

03-17-2004



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

3-15-04

RECC TRADEMARK 102697019

DEPARTMENT OF COMMERCE U.S. Patent and Trademark Office

Tab settings

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

1. Name of conveying party(ies):

Racemi, Inc.

- 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: 02/16/2004

2. Name and address of receiving party(ies)

Name: Five Paces Ventures, L.P.

Internal Address: Suite 214

Street Address: 3390 Peachtree Street, NW

City: Atlanta State: GA Zip: 30308

- Individual(s) citizenship Association General Partnership Limited Partnership Corporation-State Other Robert A. Patillo, Individual

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) 78/123,423

B. Trademark Registration No.(s) 2,789,266

Additional number(s) attached Yes No

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

Name: Robert P. Felber, Jr.

Internal Address:

Waller Lansden Dortch & Davis PLLC

Nashville City Center

Street Address: 511 Union Street

Suit 2100

City: Nashville State: TN Zip: 37219

6. Total number of applications and registrations involved:

2

7. Total fee (37 CFR 3.41): \$ 65.00

- Enclosed Authorized to be charged to deposit account

8. Deposit account number:

9. Signature.

Robert P. Felber, Jr. Name of Person Signing

Handwritten signature

Signature

March 10, 2004 Date

Total number of pages including cover sheet, attachments, and document: 23

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

03/17/2004 INSTITUTE 00000003 78123423 01 FC:0521 02 FC:0522

TRADEMARK REEL: 002927 FRAME: 0537

ADDITIONAL NAME AND ADDRESS OF RECEIVING PARTY

RE: Security Interest

Trademark Application No. 78/123,423

Trademark Registration No. 2,789,266

**Robert A. Pattillo
2987 Clairmont Road, Suite 320
Atlanta, Georgia 30329**

LOAN AND SECURITY AGREEMENT

This LOAN AND SECURITY AGREEMENT (this "Agreement") is made and entered into as of February 16, 2004, by and among Racemi, Inc. ("Debtor"), a Delaware corporation, whose address is 75 Fifth Street NW, Suite 214, Atlanta, GA 30308, Five Paces Ventures, L.P. ("FPV"), whose address is 3390 Peachtree Road, Suite 102, Atlanta, Georgia 30326, and Robert A. Pattillo ("Pattillo"), whose address is 2987 Clairmont Road, Suite 320, Atlanta, Georgia 30329 (FPV and Pattillo, together, being the "Secured Parties").

That for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Debtor hereby agrees with Secured Parties as follows:

1. **Commitment.** Each Secured Party agrees, severally and not jointly, on the terms and conditions hereinafter set forth, to make one or more loans (the "Loans") to the Debtor during the period from the date of this Agreement up to but not including the Termination Date in an aggregate amount not to exceed, as to each Secured Party, _____ Each Secured Party agrees that the breach of its obligations to provide funds as required hereunder will damage both the Debtor and the other Secured Party. Loans shall be made in accordance with Schedule B attached hereto and incorporated by reference. The obligation of each Secured Party to make each Loan shall be subject to the conditions precedent that on the date of such Loan:

- (a) The Debtor shall remain a corporation validly existing and in good standing under the laws of the State of Delaware;
- (b) No Event of Default shall have occurred or be continuing;
- (c) The other Secured Party shall not be in breach of its obligations hereunder and shall have funded, with respect to such Loan, the amount required hereunder; and
- (d) The requirements of Schedule B for such Advance shall have been satisfied.

2. **Grant of Security Interest.** As collateral security for all of the Obligations (as defined in Section 3 hereof), Debtor hereby pledges and assigns to Secured Parties, and grants to Secured Parties a continuing security interest in, the following (collectively hereinafter referred to as the "Collateral"):

- (a) Goods (including, without limitation, Equipment and Inventory);
- (b) Accounts;
- (c) Chattel Paper (including, without limitation, Tangible Chattel Paper and Electronic Chattel Paper);
- (d) Instruments (including, without limitation, Promissory Notes);
- (e) Documents;
- (f) General Intangibles, including, without limitation, Payment Intangibles, Software Patents and Trademarks (including but not limited to those Patents and Trademarks identified on Schedule C hereto);

- (g) Deposit Accounts;
- (h) Investment Property;
- (i) Supporting Obligations; and

(j) All proceeds acquired upon the sale, lease, license, exchange or other disposition of any and all of the foregoing Collateral ("Proceeds"). Although Proceeds are covered, Secured Parties do not authorize the sale or other transfer of any of the Collateral or the transfer of any interest in the Collateral, except for the sale of Inventory in the ordinary course of Debtor's business);

in each case, wherever located, whether now owned or hereafter acquired by Debtor and howsoever Debtor's interest therein may arise or appear (whether by ownership, lease, security interest, claim, or otherwise). The Collateral described in subparagraph (a) of this Section, and the products thereof, is sometimes hereinafter called the "Tangible Collateral."

3. Security for Obligations. The security interest created hereby in the Collateral constitutes continuing collateral security for all of the following obligations, whether now existing or hereafter incurred (the "Obligations"):

(a) The full and prompt payment, when due, of the indebtedness (and interest thereon) and any fees, costs and expenses owed to Secured Parties evidenced and to be evidenced by the Notes; and

(b) The prompt payment and performance of any and all other present and future indebtednesses, liabilities and obligations (other than for employment services) of Debtor to Secured Parties of every kind, character, and description, whether now existing or hereafter created or arising, whether absolute or contingent, due or to become due, joint or several, matured or unmatured, direct or indirect, primary or secondary, and including without limitation, all future advances to Debtor.

4. Representations and Warranties. Debtor represents and warrants as follows:

(a) All Tangible Collateral now existing is, and all Tangible Collateral hereafter existing will be, located at the address specified for Debtor in the initial paragraph hereof. Debtor's chief place of business and chief executive office, the place where Debtor keeps Debtor's records concerning Accounts and all originals of all Chattel Paper are located at the address specified for Debtor in the initial paragraph hereof. None of the Accounts is evidenced by a promissory note or other instrument.

(b) Debtor is a corporation. Debtor's state of organization is Delaware. The exact legal name of Debtor is set forth in the initial paragraph hereof.

(c) Debtor owns the Collateral free and clear of any lien, security interest or other charge or encumbrance (a "Lien") except for (i) the security interest created by this Agreement, and (ii) Permitted Liens, and except for the financing statements filed in favor of Secured Parties relating to this Agreement, no other financing statement or other instrument similar in effect covering all or any part of the Collateral is on file in any recording office.

(d) The exercise by Secured Parties of its rights and remedies hereunder will not contravene any law or governmental regulation or any contractual restriction binding on or affecting Debtor or any of Debtor's properties and will not result in or require the creation of any lien, security interest or other charge or encumbrance upon or with respect to any of Debtor's properties.

(e) No authorization or approval or other action by, and no notice to or filing with, any governmental authority or other regulatory body is required either for the grant by Debtor of the security interest created hereby in the Collateral or for the exercise by Secured Parties of its rights and remedies hereunder.

(f) This Agreement creates a valid security interest in favor of Secured Parties in the Collateral. The taking possession by Secured Parties of all Instruments and Tangible Chattel Paper constituting Collateral from time to time, the obtaining of control with respect to Deposit Accounts, Investment Property and Electronic Chattel Paper, and the filing of the financing statements with the Delaware Secretary of State will perfect and establish the first priority of Secured Parties' security interest hereunder in the Collateral, subject to no other liens and encumbrances. Except as set forth in this Section 4(f), no action is necessary or desirable to perfect or otherwise protect such security interest.

5. Debtor's Covenants. So long as any of the Obligations shall remain outstanding, unless Secured Parties shall otherwise consent in writing:

(a) Further Assurances. Debtor will at Debtor's expense, at any time and from time to time, promptly execute and deliver all further instruments and documents and take all further action that Secured Parties deems necessary or desirable or that Secured Parties may request in order (i) to perfect and protect the security interest created or purported to be created hereby; (ii) to enable Secured Parties to exercise and enforce its rights and remedies hereunder in respect of the Collateral; or (iii) to otherwise effect the purposes of this Agreement, including, without limitation: (A) executing and filing such financing or continuation statements, or amendments thereto, as Secured Parties deems necessary or desirable or that Secured Parties may request in order to perfect and preserve the security interest created or purported to be created hereby; (B) furnishing to Secured Parties from time to time statements and schedules further identifying and describing the Collateral and such other reports in connection with the Collateral as Secured Parties may reasonably request, all in reasonable detail; (C) marking conspicuously each Chattel Paper and, at the request of Secured Parties, each of its records pertaining to the Accounts with a legend, in form and substance satisfactory to Secured Parties, indicating that such Chattel Paper is subject to the security interest created hereby; (D) if any Account shall be evidenced by a promissory note or other Instrument or Chattel Paper, at the request of Secured Parties, delivering and pledging to Secured Parties hereunder such note, Instrument or Chattel Paper duly endorsed and accompanied by executed Instruments of transfer or assignment, all in form and substance satisfactory to Secured Parties; (E) if any Inventory shall be represented by a warehouse receipt or other document of title, delivering such warehouse receipt or other document to Secured Parties duly endorsed or assigned to Secured Parties, all in form and substance satisfactory to Secured Parties; (F) furnish to Secured Parties evidence in form or substance reasonably satisfactory to Secured Parties that Secured Parties has control of any Collateral consisting of Deposit Accounts, Investment Property or Electronic Chattel Paper or sufficient to perfect Secured Parties' security interest in such Collateral; and (G) where Collateral consisting of Documents, Goods, Instruments, Tangible Chattel Paper or Money is held by a third-party bailee, furnish Secured Parties evidence in form reasonable satisfactory to Secured Parties of such bailee's acknowledgment that it is holding such Collateral for the benefit of Secured Parties.

(b) Location of Tangible Collateral. Debtor will keep all of the Tangible Collateral, both now owned and hereafter acquired at the location set forth in the initial paragraph of this Agreement, or at such other location or locations to which Secured Parties shall consent in writing in advance of placing Tangible Collateral at such location(s).

(c) Taxes. Debtor will pay promptly before delinquent all property and other taxes, assessments, and governmental charges or levies imposed upon, and all claims (including claims for labor, materials, and supplies) against, the Collateral, except to the extent the validity thereof is being contested diligently and in good faith by proper proceedings satisfactory to Secured Parties.

(d) Insurance. Upon the occurrence of an Event of Default or the actual or constructive total loss of the Tangible Collateral or any part of the Tangible Collateral, all insurance payments in respect of such Tangible Collateral shall be paid to Secured Parties and, at Secured Parties' option, applied as specified in Section 8(b) hereof.

(e) As to Accounts, Chattel Paper and General Intangibles.

(i) Debtor will (A) keep Debtor's chief place of business and chief executive office and the office where Debtor keeps Debtor's records concerning Accounts, and all originals of all Chattel Paper and all documents which constitute or create General Intangibles, and all Instruments consisting of Promissory Notes at the location(s) specified in Section 5(b) hereof, and (B) hold and preserve its records concerning the Accounts, General Intangibles, and such Chattel Paper, and such Promissory Notes, and permit representatives of Secured Parties at any time during normal business hours to inspect and make copies of or abstracts from such records and Chattel Paper and Promissory Notes.

(ii) Debtor will, except as otherwise provided in this paragraph (ii), continue to collect, at Debtor's own expense, all amounts due or to become due under the Accounts, Chattel Paper and General Intangibles. In connection with such collections, Debtor may (and, at Secured Parties' direction, will) take such action as Debtor or Secured Parties may deem necessary or advisable to enforce collection or performance of the Accounts, Chattel Paper, and General Intangibles; provided, however, that Secured Parties shall have the right at any time, upon the occurrence and during the continuance of an Event of Default or an event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default, to notify the account debtors or obligors under any Accounts, Chattel Paper or General Intangibles of the assignment of such Accounts, Chattel Paper or General Intangibles to Secured Parties and to direct such account debtors or obligors to make payment of all amounts due or to become due to Debtor thereunder directly to Secured Parties and, upon such notification and at the expense of Debtor and to the extent permitted by law, to enforce collection of any such Accounts, Chattel Paper or revenues under the General Intangibles and to adjust, settle or compromise the amount or payment thereof, in the same manner and to the same extent as Debtor might have done. Upon and after the giving of such notification, (A) all amounts and proceeds (including instruments) received by Debtor in respect of the Accounts, Chattel Paper or General Intangibles shall be received in trust for the benefit of Secured Parties hereunder, shall be segregated from other funds of Debtor and shall be forthwith paid over to Secured Parties in the same form as so received (with any necessary endorsement) to be held as cash collateral and either (1) released to Debtor so long as no Event of Default shall have occurred and be continuing or (2) if any Event of

Default shall have occurred and be continuing, applied as specified in Section 8(b) hereof, and (B) Debtor will not adjust, settle or compromise the amount of payment of any receivable or other obligation or release wholly or partly any account debtor or obligor thereof or allow any credit or discount thereon.

(f) Control. Debtor will cooperate with Secured Parties in obtaining control with respect to Collateral consisting of Deposit Accounts, Investment Property, and Electronic Chattel Paper.

(g) Transfers and Other Liens. Without the prior written consent of Secured Parties, Debtor will not (i) sell, assign (by operation of law or otherwise), exchange, or otherwise dispose of any of the Collateral (except for sale or other use of Inventory in the ordinary course of business); or (ii) create or suffer to exist any lien, security interest or other charge or encumbrance upon or with respect to any of the Collateral except for the security interest created by this Agreement and except for Permitted Liens.

(h) Condition of Collateral. Debtor will cause all Equipment constituting part of the Collateral to be maintained and preserved in good and serviceable condition, repair and working order, and will forthwith, or in the case of any loss or damage to any thereof as quickly as practicable after the occurrence thereof, make or cause to be made all repairs, replacements, and other improvements in connection therewith which are necessary or desirable or that Secured Parties may request to such end. Debtor will promptly furnish to Secured Parties a statement respecting any material loss or damage to any of the Tangible Collateral.

(i) Entity Status. Debtor will preserve its existence and will not merge into or consolidate with any other entity, sell all or substantially all of its assets, change its state of organization or change its name.

6. Additional Provisions Concerning the Collateral.

(a) Debtor hereby authorizes Secured Parties to file, without the signature of Debtor, one or more financing or continuation statements, and amendments thereto, describing the Collateral.

(b) Debtor hereby irrevocably appoints the Secured Parties as Debtor's attorney-in-fact and proxy, with full authority in the place and stead of Debtor and in the name of Debtor or otherwise, from time to time in Secured Parties' discretion, to take any action and to execute any instrument which Secured Parties may deem necessary or advisable to accomplish the purposes of this Agreement, including, without limitation, following an Event of Default: (i) to ask, demand, collect, sue for, recover, compound, receive, and give acquittance and receipts for moneys due and to become due under or in respect of any of the Collateral; (ii) to receive, endorse, and collect any checks, drafts or other Instruments, Documents, and Chattel Paper in connection with clause (i) above; and (iii) to file any claims or take any action or institute any proceedings which Secured Parties may deem necessary or desirable for the collection of any of the Collateral or otherwise to enforce the rights of Secured Parties with respect to any of the Collateral. Debtor hereby ratifies and approves all acts of said attorney; and so long as the attorney acts in good faith it shall have no liability to Debtor for any act or omission as such attorney.

(c) If Debtor fails to perform any agreement contained herein, either of the Secured Parties may itself perform, or cause performance of, such agreement or obligation, and the

expenses of Secured Parties incurred in connection therewith shall be payable by Debtor under Section 10 hereof, and shall be fully secured hereby.

(d) The powers conferred on Secured Parties hereunder are solely to protect their interests in the Collateral and shall not impose any duty upon them to exercise any such powers. Except for the safe custody of any Collateral in their possession and the accounting for moneys actually received by them hereunder, Secured Parties shall have no duty as to any Collateral or as to the taking of any necessary steps to preserve rights against prior parties or any other rights pertaining to any Collateral.

(e) Anything herein to the contrary notwithstanding, (i) Debtor shall remain liable under any contracts and agreements included in or relating to the Collateral to the extent set forth therein to perform all of Debtor's obligations thereunder to the same extent as if this Agreement had not been executed; (ii) the exercise by Secured Parties of any of their rights hereunder shall not release Debtor from any of Debtor's duties or obligations under the contracts and agreements included in or relating to the Collateral; and (iii) Secured Parties shall not have any obligation or liability by reason of this Agreement under any contracts and agreements included in or relating to the Collateral, nor shall Secured Parties be obligated to perform any of the obligations or duties of Debtor thereunder or to take any action to collect or enforce any claim for payment assigned hereunder.

7. Events of Default. An "Event of Default" shall be deemed to have occurred hereunder upon the occurrence of a failure or default in the full, faithful and prompt payment or performance of any one or more of the Obligations, and shall include, but shall not be limited to:

(a) Any default in the full and prompt payment when due of all or any part of any indebtedness constituting part of the Obligations hereunder;

(b) Any default by Debtor in the full, faithful and prompt payment or performance of any covenant, agreement, liability, obligation, condition or undertaking on Debtor's part to be paid, met, kept, observed or performed pursuant to the provisions hereof, of the Notes, or of any other instrument or document now or hereafter securing all or any part of the Obligations; or

(c) Any warranty or representation contained herein shall prove to have been false or materially misleading as of the time made.

8. Remedies Upon Default. If an Event of Default shall have occurred:

(a) Secured Parties may exercise in respect of the Collateral, in addition to other rights and remedies provided for herein or otherwise available to it, all the rights and remedies of Secured Parties on default under the Code (whether or not the Code applies to the affected Collateral), and also may (i) require Debtor to, and Debtor hereby agrees that Debtor will at Debtor's expense and upon request of Secured Parties forthwith, assemble all or part of the Collateral as directed by Secured Parties and make it available to Secured Parties at a place to be designated by Secured Parties which is reasonably convenient to both parties; and (ii) without notice except as specified below, sell the Collateral or any part thereof in one or more parcels at public or private sale, at any of Secured Parties' offices or elsewhere, for cash, on credit or for future delivery, and at such price or prices and upon such other terms as Secured Parties may deem commercially reasonable. Debtor agrees that, to the extent notice of sale shall be required by law, at least ten (10) days' notice to Debtor of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification. Secured Parties

shall not be obligated to make any sale of Collateral regardless of notice of sale having been given. Secured Parties may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned. Any cash held by Secured Parties as Collateral and all cash proceeds received by Secured Parties in respect of any sale of, collection from, or other realization upon, all or any part of the Collateral under the provisions of the Code or this Agreement shall be applied as follows:

(i) First, to the repayment of the reasonable costs and expenses, including reasonable attorneys' fees and legal expenses, incurred by Secured Parties in connection with (A) the administration of this Agreement, (B) the custody, preservation, use, or operation of, or the sale of, collection from, or other realization upon, any Collateral, (C) the exercise or enforcement of any of the rights of Secured Parties hereunder, or (D) the failure of Debtor to perform or observe any of the provisions hereof;

(ii) Second, at the option of Secured Parties, to the payment or other satisfaction of any liens and other encumbrances upon any of the Collateral;

(iii) Third, subject to Section 13 hereof to the reimbursement of Secured Parties for the amount of any obligations of Debtor paid or discharged by Secured Parties pursuant to the provisions of this Agreement, and of any expenses of Secured Parties payable by Debtor hereunder;

(iv) Fourth, subject to Section 13 hereof to the satisfaction of the Obligations, in such order as Secured Parties shall elect;

(v) Fifth, subject to Section 13 hereof to the satisfaction of any other indebtedness of Debtor to Secured Parties;

(vi) Sixth, to the payment of any other amounts required by applicable law; and

(vii) Seventh, the surplus proceeds, if any, to Debtor or to whomsoever shall be lawfully entitled to receive the same or as a court of competent jurisdiction shall direct.

(b) In the event that the proceeds of any such sale, collection or realization are insufficient to pay all amounts to which Secured Parties is legally entitled, Debtor shall be liable for the deficiency, together with interest thereon at such rate(s) as shall be fixed by instrument(s) evidencing the Obligation(s) with respect to which such deficiency exists, together with the costs of collection and the reasonable fees of any attorneys employed by Secured Parties to collect such deficiency.

9. Rights and Duties of Secured Parties, Etc. Secured Parties undertake, as to this Agreement, to exercise only such duties as are specifically set forth in this Agreement and to exercise such of the rights, powers and remedies as are vested in it by this Agreement or by law. In any instance hereunder where Secured Parties' approval or consent is required or the exercise of Secured Parties' judgment is required, the granting or denial of such approval or consent and the exercise of such judgment shall be within the sole discretion of Secured Parties, and Secured Parties shall not, for any reason or to any extent, be required to grant such approval or consent or exercise such judgment. Secured Parties may consult with counsel, and the written advice or opinion of such counsel shall be full and complete

authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon.

10. Indemnity and Expenses.

(a) Debtor agrees to indemnify Secured Parties from and against any and all claims, losses, and liabilities growing out of or resulting from this Agreement (including, without limitation, enforcement of this Agreement), except claims, losses, or liabilities resulting solely and directly from Secured Parties' gross negligence or willful misconduct.

(b) Debtor will upon demand pay to Secured Parties the amount of any and all costs and expenses, including the fees and disbursements of Secured Parties' counsel and of any experts and agents, which Secured Parties may incur in connection with (i) the administration of this Agreement (excluding the salary of Secured Parties' employees and Secured Parties' normal and usual overhead expenses); (ii) the custody, preservation, use, or operation of, or the sale of, collection from, or other realization upon, any Collateral; (iii) the exercise or enforcement of any of the rights of Secured Parties hereunder; or (iv) the failure by Debtor to perform or observe any of the provisions hereof, except expenses resulting solely and directly from Secured Parties' gross negligence or willful misconduct.

11. Notices, Etc. All notices and other communications provided for hereunder shall be in writing and shall be mailed, certified mail, return receipt requested, if to Debtor, to Debtor at the address set forth in the first paragraph of this Agreement; if to Secured Parties, to Secured Parties at the addresses set forth in the first paragraph of this Agreement, with copies to Matthew R. Burnstein, Esq., Waller Lansden Dortch & Davis, PLLC, 511 Union Street, Suite 2100, Nashville, TN 37219, Laura G. Hester, Esq., Foltz Martin LLC, 5 Piedmont Center, 3525 Piedmont Road, NE, Suite 750, Atlanta, Georgia 30305 and as to any such person to such other address as shall be designated by such person in a written notice to the other party complying as to delivery with the terms of this Section 11. All such notices and other communications shall be effective (i) if mailed, when received or three days after mailing, whichever is earlier; or (ii) if delivered, upon delivery.

12. Security Interest Absolute. All rights of Secured Parties, all security interests and all Obligations of Debtor hereunder shall be absolute and unconditional irrespective of: (i) any lack of validity or enforceability of the Notes, or any other agreement or instrument relating thereto; (ii) any change in the time, manner, or place of payment of, or in any other term in respect of, all or any of the Obligations, or any other amendment or waiver of or consent to any departure from this Agreement, the Notes, or any other agreement or instrument relating thereto; (iii) any increase in, addition to, or exchange, release, or non-perfection of, any other collateral, or any release or amendment or waiver of or consent to departure from any guaranty, for all or any of the Obligations; (iv) any other circumstance which might otherwise constitute a defense available to, or a discharge of, Debtor in respect of the Obligations or this Agreement; or (v) the absence of any action on the part of Secured Parties to obtain payment or performance of the Obligations from Debtor or any other party.

13. Inter-Creditor Arrangements.

(a) *Shared Priority of Security Interests.* The Secured Parties acknowledge and agree that they have a shared security interest in the Collateral such that the Collateral secures the Obligations of the Debtor under the Notes without preference or priority in respect of the other Secured Parties, and the Secured Parties shall share ratably, based on outstanding balances of principal and interest under their respective Notes as though their security interests in the Collateral were each perfected simultaneously with each other. In furtherance of the foregoing,

each Secured Party hereby subordinates its security interest in the Collateral to the security interest in the Collateral of each other Secured Party, but only to the extent necessary to accomplish the foregoing purpose.

(b) *Relationship Created by Shared Security Interest in the Collateral.* The shared position of the security interests in the Collateral of the Secured Parties only governs the relationship between the Secured Parties with respect to the Collateral, and shall create no restriction or limitation on any Secured Party concerning other third-party liens that may now or hereafter pertain to the Collateral. If any Secured Party fails, for any reason, to become or remain a secured party as provided herein, the remaining Secured Parties will enjoy full rights and interests to the Collateral subject to the terms of this Agreement.

(c) *Waiver and Authorization.* The Secured Parties waive the enforcement of any covenant or restriction in any prior loan documents with the Debtor, including without limitation, all loan agreements, promissory notes, security agreements, financing statements and mortgages, that would prohibit the Debtor from granting the Secured Parties a security interest in the Collateral.

(d) *Nature of Interests.* The Notes shall be direct loans to the Debtor, and no Secured Party shall have any right or interest in or to the Notes of the other Secured Party. Nothing contained in this Agreement shall be deemed or construed to create a co-partnership or joint venture, a trustee/beneficiary, agent/principal or any other relationship among the Secured Parties solely by virtue hereof. Each Secured Party shall have the right to use its discretion with respect to exercising or refraining from exercising any right that either may have under the Note of which it is the holder or under this Agreement.

(e) *Exercise of Remedies.* The Secured Parties acknowledge and agree that an Event of Default under any of the Notes or under this Agreement constitutes an Event of Default under all of the Notes and under this Agreement. The Secured Parties further acknowledge and agree that in order to maximize the value of the Collateral it is essential that the remedies available to the Secured Parties be governed by the terms of this Agreement. If any Secured Party believes an Event of Default has occurred, such Secured Party shall promptly give all other Secured Parties written notice thereof setting forth in reasonable detail the nature thereof. Within ten (10) days after the date all Secured Parties shall have received notice of such Event of Default, the Secured Parties shall, by majority vote (being 50.1% or greater, with each Secured Party's voting percentage being equal to the then outstanding balance due such Secured Party under the Note of which it is the holder divided by then outstanding balance due all Secured Parties under all Notes ("Majority Vote")) determine whether or not to declare an Event of Default and/or to enforce their remedies. In the event such vote does not occur within such time period or in the event of a tie vote, the Secured Party who originally gave the notice of an Event of Default to the other Secured Parties shall be entitled, with concurrent notice to the other Secured Parties, to declare an Event of Default and to exercise its respective rights and remedies with respect to the Collateral, and any amounts received by such Secured Party from the sale or other disposition of the Collateral, less the costs and expenses incurred by such Secured Party with respect to the collection thereof, shall be shared ratably among all Secured Parties with each Secured Party's sharing percentage being equal to the then outstanding balance due such Secured Party under the Note of which it is the holder divided by then outstanding balance due all Secured Parties under all Notes ("Ratable Share"). In the event the Secured Parties do not elect by Majority Vote to declare an Event of Default, all Secured Parties shall be prohibited from declaring an Event of Default and from exercising their respective rights and remedies with respect to the Collateral until such time as the Secured Parties elect by Majority Vote to declare an Event of Default either

with respect to the Event of Default of which they originally received notice or any other Event of Default. In the event the Secured Parties elect by Majority Vote to declare an Event of Default either with respect to the Event of Default of which they originally received notice or any other Event of Default, they shall, by Majority Vote appoint one among them as an agent (the "Agent") to act on their behalf in declaring such Event of Default and pursuing the rights and remedies of the Secured Parties in the manner set forth below.

(f) *Authority of Agent.* Each of the Secured Parties hereby irrevocably authorizes the Agent elected as provided in the last sentence of Section 13(e) to take such action on such Secured Parties' behalf under the Notes and this Agreement and to exercise such powers and to perform such duties hereunder and thereunder as are delegated to or required of the Agent by the terms hereof, together with such powers as are reasonably incidental thereto; and (ii) to take such action on such Secured Parties' behalf as the Agent shall consider necessary or advisable for the protection, collection or enforcement of any of the Obligations.

(g) *Acceptance of Appointment.* Upon being elected as provided herein, the Agent hereby accepts its appointment as Agent for each of the Secured Parties under this Agreement and the Notes, but only on the terms set forth in this Agreement, including the following:

(i) the Agent may exercise its powers and perform its duties under this Agreement either directly or through its agents or attorneys;

(ii) the Agent shall be entitled to obtain from counsel selected by it with reasonable care advice with respect to legal matters pertaining to this Agreement and shall not be liable for any action taken, omitted to be taken or suffered in good faith in accordance with the advice of such counsel;

(iii) the Agent shall not be required to use its own funds in the performance of any of its duties or in the exercise of any of its rights or powers; and

(iv) the Agent, in performing its duties and functions under this Agreement on behalf of the Secured Parties, will exercise the same care which it normally exercises in making and handling loans in which it alone is interested, but does not assume further responsibility.

(h) *Application of Moneys.* All moneys realized by the Agent under this Agreement shall be held by the Agent for distribution to the Secured Parties in accordance with this Section 13.

(i) *Reliance by the Agent.* The Agent shall be entitled to rely on any notice, consent, certificate, affidavit, letter, telegram, telecopy, facsimile or teletype message, statement, order, instrument or other document believed by it to be genuine and correct and to have been signed or sent by the proper person or persons. The Agent shall deem and treat the payee of any of the Notes as the absolute owner thereof for all purposes hereof until such time as it receives actual notice of an assignment of such payee's interest, together with the written agreement of the assignee in form and substance satisfactory to Agent that such assignee is bound by this Agreement as a "Secured Party" hereunder.

(j) *Exculpatory Provisions.* Neither the Agent nor any of its partners, members, shareholders, directors, officers, employees or agents shall be liable in any manner to any of the Secured Parties for any action taken, omitted to be taken or suffered in good faith by it or them

under this Agreement or in connection therewith, or be responsible for the consequences of any oversight or error of judgment, except for losses due to gross negligence or willful misconduct of such Agent, partner, member, shareholder, director, officer, employee or agent. Without limiting the generality of the foregoing sentence, under no circumstances shall the Agent be subject to any liability to any Secured Parties on account of any action taken or omitted to be taken by such Agent in compliance with the direction of a Majority Vote of the Secured Parties.

(k) The Agent shall not be obligated to take any action or refrain from taking any action under this Agreement that might, in its judgment, involve it in any expense or liability until it shall have been indemnified to its satisfaction by or received an agreement to indemnify from each Secured Party. If a court of competent jurisdiction shall adjudge that any amount received and distributed by the Agent to a Secured Party is to be repaid, each Secured Party to whom any such distribution shall have been made shall either repay to the Agent its proportionate share of the amount so adjudged to be repaid or shall pay over the same in such manner and to such Secured Party as shall be determined by such court.

(l) *Action by the Agent.* Except as otherwise expressly provided under this Agreement or in the Notes, the Agent will take such action, assert such rights and pursue such remedies under this Agreement as directed by a Majority Vote of the Secured Parties. Except as otherwise expressly provided, the Agent will not (and will not be obligated to) take any action, assert any rights or pursue any remedies under this Agreement in violation or contravention of any express direction or instruction adopted by a Majority Vote of the Secured Parties. The Agent may refuse (and will not be obligated) to take any action, assert any rights or pursue any remedies under this Agreement without the express written direction and instruction adopted by a Majority Vote of the Secured Parties. In the event the Agent fails, within a commercially reasonable time, to take such action, assert such rights, or pursue such remedies as directed by a Majority Vote of the Secured Parties, each Secured Party shall have the right to take such action, to assert such rights, or pursue such remedies on behalf of all of the Secured Parties unless the terms hereof otherwise require the consent of all the Secured Parties to the taking of such actions. No Secured Parties (other than the Agent, acting in its capacity as Agent) shall be entitled to take any enforcement action of any kind under this Agreement, except as expressly provided in this Agreement. Action that may be taken by the Secured Parties may be taken pursuant to a vote at a meeting (which may be held by telephone conference call) of all of the Secured Parties, or pursuant to the written consent of such Secured Parties.

(m) *Indemnification.* Each Secured Party agrees to indemnify the Agent (to the extent Agent is not promptly reimbursed by the Debtor), in accordance with its Ratable Share from and against any and all liabilities, obligations, losses, damages, penalties, interests, actions, judgments and suits of any kind or nature whatsoever which may be imposed on, incurred by or asserted against the Agent relating to or arising out of this Agreement or relating to any action taken or omitted by such Agent under this Agreement, provided that no Secured Party shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, interest, actions, judgments or suits resulting from the Agent's own gross negligence or willful misconduct.

(n) *Reimbursement of the Agent.* Each Secured Party further agrees to reimburse the Agent in accordance with its Ratable Share, for any reasonable out-of-pocket costs or expenses incurred by the Agent in connection with its duties under this Agreement (including, but not limited to, reasonable fees and disbursements of counsel, travel and living expenses away from home of employees or agents of the Agent and compensation of agents or of experts employed by the Agent to render services for the Secured Parties hereunder), but only to the extent such fees, disbursements, expenses and compensation have not been promptly reimbursed to the Agent by

the Debtor. If any such sums are reimbursed to the Agent by the Debtor after one or more of the Secured Parties have reimbursed the Agent for such sums, the Agent will refund such sums ratably to the Secured Parties who contributed such sums.

(o) *Sharing of Funds Received.* Each Secured Party agrees with the Agent and each of the other Secured Parties that if such Secured Party shall receive funds from the Debtor or any other person, whether by payment received otherwise than in accordance with the terms of this Agreement, exercise of the right of set-off, counterclaim, cross-claim, enforcement of any claim, or proceedings against the Debtor or any other person or persons, proof of claim in bankruptcy, reorganization, liquidation, receivership or other similar proceedings, or otherwise, and shall retain and apply such funds to the payment of any of the indebtedness under their respective Notes, or in respect of any of the Obligations of the Debtor to the Secured Parties under this Agreement in any amount in excess of its Ratable Share, such Secured Party will promptly make such dispositions and arrangements with the other Secured Parties and the Agent with respect to such excess, either by way of distribution, pro tanto assignment of claim, subrogation or otherwise, as shall result in each of the Secured Parties receiving its Ratable Share of such payments.

(p) *Relationship of Agent to Secured Parties.* The Agent shall not have a fiduciary relationship in respect of any Secured Parties by reason of this Agreement. The Agent shall have no implied duties to the Secured Parties, or any obligation to the Secured Parties to take any action hereunder except any action specifically provided by this Agreement to be taken by the Agent. The Agent shall have, in its capacity as a Secured Party under this Agreement, the same obligations and the same rights, remedies, powers and privileges under this Agreement as it would have were it not also an Agent. The duties and liabilities of the Agent under this Agreement shall not be increased or otherwise changed without its express prior written consent. The Agent and any successor Agent elected by a Majority Vote of the Secured Parties may resign as such at any time by giving thirty (30) days' prior written notice of resignation to each Secured Party, such resignation to be effective on the date which is specified in such notice. Upon any such resignation, or in the event the office of Agent shall become vacant for any other reason, the Secured Parties shall appoint by Majority Vote a successor Agent, by an instrument in writing signed by such Secured Parties delivered to such successor Agent whereupon, such successor Agent shall succeed to all of the rights and obligations of the retiring Agent as if originally named. The retiring Agent shall duly assign, transfer and deliver to such successor Agent all moneys at the time held by the retiring Agent hereunder after deducting therefrom its expenses for which it is entitled to be reimbursed. Upon such succession of any such successor Agent, the retiring Agent shall be discharged from its duties and obligations hereunder, except for its gross negligence or willful misconduct arising prior to its retirement or removal hereunder. After any Agent's resignation, the provisions of this Section 13 shall continue in effect for its benefit in respect of any actions taken or omitted to be taken by it while it was acting as Agent.

(q) *Secured Parties Credit Decisions.* Each Secured Party acknowledges that it has, independently of and without reliance upon any of the other Secured Parties, made its own credit analysis and decision to enter into this Agreement to which it is a party. Each Secured Party also acknowledges that it will, independently of and without reliance upon Agent or any of the other Secured Parties, continue to make its own credit decisions in taking or not taking action under this Agreement and in determining the compliance or lack thereof by the Debtor with any provision its respective Note and this Agreement.

14. **Definitions.** All capitalized terms used herein but not defined herein shall have the meanings ascribed to them in Article 9 of the Uniform Commercial Code as adopted in the State of Georgia (the "Code").

(a) "Commitment" means Secured Parties' obligations to make Loans to the Debtor pursuant to Section 1 hereof in the amount referred to therein.

(b) "Liens" shall have the meaning set forth in Section 4(c) hereof.

(c) "Notes" means those two certain Convertible Promissory Notes, dated of even date herewith (the "Notes"), each in the principal amount of up to _____ executed by Debtor, and any and all renewals, modifications, and extensions of said Notes, in whole or in part.

(d) "Patents" means all patents and patent applications including, without limitation, the inventions and improvements described and claimed therein, and (i) the reissues, divisions, continuations, renewals, extensions, and continuations-in-part thereof, (ii) all income, royalties, damages, and payments now and hereafter due or payable under and with respect thereto, including, without limitation, damages and payments for past or future infringements thereof; (iii) the right to sue for past, present, and future infringements thereof.

(e) "Permitted Liens" shall mean (a) any Liens existing on the date of this Agreement and set forth on Schedule A attached hereto; (b) Liens for taxes, fees, assessments or other governmental charges or levies, either not delinquent or being contested in good faith by appropriate proceedings; (c) Liens (i) upon or in any Equipment acquired or held by Debtor to secure the purchase price of such Equipment or indebtedness incurred solely for the purpose of financing the acquisition of such Equipment or (ii) existing on such Equipment at the time of its acquisition, provided that the Lien is confined solely to the Equipment so acquired, improvements thereon and the Proceeds of such Equipment; (d) leases or subleases and licenses or sublicenses granted to others in the ordinary course of Debtor's business if such are otherwise permitted under this Agreement and do not interfere in any material respect with the business of Debtor; (e) any right, title or interest of a licensor under a license provided that such license or sublicense does not prohibit the grant of the security interest granted hereunder; (f) Liens arising from judgments, decrees or attachments to the extent and only so long as such judgment, decree or attachment has not caused or resulted in an Event of Default under this Agreement; (g) easements, reservations, rights-of-way, restrictions, minor defects or irregularities in title and other similar Liens affecting real property not interfering in any material respect with the ordinary conduct of the business of Debtor; (h) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods; (i) Liens arising solely by virtue of any statutory or common law provision relating to banker's liens, rights of setoff or similar rights and remedies as to deposit accounts or other funds maintained with a creditor depository institution; (j) Liens on equipment and other personal property (including proceeds thereof and accessions thereto) securing capital or operating lease obligations, including without limitation sale and lease-back transactions; and (k) Liens, not otherwise permitted, which Liens do not in the aggregate exceed _____ at any one time.

(f) "Trademarks" shall mean all trademarks, trademark registrations, trade names, and trademark applications, goodwill related to any of the foregoing, and: (i) continuations, extensions, and renewals thereof; (ii) all income, royalties, damages, and payments now and hereafter due or payable with respect thereto, including, without limitation, damages and

payments for past or future infringements thereof; (iii) the right to sue for past, present, and future infringements thereof; and (iv) all rights corresponding thereto throughout the world.

15. Miscellaneous.

(a) No amendment of any provision of this Agreement shall be effective unless it is in writing and signed by Debtor and all Secured Parties, and no waiver of any provision of this Agreement, and no consent to any departure by Debtor therefrom, shall be effective unless it is in writing and signed by all Secured Parties, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

(b) No failure on the part of the Secured Parties to exercise, and no delay in exercising, any right hereunder or under any other instrument or document shall operate as a waiver thereof; nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right. The rights and remedies of Secured Parties provided herein and in the other instruments and documents are cumulative and are in addition to, and not exclusive of, any rights or remedies provided by law. The rights of Secured Parties under the Notes, any other instrument which now or hereafter evidences or secures all or part of the Obligations, or any related document against any party thereto are not conditional or contingent on any attempt by the Secured Parties to exercise any of its rights under any other such instrument or document against such party or against any other party.

(c) Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or invalidity without invalidating the remaining portions hereof or thereof or affecting the validity or enforceability of such provision in any other jurisdiction.

(d) This Agreement shall create a continuing security interest in the Collateral and shall (i) remain in full force and effect until the termination of the duties and obligations of Debtor under this Agreement, and, thereafter, until the payment in full of the Obligations (or the conversion in accordance with its terms), and (ii) be binding on Debtor and Debtor's successors and permitted assigns and shall inure, together with all rights and remedies of Secured Parties hereunder, to the benefit of the Secured Parties and its respective successors, transferees, and assigns. None of the rights or obligations of Debtor hereunder may be assigned or otherwise transferred without the prior written consent of the Secured Parties.

(e) Upon the termination of the duties and obligations of Debtor under the Notes and the satisfaction in full of the Obligations, Secured Parties will, upon Debtor's request and at Debtor's expense, (i) return to Debtor such of the Collateral as shall not have been sold or otherwise disposed of or applied pursuant to the terms hereof; and (ii) execute and deliver to Debtor such documents as Debtor shall reasonably request to evidence termination of the security interest herein granted.

(f) This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia, except as required by mandatory provisions of law and except to the extent that the validity or perfection of the security interest created hereby, or remedies hereunder, in respect of any particular Collateral are governed by the laws of a jurisdiction other than the State of Georgia.

(g) The captions or headings of the Sections of this Agreement are inserted merely for convenience of reference and shall not be deemed to limit or modify the terms and provisions hereof.

16. Expenses. On the date hereof, from the initial Loan made by Pattillo, the Secured Parties will be reimbursed by the Company for their out of pocket expenses including, without limitation, reasonable attorneys' fees and expenses and other due diligence expenses up to a maximum of

Remainder of page intentionally left blank.

IN WITNESS WHEREOF, the Secured Parties and Debtor has caused this Agreement to be executed and delivered by their duly authorized representatives as of the day and year first above written.

DEBTOR:

RACEMI, INC.

By: Oral Latt

Its: CO/President

SECURED PARTIES:

FIVE PACES VENTURES, L.P.

By: Five Paces Management Company, LLC

Its: General Partner

By: _____

Its: _____

ROBERT A. PATTILLO:

Robert A. Pattillo

IN WITNESS WHEREOF, the Secured Parties and Debtor has caused this Agreement to be executed and delivered by their duly authorized representatives as of the day and year first above written.

DEBTOR:

RACEMI, INC.

By: _____

Its: _____

SECURED PARTIES:

FIVE PACES VENTURES, L.P.

By: Five Paces Management Company, LLC

Its: General Partner

By: Mark B. Mykityshyn

Its: GENERAL PARTNER

ROBERT A. PATTILLO:

Robert A. Pattillo

IN WITNESS WHEREOF, the Secured Parties and Debtor has caused this Agreement to be executed and delivered by their duly authorized representatives as of the day and year first above written.

DEBTOR:

RACEMI, INC.

By: _____

Its: _____

SECURED PARTIES:

FIVE PACES VENTURES, L.P.

By: Five Paces Management Company, LLC

Its: General Partner

By: _____

Its: _____

ROBERT A. PATTILLO:



Robert A. Pattillo

SCHEDULE A - PERMITTED LIENS

None

SCHEDULE B – ADVANCES

On or before the date hereof, FPV has loaned _____ to Borrower which, together with interest thereon, shall be deemed to be _____ borrowed hereunder as the initial Advance (the “FPV Initial Advance”).

Additional Advances shall be made:

1. On the date hereof, _____ from Robert A. Pattillo and an amount, if requested by the Company, from FPV sufficient to cover needed expenses in connection herewith (the “FPV Closing Loan”).
2. On April 15, 2004, _____ The difference between _____ and the sum of the FPV Initial Advance and the FPV Closing Loan from FPV, and _____ from Robert A. Pattillo, which Advances shall be made if and only if the Board of Directors, in its sole reasonable discretion, shall have determined that the Company shall have successfully completed the following milestones:
 1. The Company shall have successfully installed at least two paid pilot projects for customers at least as prominent as EBS, the Citadel Group, or FHLB. Here the term “prominent customer” is loosely defined to mean a commercial or government customer of sufficient size and reputation as to provide an impressive reference to other large, potential customers.
 2. The Company shall be in discussion with at least two additional prominent customers for a paid pilot project or actual sale of the product.
 3. The Company shall have collected at least _____ in gross revenues.
 4. The Company shall have booked at least an additional _____ in gross revenues.
 5. The Company shall have entered discussions with at least two strategic partners identified by the Board of Directors as a potential acquirer of the Company.

SCHEDULE C – PATENTS AND TRADEMARKS

Patent Application No. 09/987,917 entitled “Cluster Computer Network Appliance White Paper” filed November 16, 2000 by Paul Freet and Joel Derrico as assigned to the Company on November 16, 2001.

Patent Application No. 10/290,171 entitled “Dynamic Server Allocation” filed November 8, 2001 by Charlie Watt as assigned to the Company on November 8, 2001.

Registered US Trademark, No 2,789,266, “Racemi”. Registered December 2, 2003.

US Trademark Application No 78/123,423, “DynaCenter”. Published May 27, 2003.