

01-06-2004

Form PTO-1594 (Rev. 03/01) OMB No. 0651-0027 (exp. 5/31/2002)

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



Tab settings

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To the honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies): American Excelsior Company 12-11-03

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: December 5, 2003

2. Name and address of receiving party(ies)
Name: The Frost National Bank
Internal Address: _____ DEC 11 2003
Street Address: 1010 Lamar, Suite 700
City: Houston State: TX Zip: 77002

Individual(s) citizenship _____
 Association _____
 General Partnership _____
 Limited Partnership _____
 Corporation-State _____
 Other national banking association

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

4. Application number(s) or registration number(s):
A. Trademark Application No.(s)
B. Trademark Registration No.(s)
SEE ATTACHED EXHIBIT A

Additional number(s) attached Yes No

6. Total number of applications and registrations involved: 30

7. Total fee (37 CFR 3.41) \$ 765.00
 Enclosed
 Authorized to be charged to deposit account

8. Deposit account number: _____

(Attach duplicate copy of this page if paying by deposit account)

5. Name and address of party to whom correspondence concerning document should be mailed:
Name: J. Colter Harris
Internal Address: Jackson Walker L.L.P.
Street Address: 901 Main Street, Suite 6000
City: Dallas State: TX Zip: 75202

DO NOT USE THIS SPACE

9. Statement and signature.
To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

J. Colter Harris 12/10/2003
Name of Person Signing Signature Date

Total number of pages including cover sheet, attachments, and document: 22

01/05/2004 ECDOPER 00000229 2592521 Mail documents to be recorded with required cover sheet information to:
01 FC:8521 40.00 00
02 FC:8522 95686v1 725.00 00
Commissioner of Patent & Trademarks, Box Assignments
Washington, D.C. 20231

TRADEMARK REEL: 002893 FRAME: 0966

EXHIBIT A TO RECORDATION FORM COVER SHEET

Federal Trademark Registrations/Applications

<u>Mark</u>	<u>Reg. No.</u>	<u>Reg. Date</u>
AEC PREMIER STRAW	2,592,521	07/09/2002
AMCEL	1,574,980	01/02/1990
AMERICAN EXCELSIOR COMPANY	1,856,681	10/04/1994
AMERICAN EXCELSIOR COMPANY and Design	1,877,518	02/07/1995
AMERICAN EXCELSIOR COMPANY EARTH SCIENCE DIVISION and Design	2,388,020	09/19/2000
AMFLO	1,889,017	04/11/1995
AMFLO	1,871,333	01/03/1995
AMFLO RE-GREEN	1,871,334	01/03/1995
ASPENTONES	1,747,155	01/19/1993
COOLER CONTROLLER (Stylized)	2,200,691	10/27/1998
CURLEX	1,739,639	12/15/1992
CURLEX	1,751,412	02/09/1993
CURLEX POWER-STOP	1,801,626	10/26/1993
ECO FLOW and Design	2,454,094	05/22/2001
ECO-LAM	2,241,016	04/20/1999
E-MAT	2,281,427	09/28/1999
ENFORCER	2,421,455	01/16/2001
EROSIONLAB	2,303,017	12/21/1999
EROSIONWORKS	2,084,949	07/29/1997
EXCEL	1,562,469	10/24/1989
EXCEL BOARD	1,810,788	12/14/1993
FIBER-CEL	2,152,975	04/21/1998
GREEN SAVERS	2,130,236	01/20/1998
MAX COOL and Design	2,547,509	03/12/2002
MOSS BLEND	2,096,060	09/09/1997
PAC-EASE	2,084,596	07/29/1997
QUICKGRASS	1,965,543	04/02/1996
RECYCLEX	2,562,477	04/16/2002
SEDIMENT LOG	2,145,282	03/17/1998
SNO-FLUF	507,583	03/15/1949

3495689v1

SECURITY AGREEMENT

By and Between

AMERICAN EXCELSIOR COMPANY

in favor of

**THE FROST NATIONAL BANK,
a national banking association,
doing business as
FROST CAPITAL GROUP and
formerly known as
CREEKWOOD CAPITAL**

Dated as of

December 5, 2003

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SECURITY AGREEMENT

THIS SECURITY AGREEMENT dated as of December 5, 2003, by AMERICAN EXCELSIOR COMPANY, a Texas corporation, with its principal office and mailing address at 850 Avenue H East, Arlington, Texas 76011 ("Debtor"), in favor of THE FROST NATIONAL BANK, a national banking association, doing business as FROST CAPITAL GROUP and formerly known as CREEKWOOD CAPITAL GROUP, whose office address is at 1010 Lamar, Suite 700, Houston, Texas 77002 (herein called "Secured Party").

WITNESSETH

A. Debtor has requested Secured Party to make a loan or loans to or for the account of Debtor pursuant to that certain Loan Agreement by and between Debtor and Secured Party of even date herewith (as renewed, modified and restated from time to time, the "Agreement");

B. Secured Party has conditioned its agreement to make such loan or loans under that certain Agreement upon Debtor's execution and delivery of this Security Agreement;

NOW, THEREFORE, to induce Secured Party to make a loan or loans to or for the account of Debtor, at the special instance of Secured Party, and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, Debtor hereby agrees with Secured Party, as follows:

ARTICLE I GENERAL

Section 1.01. Certain Definitions. As used in this Security Agreement, the following terms shall have the respective meanings as indicated, unless the context otherwise requires:

"Accounts" shall have the meaning indicated in Subsection 2.01(a) of this Security Agreement.

"Agreement" shall have the meaning set forth in the Recitals hereto.

"Books and Records" shall mean all books, records, reports, memoranda, and/or data compilations, in any form (including, without limitation, corporate and other business records, customer lists, credit files, computer programs, printouts and any other computer materials and records), of Debtor pertaining to any of the Accounts, General Intangibles, Goods, and any other Property included in the Collateral.

"Code" shall mean the Uniform Commercial Code as presently in effect in the State of Texas, Texas Business & Commerce Code Annotated Sections 1.101 through 11.108.

“Collateral” shall mean all Property, including without limitation, cash or other proceeds, in which Secured Party shall have a security interest pursuant to Section 2.01 of this Security Agreement.

“General Intangibles” shall have the meaning indicated in Subsection 2.01(b) of this Security Agreement.

“Goods” shall have the meanings indicated in Subsection 2.01(c) of this Security Agreement.

“Indebtedness” shall have the meaning indicated in Section 2.02 of this Security Agreement.

“Instruments” shall have the meaning indicated in Subsection 2.01(e) of this Security Agreement.

“Intellectual Property Collateral” shall have the meaning indicated in Subsection 2.01(b)(ii) of this Security Agreement.

“Other Liable Party” shall mean any Person other than Debtor, primarily or secondarily liable for any of the Indebtedness or who grants Secured Party a lien upon and/or a security interest on any Property as security for any of the Indebtedness.

“Person” shall mean any individual, corporation, partnership, joint venture, limited liability company, association, joint stock company, trust, trustee, unincorporated organization, government or agency or court or political subdivision thereof, or any other form of entity.

“Property” shall mean any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

“Related Rights” shall mean all chattel papers, documents and instruments relating to the Accounts or General Intangibles and all rights now or hereafter existing in and to all security agreements, leases and other contracts securing or otherwise relating to any Accounts or General Intangibles or any such chattel papers, documents and instruments.

“Security Agreement” shall mean this Security Agreement, as the same may from time to time be amended, supplemented, revised or restated.

Section 1.02. Terms Defined in Code. All terms used herein which are defined in the Code shall have the same meaning herein unless otherwise defined herein or the context otherwise requires.

ARTICLE II
SECURITY INTEREST

Section 2.01. Grant of Security Interest. Debtor hereby grants and confirms that it has granted to Secured Party a first priority security interest in, a general lien upon, and a right of set-off against the following described Property:

(a) all of Debtor's accounts of any kind (including all leases) whether now existing or hereafter arising (herein called the "Accounts"); all chattel papers (including electronic chattel papers, hereinafter collectively referred to as "chattel papers"), documents and instruments whether now existing or hereafter arising relating to the Accounts; all rights now or hereafter existing in and to all security agreements, leases and other contracts securing or otherwise relating to any Accounts or any such chattel papers, documents and instruments; and all returned or repossessed goods arising therefrom or relating to any Accounts, or other proceeds of any sale or other disposition of inventory;

(b) all of Debtor's investment property and general intangibles of any kind whether now existing or hereafter arising including, without limitation the following (herein called the "General Intangibles"):

(i) all leases of real or personal property;

(ii) all copyrights, trademarks, trademark registrations and applications for registration, trade names, corporate names, trade styles, service marks, logos, other source and business identifying marks, together with any goodwill associated therewith, and all patents, patent applications, and all renewals, extensions and continuations in part of the above, any written agreement granting any right to use any copyright, trademark, trademark application or registration, patent, patent application or registration, and the right to sue for past, present and future infringements of the foregoing including the Intellectual Property Collateral set forth in Exhibit B attached hereto (herein called the "Intellectual Property Collateral"); and

(c) all chattel papers, documents and instruments whether now existing or hereafter arising relating to the General Intangibles; and all rights now or hereafter existing in and to all security agreements, leases, licenses and other contracts securing or otherwise relating to any General Intangibles or such chattel papers, documents and instruments;

(d) all of Debtor's equipment, machinery, furniture, and inventory in all of its forms, whether now owned or hereafter acquired and wherever located, all parts thereof and all accessions or additions thereto and products thereof, whether now owned or hereafter acquired (any and all such equipment, machinery, furniture, inventory, parts, accessions, additions and products herein called the "Goods"); and including, without limiting the foregoing, the Goods located at Debtor's places of business listed on Schedule I attached hereto; all chattel papers, documents and instruments whether now

existing or hereafter arising relating to the Goods; and all rights now or hereafter existing in and to all security agreements, leases and other contracts securing or otherwise relating to any Goods or any such chattel papers, documents and instruments;

(e) in the event that any of the Goods are or will become so related to any particular real estate that an interest in such Goods arises under the real estate law of the state where the real estate is located or is or will be installed in or affixed to other goods of such type, a description of such real estate or other goods is contained in Schedule II hereto and the name of the record owner of such real estate is contained in Schedule II hereto;

(f) all of Debtor's chattel papers, notes, documents and instruments (herein called the "Instruments") whether now existing or hereafter arising; and all rights now or hereafter existing in and to all security agreements, leases and other contracts securing or otherwise relating to any such chattel papers, documents and instruments;

(g) any additional Properties from time to time delivered to or deposited with Secured Party or any agent bank of Secured Party, whether as security for the Indebtedness or otherwise;

(h) all commercial tort claims, deposit accounts, letter of credit rights, payment intangibles or software; and

(i) the proceeds, products, additions, substitutions and accessions of and to any and all of the foregoing Property; and all of Debtor's books, records, reports, memoranda and data compilations, in any form (including, without limitation, corporate and other business records, customer lists, credit files, computer programs, printouts and any other computer materials and records), of Debtor pertaining to any and all of the foregoing Property.

Section 2.02. Indebtedness Secured. The security interest in, general lien upon, and right of set-off against the Collateral is granted to Secured Party to secure the Indebtedness (as defined in the Agreement).

Section 2.03. Limited License. Debtor hereby grants to Secured Party a limited license in Debtor's trade names, trademarks and service marks for purposes of allowing Secured Party to use the same in connection with any foreclosure sale or any other disposition pursuant to the Code or this Security Agreement.

ARTICLE III **REPRESENTATIONS AND WARRANTIES**

In order to induce Secured Party to accept this Security Agreement, Debtor represents and warrants to Secured Party (which representations and warranties will survive the creation of the Indebtedness and any extension of credit thereunder) that:

Section 3.01. Information. All information supplied and statements (including financial statements), certificates or data furnished or made by Debtor (or any officer, attorney or accountant of Debtor) to Secured Party (including, without limitation, any extracts from or copies of the Books and Records) in connection with the Indebtedness and/or this Security Agreement, whether contemporaneously with or subsequent to the execution of this Security Agreement are and shall be true, correct, complete, valid and genuine. No information, statements, certificate, exhibit or report furnished by Debtor to Secured Party in connection with the Indebtedness and/or this Security Agreement contained any material misstatement of fact or omitted to state a material fact or any fact necessary to make the statement contained therein not misleading.

Section 3.02. Status of Accounts. Each Account now existing represents, and each Account hereafter arising will represent, the valid and legally enforceable indebtedness of a bona fide account debtor arising from the sale or lease or rendition by Debtor of goods and/or services and is not and will not be subject to contra accounts, set-offs, defenses or counterclaims by or available to account debtors obligated on the Accounts except as disclosed to Secured Party in writing; such goods will have been delivered to, or be in the process of being delivered to, and such services will have been rendered by Debtor to the account debtor and accepted by the account debtor; and the amount shown as to each Account on Debtor's books will be the true and undisputed amount owing and unpaid thereon, subject to any discounts, allowances, rebates, credits and adjustments to which the account debtor has a right and which have been disclosed to Secured Party in writing.

Section 3.03. Status of Related Rights. All Related Rights are, and those hereafter arising will be, valid and genuine. Any chattel paper included in the Related Rights has, and those hereafter arising will have, only one duplicate original counterpart which constitutes chattel paper or collateral within the meaning of the Code or the law of any applicable jurisdiction.

Section 3.04. Status of Books and Records. All Books and Records have been, and those entries hereafter made therein will be, made in the regular course of Debtor's business; made on the basis of information recorded or transmitted (or to be recorded or transmitted) by a Person, either an employee or representative of Debtor, with personal knowledge of the acts, events, conditions, opinions or diagnoses recorded therein and in the regular course of Debtor's business; made at or near the time of the act, event, condition, opinion or diagnosis recorded therein and in the regular course of Debtor's business; and contain full, true and correct entries of all dealings or transactions relating to the Accounts, General Intangibles, Goods, Related Rights and other Collateral, in accordance with generally accepted accounting principles, consistently applied.

Section 3.05. Mobile Goods. In the event any of the Goods are mobile, such Goods are of a type normally used in more than one jurisdiction, such as motor vehicles, trailers, rolling stock, airplanes, shipping containers, road building and construction machinery and commercial harvesting machinery and the like.

Section 3.06. Certificate of Title. In the event any of the Goods are covered by a certificate of title, such Goods are specifically identified on Exhibit C attached hereto.

Section 3.07. Collateral Not Covered by Documents. None of the Goods included in the Collateral are, and at the time the security interest in favor of Secured Party attaches, none of the after acquired Goods included in the Collateral will be, covered by any document as defined in the Code or in the Uniform Commercial Code of any state other than Texas where the Goods are (or will be) located.

Section 3.08. Status of Instruments. Each Instrument now existing is, and each Instrument hereafter will be, the valid and legally enforceable indebtedness of a bona fide maker thereof for good and valuable consideration, of which a Debtor is the owner and holder, and is not and will not be subject to set-offs, counterclaims or defenses by any maker except as disclosed to Secured Party in writing; and the amount shown on the relevant Debtor's books in respect thereof will be the true and undisputed amount owing and unpaid thereon. Each Instrument is endorsed to Secured Party and is in the possession of Secured Party, unless (a) Secured Party shall otherwise consent in writing and (b) each Instrument subject to such consent bears a legend, in form and substance satisfactory to Lender, indicating that such Instrument is subject to a security interest granted by this Security Agreement.

ARTICLE IV **COVENANTS**

A deviation from the provisions of this Article IV shall not constitute an event of default under this Security Agreement if, prior to the occurrence thereof, such deviation is consented to in writing by Secured Party. Without the prior written consent of Secured Party, Debtor will at all times comply with the covenants contained in this Article IV, from the date hereof and for so long as any part of the Indebtedness is outstanding.

Section 4.01. Financing Statement Filings. Debtor authorizes Secured Party to prepare and file financing statements pertaining to the Collateral with the central filing office in the jurisdiction of its organization, or in any other jurisdiction in which Secured Party deems a such a filing to be necessary or appropriate. Debtor will immediately notify Secured Party of any condition or event that may change the proper location for the filing of any financing statements or other public notice or recordings for the purpose of perfecting security interests in the Collateral. Without limiting the generality of the foregoing, Debtor will (a) prior to any Collateral becoming so related to any particular real estate so as to become a fixture on such real estate or being installed in or affixed to other Collateral so as to become an accession to such other Collateral, notify Secured Party of the description of such real estate or other Collateral and the name of the record owner thereof; (b) upon demand of Secured Party, furnish written consent(s) to Secured Party's security interest and/or disclaimer(s) signed by any person having an interest in such real estate or other Collateral referred to in clause (a) above; and (c) notify Secured Party thirty (30) days prior to any change in any Debtor's name, identity or corporate structure. In any notice furnished pursuant to this Section, Debtor will expressly state that the notice is required by this Security Agreement and contains facts that will or may require additional filings of financing statements or other notices for the purpose of continuing perfection of Secured Party's security interest in the Collateral.

Section 4.02. Satisfactory Collateral. Debtor will at all times maintain with Secured Party Collateral of a character and value satisfactory to Secured Party. If at any time any of the Collateral shall depreciate in character or value or otherwise be unsatisfactory to Secured Party, Secured Party in its discretion may demand, and Debtor will upon said demand provide, such further collateral or such payment on account of the Indebtedness as will be satisfactory to Secured Party.

Section 4.03. Possession of Collateral. Secured Party shall be deemed to have possession of any of the Collateral in transit to it or set apart for it. Otherwise, the Collateral shall remain in Debtor's possession or control at all times at Debtor's risk of loss and shall (except for temporary removal consistent with its normal use) be kept at the locations represented pursuant to the Agreement and any other location specified in writing to Secured Party, where Secured Party may inspect it at any time.

Section 4.04. Further Assurances. Debtor (i) will not remove any Goods (other than mobile goods) included in the Collateral from the jurisdiction in which such Goods are located without first notifying the Secured Party; (ii) will mark conspicuously any and all chattel paper included in the Collateral and its Books and Records pertaining to the Collateral with a legend, in form and substance satisfactory to Secured Party indicating that such chattel paper or Collateral is subject to the security interest granted by this Security Agreement; and (iii) will, in the event any Account, General Intangible or Related Right is evidenced by a note or other instrument, transfer, deliver and assign to Secured Party such note or other instrument duly endorsed and accompanied by duly executed instruments of transfer and assignment, all in form and substance satisfactory to Secured Party, to be held by Secured Party as Collateral under this Security Agreement.

Section 4.05. Filing Reproductions. At the option of Secured Party, a carbon, photographic or other reproduction of this Security Agreement or of a financing statement covering the Collateral shall be sufficient as a financing statement and may be filed as a financing statement.

Section 4.06. Delivery of Information. Debtor will transmit to Secured Party promptly all information that Debtor may have or receive with respect to (i) the Collateral or (ii) account debtors or obligors in respect of the Accounts, the General Intangibles and the Related Rights which might in any way affect the value of the Collateral or Secured Party's rights or remedies with respect thereto.

Section 4.07. Compromise of Collateral. Debtor will not adjust, settle, compromise, release (wholly or partially) any account debtor or obligor with respect to, or allow any credit (other than proceeds subject to subsection 4.10(c)) or discount with respect to any of the Collateral without the prior written consent of Secured Party, except in the ordinary course of business.

Section 4.08. Account Obligations. Debtor will duly perform or cause to be performed all obligations of Debtor with respect to the goods or services, the sale or lease or rendition of which gave rise or will give rise to each Account or Instrument.

Section 4.09. Use of Inventory. Until the occurrence of any event of default specified in Section 5.03 hereof, Debtor may use its inventory in any lawful manner not inconsistent with this Security Agreement and with the terms of insurance thereon and may sell, lease or otherwise dispose of its inventory in the ordinary course of business. Debtor will not be permitted to use any item of inventory in a manner inconsistent with the holding thereof for sale, lease or disposition in the ordinary course of business or in contravention of the terms of any agreement. A sale, lease or disposition in the ordinary course of business does not include the exchange of items of inventory for goods in kind or otherwise or transfers of items of inventory made in satisfaction of present or future indebtedness.

Section 4.10. Collection and Enforcement of Accounts, General Intangibles and Related Rights.

(a) Except as otherwise provided in subsection 4.10(b) hereof, Debtor shall continue to collect, at its own expense, all amounts due or to become due to Debtor with respect to the Accounts, General Intangibles, Instruments and Related Rights in accordance with the provisions of the Agreement. In connection with such collections, Debtor may take (and, at Secured Party's direction, shall take) such action as Debtor or Secured Party may deem necessary or advisable to enforce collection of the Accounts, General Intangibles and Related Rights.

(b) Notwithstanding the provisions of subsection 4.10(a) hereof, Secured Party shall have the right at any time and from time to time, whether with or without written notice to Debtor of its intention to do so, to contact account debtors or obligors under any or all of the Accounts, General Intangibles, Instruments or Related Rights in order to verify information about Debtor's accounts, to notify such account debtors or obligors of the assignment and security interest of Secured Party in such Accounts, General Intangibles, Instruments or Related Rights and to direct such account debtors or obligors to make payment of all amounts due or to become due Debtor thereunder directly to Secured Party. Upon exercising such right, Secured Party may additionally, at the expense of Debtor, enforce collection of any or all of the Accounts, General Intangibles, Instruments and Related Rights and may adjust, settle or compromise the amount or payment thereof, in the same manner and to the same extent as Debtor might have done.

(c) During the term of the Agreement, (i) all amounts and proceeds (including chattel paper, notes and instruments) received by Debtor in respect of the Accounts, General Intangibles, Instruments and Related Rights (1) shall be received in trust for the benefit of Secured Party hereunder, (2) shall be segregated from other funds of Debtor and shall not be commingled with other money nor deposited in a deposit account of Debtor, and (3) shall forthwith be paid over to Secured Party in the same form as so received (together with any necessary endorsement) to be held by Secured Party as cash collateral and applied as set forth in Section 5.02 hereof; and (ii) upon notice by Secured Party to Debtor that Secured Party either intends to exercise the rights and remedies granted in subsection 4.10(b) hereof or that it has so exercised one or more of the rights or remedies granted to it in subsection 4.10(b) hereof, as the case may be (it being understood and agreed that the foregoing shall not in any fashion require the Secured

Party to give notice of its intent to exercise, or its exercise of, the right and remedies granted to it in subsection 4.10(b) hereof), Debtor shall forthwith deliver to Secured Party, to be maintained under the exclusive control of Secured Party, the Books and Records relating to the Accounts, the General Intangibles, the Instruments and the Related Rights for the purpose of enabling Secured Party to exercise its rights and remedies under this Security Agreement.

Section 4.11. Reports. Debtor will promptly furnish to Secured Party from time to time, upon request of Secured Party (i) an analysis of Debtor's Accounts, General Intangibles, the Instruments and Related Rights in such detail as Secured Party may direct and including, without limitation, an identification of each Account by amount, invoice number and/or date and account debtor or obligor; an age analysis; and a summary for any relevant period identifying the amount outstanding at the beginning of the period, amount billed during the period, proceeds received during the period and amount outstanding at the end of the period; and (ii) an analysis of Debtor's inventory in such detail as Secured Party may direct and including, without limitation, for any relevant period, inventory comprising work in progress at the beginning of the period, amount billed comprising finished goods at the beginning of the period, inventory sold or otherwise disposed of during the period, inventory subject to lease during the period, inventory comprising work in progress at the end of the period, and inventory comprising finished goods at the end of the period.

Section 4.12. Proceeds. Except as otherwise specified in the Agreement, Debtor will deliver to Secured Party promptly upon receipt, all proceeds received by Debtor from the sale or other disposition of the Collateral in the exact form in which they are received, or in such other form as Secured Party may from time to time direct. To evidence Secured Party's rights in this regard, Debtor will assign or endorse proceeds to Secured Party as Secured Party requests. Upon request of Secured Party, Debtor will notify obligors on all of the Collateral to make payments directly to Secured Party, and Secured Party may endorse as Debtor's agent any checks, instruments, chattel paper or other documents connected with the Collateral, take control of proceeds of the Collateral and may hold the proceeds as part of the Collateral and may use cash proceeds to reduce any part of the Indebtedness, or otherwise, and take any action necessary to obtain, preserve and enforce the security interests and liens granted hereunder and maintain and preserve the Collateral.

Section 4.13. Insurance. Debtor shall have and maintain, with financially sound and reputable insurers, insurance satisfactory in all respects to Secured Party covering the Goods included in the Collateral against risk of fire, theft and such other risks as Secured Party may require, including standard extended coverage, in an amount at least equal to the value thereof. Policies evidencing any such property insurance (i) shall contain a standard loss payee endorsement and mortgagee's endorsement, (ii) shall provide for payment of any loss to Secured Party, (iii) shall contain the agreement by the insurer that any loss thereunder shall be payable to Secured Party notwithstanding any action, inaction or breach of representation or warranty by Debtor, (iv) shall provide that there shall be no recourse against Secured Party for payment of premiums or other amounts with respect thereto and (v) shall provide for a minimum of thirty (30) days prior written notice to Secured Party of any cancellation, modification or alteration of such insurance coverage. Debtor shall furnish Secured Party with certificates or other evidence

Security Agreement (*American Excelsior Company*)

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of compliance with the foregoing insurance provisions. Secured Party may act as attorney for Debtor and Debtor hereby irrevocably appoints Secured Party as Debtor's true and lawful attorney-in-fact and agent, with full power of substitution, in Secured Party's name or Debtor's name or otherwise, but at Debtor's cost and expense and without notice to Debtor, to obtain, adjust, sell and cancel such insurance and endorse any draft drawn by insurers of such Collateral. The Secured Party may apply any proceeds of such insurance which may be received by it in payment on account of the Indebtedness, whether due or not. If any insurance policy covering the Goods included in the Collateral expires or is canceled before the Indebtedness is paid in full or Secured Party's obligation, if any, to advance additional monies has terminated, at the Secured Party's option, the Secured Party may obtain replacement insurance which may, but need not, be single interest insurance in favor of the Secured Party and Secured Party may pay the premiums thereunder.

ARTICLE V

RIGHTS AND REMEDIES

Section 5.01. With Respect to Collateral. Secured Party is hereby fully authorized and empowered (without necessity of any further consent or authorization from Debtor) and the right is expressly granted to Secured Party, and Debtor hereby constitutes, irrevocably appoints and makes Secured Party Debtor's true and lawful attorney-in-fact and agent for Debtor and in Debtor's name, place and stead, which appointment is coupled with an interest in the Collateral, with full power of substitution, in Secured Party's name or Debtor's name or otherwise, for Secured Party's sole use and benefit, but at Debtor's cost and expense, to exercise without notice, all or any of the following powers at any time with respect to all or any of the Collateral (regardless of whether any of the Indebtedness is due or not):

(a) to demand, sue for, collect, receive and give acquittance for any and all monies due or to become due by virtue thereof and otherwise deal with proceeds;

(b) to receive, take, endorse, assign and deliver any and all checks, notes, drafts, documents and other negotiable and nonnegotiable instruments and chattel paper taken or received by Secured Party in connection therewith;

(c) to settle, compromise, compound, prosecute or defend any action or proceeding with respect thereto;

(d) to sell, transfer, assign or otherwise deal in or with the same or the proceeds or avails thereof or the relative goods, as fully and effectually as if Secured Party were the absolute owner thereof;

(e) to extend the time of payment of any or all thereof and to grant waivers and make any allowance or other adjustment with reference thereto; and

(f) to enter any post office box and take all items therefrom, to open the same and, after taking all remittances, to return any remaining items to Debtor and to change any post office box to any address or post office box Secured Party chooses;

provided, however, Secured Party shall be under no obligation or duty to exercise any of the powers hereby conferred upon it and shall be without liability for any act or failure to act in connection with the collection of, or the preservation of any rights under, any Collateral.

Section 5.02. Application of Cash Sums. Prior to the happening of any of the events of default specified in Section 5.03 hereof, all cash sums paid to and received by Secured Party on account of the Collateral (i) shall be promptly applied by Secured Party on the Indebtedness whether or not such Indebtedness shall have by its terms matured, such application to be made to principal or interest or expenses as Secured Party may elect; provided, further, however, Secured Party's failure to so apply any such sums shall not be a waiver of Secured Party's right to so apply such sums or any other sums at any time, or (ii) at the option of Secured Party, shall be released to Debtor for use in Debtor's business.

Section 5.03. Default, Events. At the option of Secured Party and without necessity of demand or notice, all or any part of the Indebtedness shall immediately become due and payable irrespective of any agreed maturity or period of grace and any obligation of Secured Party for further financial accommodation shall terminate upon the happening of any of the following events:

- (a) the occurrence of an "Event of Default" under the Agreement;
- (b) default in the payment of any amount payable hereunder when due;
- (c) the issuance of an order of attachment against Debtor, or any of the Collateral, or Other Liable Party; or
- (d) failure by Debtor, upon demand from Secured Party, to furnish such further reasonable Collateral or take such payment on account of the Indebtedness as will be satisfactory to Secured Party.

Section 5.04. Default, Remedies. If all or any part of the Indebtedness shall become due and payable as specified in Section 5.03 hereof, Secured Party may then, or at any time thereafter apply, set off, sell in one or more sales, lease or otherwise dispose of, any or all of the Collateral, in its then condition or following any commercially reasonable preparation or processing, in such order as Secured Party may elect, and any such sale may be made either at public or private sale at its place of business or elsewhere, either for cash or upon credit or for future delivery, at such price as Secured Party may deem fair, and Secured Party may be the purchaser of any or all Collateral so sold and hold the same thereafter in its own right free from any claim of Debtor or right of redemption. No such purchase or holding by Secured Party shall be deemed a retention by Secured Party in satisfaction of the Indebtedness. All demands, notices and advertisements, and the presentment of property at sale, are hereby waived. If, notwithstanding the foregoing provisions, any applicable provision of the Code or other law requires Secured Party to give reasonable notice of any such sale or disposition or other action, Debtor agrees that five (5) days prior written notice shall constitute reasonable notice. Secured Party may require Debtor to assemble the Collateral and make it available to Secured Party at a

place designated by Secured Party which is reasonably convenient to Secured Party and Debtor. Any sale hereunder may be conducted by an auctioneer or any officer or agent of Secured Party.

Section 5.05. Proceeds. The proceeds of any sale or other disposition of the Collateral and all sums received or collected by Secured Party from or on account of the Collateral shall be applied by Secured Party in the manner set forth in Section 9.615 of the Code as presently in effect.

Section 5.06. Deficiency. Debtor shall remain liable to Secured Party for any Indebtedness, advances, costs, charges and expenses, together with interest thereon remaining unpaid and shall pay the same immediately to Secured Party at Secured Party's offices.

Section 5.07. Secured Party's Duties. The powers and remedies conferred upon Secured Party by this Security Agreement are solely to protect its interest in the Collateral and shall not impose any duty upon Secured Party to exercise any such power or remedy. Secured Party shall be under no duty whatsoever to make or give any presentment, demand for performance, notice of nonperformance, protest, notice of protest, notice of dishonor, or other notice or demand in connection with the Collateral or the Indebtedness, or to take any steps necessary to preserve any rights against prior parties. Secured Party shall not be liable for failure to collect or realize upon any or all of the Indebtedness or Collateral, or for any delay in so doing, nor shall Secured Party be under any duty to take any action whatsoever with regard thereto. Secured Party shall use reasonable care in the custody and preservation of any Collateral in its possession but need not take any steps to keep the Collateral identifiable. Secured Party shall have no duty to comply with any recording, filing or other legal requirements necessary to establish or maintain the validity, priority or enforceability of, or Secured Party's rights in or to, any of the Collateral.

Section 5.08. Secured Party's Actions. Debtor waives any right to require Secured Party to proceed against any Person, exhaust any Collateral, or have any Other Liable Party joined with Debtor in any suit arising out of the Indebtedness or this Security Agreement or pursue any other remedy in Secured Party's power; waives any and all notice of acceptance of this Security Agreement or of creation, modification, renewal or extension for any period of any of the Indebtedness from time to time; and waives any defense arising by reason of any disability or other defense of Debtor or of any Other Liable Party, or by reason of the cessation from any cause whatsoever of the liability of Debtor or of any Other Liable Party. All dealings between Debtor and Secured Party, whether or not resulting in the creation of Indebtedness, shall conclusively be presumed to have been had or consummated in reliance upon this Agreement. Until all Indebtedness shall have been paid in full, Debtor shall not have any right to subrogation, and Debtor waives any right to enforce any remedy which Secured Party now has or may hereafter have against Debtor or Other Liable Party and waives any benefit of and any right to participate in any Collateral or security whatsoever now or hereafter held by Secured Party. Debtor authorizes Secured Party, without notice or demand and without any reservation of rights against Debtor and without affecting Debtor's liability hereunder or on the Indebtedness, from time to time to (a) take and hold any other Property as collateral, other than the Collateral, for the payment of any or all of the Indebtedness, and exchange, enforce, waive and release any or all of the Collateral or such other Property; (b) apply the Collateral or such other Property and direct

Security Agreement (*American Excelsior Company*)

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the order or manner of sale thereof as Secured Party in its discretion may determine; (c) renew and/or extend for any period, accelerate, modify, compromise, settle or release the obligation of Debtor or any Other Liable Party with respect to any or all of the Indebtedness or Collateral; and (d) release or substitute Debtor or any Other Liable Party.

Section 5.09. Transfer of Indebtedness and Collateral. Secured Party may transfer any or all of the Indebtedness, and upon any such transfer Secured Party may transfer any or all of the Collateral and shall be fully discharged thereafter from all liability with respect to the Collateral so transferred, and the transferee shall be vested with all rights, powers and remedies of Secured Party hereunder with respect to Collateral so transferred; but with respect to any Collateral not so transferred Secured Party shall retain all rights, powers and remedies hereby given. Secured Party may at any time deliver any or all of the Collateral to Debtor, whose receipt shall be a complete and full acquittance for the Collateral so delivered, and Secured Party shall thereafter be discharged from any liability therefor.

Section 5.10. Cumulative Security. The execution and delivery of this Security Agreement in no manner shall impair or affect any other security (by endorsement or otherwise) for the payment of the Indebtedness. No security taken hereafter as security for payment of the Indebtedness shall impair in any manner or affect this Security Agreement. All such present and future additional security is to be considered as cumulative security.

Section 5.11. Continuing Agreement. This is a continuing agreement and all the rights, powers and remedies of Secured Party hereunder shall continue to exist until the Indebtedness is paid in full as the same becomes due and payable; until Secured Party has no further obligation to advance monies to Debtor or Other Liable Party; and until Secured Party, upon request of Debtor, has executed a written termination statement. Furthermore, it is contemplated by the parties hereto that there may be times when no Indebtedness is owing; but notwithstanding such occurrence, this Security Agreement shall remain valid and shall be in full force and effect as to subsequent Indebtedness provided that Secured Party has not executed a written termination statement. Otherwise this Security Agreement shall continue irrespective of the fact that the personal liability of any Other Liable Party may have ceased, and notwithstanding the death or incapacity of Debtor or the death, incapacity or bankruptcy of any Other Liable Party or any other event or proceeding affecting Debtor or Other Liable Party.

Section 5.12. Cumulative Rights. The rights, powers and remedies of Secured Party hereunder shall be in addition to all rights, powers and remedies given by statute or rule of law and are cumulative. The exercise of any one or more of the rights, powers and remedies provided herein shall not be construed as a waiver of any of the other rights, powers and remedies of Secured Party. Furthermore, regardless of whether or not the Uniform Commercial Code is in effect in the jurisdiction where such rights, powers and remedies are asserted, Secured Party shall have the rights, powers and remedies of a secured party under the Code, as amended.

Section 5.13. Exercise of Rights. Time shall be of the essence for the performance of any act under this Security Agreement or the Indebtedness by Debtor or Other Liable Party, but neither Secured Party's acceptance of partial or delinquent payment nor any forbearance, failure or delay by Secured Party in exercising any right, power or remedy shall be deemed a waiver of

Security Agreement (*American Excelsior Company*)

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any obligation of Debtor or Other Liable Party or of any right, power or remedy of Secured Party or preclude any other or further exercise thereof; and no single or partial exercise of any right, power or remedy shall preclude any other or further exercise thereof, or of the exercise of any other right, power or remedy.

Section 5.14. Remedy and Waiver. Secured Party may remedy any default and may waive any default without waiving the default remedied or waiving any prior or subsequent default.

Section 5.15. Non-Judicial Remedies. Secured Party may enforce its rights hereunder without resort to prior judicial process or judicial hearing, and Debtor expressly waives, renounces and knowingly relinquishes any and all legal rights which might otherwise require Secured Party to enforce its rights by judicial process. In so providing for non-judicial remedies, Debtor recognizes and concedes that such remedies are consistent with the usage of the trade, are responsive to commercial necessity and are the result of bargaining at arm's length. Nothing herein is intended to prevent Secured Party or Debtor from resorting to judicial process at either party's option.

ARTICLE VI MISCELLANEOUS

Section 6.01. Debtor. The term "Debtor" as used throughout this Security Agreement shall include the respective successors, legal representatives, heirs and assigns of Debtor.

Section 6.02. Preservation of Liability. Neither this Security Agreement nor the exercise by Secured Party (or any failure to so exercise) any right, power or remedy conferred herein or by law shall be construed as relieving any Person liable on the Indebtedness from full liability on the Indebtedness and for any deficiency thereon.

Section 6.03. Notices. Any notice or demand to Debtor under this Security Agreement or in connection with this Security Agreement may be given and shall conclusively be deemed and considered to have been given and received upon the deposit thereof, in writing, duly stamped and addressed to Debtor at the address of Debtor appearing on the records of the Secured Party, in the U.S. Mail, but actual notice, however given or received, shall always be effective.

Section 6.04. Construction. This Security Agreement has been made in and the security interest granted hereby is granted in and both shall be governed by the laws of the State of Texas (except to the extent that the laws of any other jurisdiction govern the perfection and priority of the security interest granted hereby) and of the United States of America, as applicable, in all respects, including matters of construction, validity, enforcement and performance.

Section 6.05. Amendment and Waiver. This Security Agreement may not be amended, altered, or modified (nor may any of its terms be waived) except in a writing duly signed by an authorized officer of Secured Party and by Debtor.

Section 6.06. Invalidity. If any provision of this Security Agreement is rendered or declared invalid, illegal or unenforceable by reason of any existing or subsequently enacted legislation or by a judicial decision which shall have become final, Debtor and Secured Party shall promptly meet and negotiate substitute provisions for those rendered invalid, illegal or unenforceable, but all of the remaining provisions shall remain in full force and effect.

Section 6.07. Successors and Assigns. The covenants, representations, warranties and agreements herein set forth shall be binding upon Debtor and shall inure to the benefit of Secured Party, its successors and assigns.

Section 6.08. Survival of Agreements. All representations and warranties of Debtor herein, and all covenants and agreements herein not fully performed before the effective date of this Security Agreement, shall survive such date.

Section 6.09. Titles of Articles and Sections. All titles or headings to articles, sections or other divisions of this Security Agreement are only for the convenience of the parties and shall not be construed to have any effect or meaning with respect to the other content of such articles, sections or other divisions, such other content being controlling as to the agreement between the parties hereto.

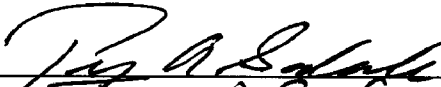
Section 6.10. Exhibits. All exhibits to this Security Agreement are incorporated herein by reference for all purposes.

Section 6.11. Conflict of Terms. If any provision contained in this Security Agreement is in direct conflict with, or inconsistent with, any provision of the Agreement, the provision in the Agreement shall govern and control.

IN WITNESS WHEREOF, Debtor has executed this Agreement as of the date set forth hereinabove.

DEBTOR:

AMERICAN EXCELSIOR COMPANY,
a Texas corporation

By: 
Name: Jerry A. Sadowski
Title: President

SECURITY AGREEMENT
EXHIBIT B

Issued Copyright Registrations

<u>Title</u>	<u>Reg. No.</u>	<u>Reg. Date</u>
Something fragile to protect?	TX136259	04/10/1978

Issued Patents

<u>Title</u>	<u>Patent No.</u>	<u>Patent Date</u>
Archery Target	D382,599	08/19/1997
Method of Extruding and Bonding Biodegradable Structured Packing	5,730,824	03/24/1998

Federal Trademark Registrations/Applications

<u>Mark</u>	<u>Reg. No.</u>	<u>Reg. Date</u>
AEC PREMIER STRAW	2,592,521	07/09/2002
AMCEL	1,574,980	01/02/1990
AMERICAN EXCELSIOR COMPANY	1,856,681	10/04/1994
AMERICAN EXCELSIOR COMPANY and Design	1,877,518	02/07/1995
AMERICAN EXCELSIOR COMPANY EARTH SCIENCE DIVISION and Design	2,388,020	09/19/2000
AMFLO	1,889,017	04/11/1995
AMFLO	1,871,333	01/03/1995
AMFLO RE-GREEN	1,871,334	01/03/1995
ASPENTONES	1,747,155	01/19/1993
COOLER CONTROLLER (Stylized)	2,200,691	10/27/1998
CURLEX	1,739,639	12/15/1992
CURLEX	1,751,412	02/09/1993
CURLEX POWER-STOP	1,801,626	10/26/1993
ECO FLOW and Design	2,454,094	05/22/2001
ECO-LAM	2,241,016	04/20/1999
E-MAT	2,281,427	09/28/1999
ENFORCER	2,421,455	01/16/2001
EROSIONLAB	2,303,017	12/21/1999
EROSIONWORKS	2,084,949	07/29/1997
EXCEL	1,562,469	10/24/1989
EXCEL BOARD	1,810,788	12/14/1993
FIBER-CEL	2,152,975	04/21/1998
GREEN SAVERS	2,130,236	01/20/1998
MAX COOL and Design	2,547,509	03/12/2002
MOSS BLEND	2,096,060	09/09/1997
PAC-EASE	2,084,596	07/29/1997
QUICKGRASS	1,965,543	04/02/1996
RECYCLEX	2,562,477	04/16/2002
SEDIMENT LOG	2,145,282	03/17/1998
SNO-FLUF	507,583	03/15/1949

State Trademark Registrations

<u>Mark</u>	<u>State</u>	<u>Reg. No.</u>	<u>Reg. Date</u>
AMERICAN EXCELSIOR	Texas	27,616	05/14/1969

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