referring to this Security Agreement and executed by the party to be charged.

9. Binding Nature. This Security Agreement shall be binding upon and inure to the benefit of the successors, assigns or other legal representatives of Borrower, and shall, together with the rights and remedies of Lender hereunder, be binding upon and inure to the benefit of Lender, its successors, assigns or other legal representatives.

10. **GOVERNING LAW. THE VALIDITY, INTERPRETATION AND ENFORCEMENT OF THIS SECURITY AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW JERSEY, WITHOUT REGARD TO ITS CONFLICTS OF LAWS PRINCIPLES AND ANY DISPUTE BETWEEN THE PARTIES WILL BE PROPERLY JURIDICTIONED AND VENUED IN FEDERAL DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY.**

11. Notices. All notices, requests, demands and other communications provided for hereunder shall be in writing (unless otherwise expressly provided herein) and shall be sent and deemed to have been received as set forth in the Loan and Security Agreement.

12. Continuing Security Interest; Assignments. This Security Agreement shall create a continuing security interest in the Collateral and shall (a) remain in full force and effect until payment in full in cash or in another manner acceptable to Lender and termination of the Obligations of Borrower to Lender, (b) be binding upon and inure to the benefit of, and be enforceable by, Borrower, its successors and assigns, and (c) be binding upon and inure to the benefit of, and be enforceable by, Lender and its successors, transferees and assigns. Upon the payment in full in cash or in another manner acceptable to Lender and termination of the Obligations of Borrower to Lender then outstanding, the security interest granted hereby shall terminate and all rights granted as security in the Collateral to Lender shall revert to Borrower. Upon any such termination, Lender will, at Borrower's expense, execute and deliver to Borrower such documents as Borrower shall reasonably request to evidence such termination.

13. Counterparts. This Security Agreement may be executed in counterparts, each of which, when taken together, shall be deemed one and the same instrument.

14. Headings. Section headings herein are included for convenience of reference only and shall not constitute a part of this Security Agreement for any other purpose.

15. Acknowledgment of Receipt. Borrower acknowledges receipt of a copy of this Security Agreement.

16. No Waiver. No course of dealing between Borrower and Lender, and no delay or omission of Lender in exercising or enforcing any of Lender's rights and remedies hereunder shall constitute a waiver thereof; and no waiver by Lender of any Event of Default shall operate as a waiver of any other Event of Default.

17. Severability. If any of the provisions of this Security Agreement shall contravene or be held invalid under the laws of any jurisdiction, this Security Agreement shall be construed as if not containing such provisions and the rights, remedies, warranties, representations, covenants, and provisions hereof shall be construed and enforced accordingly in such jurisdiction and shall not in any manner affect such provision in any other jurisdiction, or any other provisions of this Security Agreement in any jurisdiction.

18. Interest Granted to Lender. Notwithstanding any provision of this Security Agreement to the contrary, the interest granted to Lender under this Security Agreement is intended to be a pledge and a security interest only, and the execution of this Security Agreement is not intended to create an assignment or a transfer of title or any other property rights to the Trademarks.

19. WAIVER OF JURY TRIAL. BORROWER WAIVES TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT ON ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS SECURITY AGREEMENT.

**REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK**

IN WITNESS WHEREOF, Borrower has caused this Security Agreement to be duly executed as of the day and year first above written.

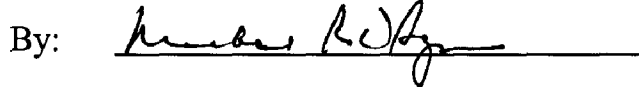
WITNESS:

WEIGH TO LIVE, LLC



Print Name: Charles W. Jarvis

Print Title: Operating Manager  
WTL LLC

By: 

Print Name: Michael R. D'Agnes

Print Title: Chairperson of the  
Management Committee

**ACKNOWLEDGMENT**

STATE OF NEW JERSEY )  
 )ss.  
COUNTY OF Middlesex )

On this 8<sup>th</sup> day of September, 2003, before me, the undersigned, personally appeared Nicholas R. D'Agostino, personally known to me to be the CHAIRMAN of WEIGH TO LIVE, LLC, a New Jersey limited liability company, the limited liability company named in the foregoing instrument, and he acknowledged that by virtue of authority conferred upon him, he signed, sealed and delivered the within instrument as the voluntary act and deed of said company.

Thomas G. Shanahan  
Notary Public

**Subscribed and sworn to and signed before me this**  
8 day of SEPT 03

**THOMAS G. SHANAHAN**  
**NOTARY PUBLIC OF NEW JERSEY**  
**Commission Expires 12/7/2004**



# EXHIBIT A

## SCHEDULE A

### Registered Trademark

### Registration Number

WEIGH TO GO	1,804,884
WEIGH TO GO!	2,430,596
WEIGH TO LIVE	1,325,104
WEIGH TO LIVE SYSTEM (and Design)	1,326,397
WEIGH TO COOK	2,087,818

**SCHEDULE B**

**Unregistered Trademarks**

PHYSICIANS DIET PLAN

CALORIE GLASS

CALORIE CUP

MENUMAX

SPECIAL POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that as of this 29th day of August, 2003, WEIGH TO LIVE, LLC, a New Jersey limited liability company with its principal place of business located at 2130 Highway 35, Suite 224B, Sea Girt, New Jersey 08750 (the "Company"), pursuant to a certain Trademark Security Agreement of even date herewith (the "Security Agreement") by the Company in favor of COMMERCE BANK, N.A., a national banking association with its principal place of business located at 1701 Route 70 East, Cherry Hill, New Jersey, 08034, ("Lender"), hereby appoints and constitutes Lender as its true and lawful attorney, with full power of substitution, and with full power and authority to perform the following acts on behalf of the Company, in accordance with the terms and provisions of the Security Agreement:

1. Assigning, selling or otherwise disposing of all right, title and interest of the Company in and to the Collateral, as such term is defined in the Security Agreement, including without limitation, the Trademarks, as such term is defined in the Security Agreement, those Trademarks listed on Schedule A annexed to the Security Agreement, any Trademarks that the Company may now or hereafter acquire, and any Trademarks which may be added to Schedule A annexed to the Security Agreement subsequent to the date of this Special Power of Attorney, and all registrations and recordings of any of the foregoing, and for the purpose of the recording, registering and filing of, or accomplishing any other formality with respect to the foregoing, and to execute and deliver any and all other agreements, documents, instruments or assignment or other papers necessary or advisable to effect such purpose, in each case, in accordance with the terms and provisions of the Security Agreement; and

2. To execute any and all documents, statements, certificates or other papers necessary or advisable in order to obtain the purposes described above as Lender may in its sole discretion determine.

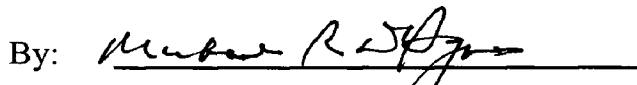
This Special Power of Attorney is made pursuant to the Security Agreement and may not be revoked until the Obligations, as such term is defined in the Security Agreement, of the Company to Lender are fully paid and satisfied.

IN WITNESS WHEREOF, the Company has caused this Special Power of Attorney to be duly executed as of the day and year first above written.

WITNESS:

WEIGH TO LIVE, LLC



By: 

Print Name: Charles W. Jones

Print Name: Michael R. D'Agnes

Print Title: Operating Manager  
WTL LLC

Print Title: Chairperson of the  
Management Committee