

04-05-2004

Docket No.:

T948233

Tab settings

TR



102712103

To the Director of the United States Patent and Trademark Office

original documents or copy thereof.

1. Name of conveying party(ies):

Spinrite Limited Partnership

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

Additional names(s) of conveying party(ies) ☐ Yes ☒ No

3. Nature of conveyance:

- ☐ Assignment
☒ Security Agreement
☐ Other
- ☐ Merger
☐ Change of Name

Execution Date: **January 27, 2004**

2. Name and address of receiving party(ies):

Name: **The Bank of Nova Scotia**

Internal Address: **Suite 700, Frederick Tower,**

Street Address: **101 Frederick Street**

City: **Kitchener** State: **ON** ZIP: **N2H6 R3**

- ☐ Individual(s) citizenship
☐ Association
☐ General Partnership
☐ Limited Partnership
☐ Corporation-State
☒ Other **bank**

If assignee is not domiciled in the United States, a domestic designation is ☐ Yes ☐ N
(Designations must be a separate document from
Additional name(s) & address(es) ☐ Yes ☐ N

4. Application number(s) or registration numbers(s):

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

1,475,015	1,034,354	765,926
840,552	1,318,315	1,995,674
2,126,513	2,314,332	764,725

Additional numbers ☒ Yes ☐ No

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

Name: **Robert Graham**

Internal Address: **Gowling Lafleur Henderson LLP**

Suite 4900, Commerce Court West, Toronto, Ontario

Canada, M5L 1J3

Street Address: **as above**

City: State: ZIP:

6. Total number of applications and registrations involved:

16

7. Total fee (37 CFR 3.41):.....\$ **\$415.00**

- ☐ Enclosed
☒ Authorized to be charged to deposit account

8. Deposit account number:

07-1750

04/02/2004 ECDPER 00000109 071750 1475015

01 FE:0521 40.00 DA
02 FE:0522 375.00 DA

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.

Robert Graham

Name of Person Signing

Signature

Date

19

Total number of pages including cover sheet, attachments, and

TRADEMARK

REEL: 002942 FRAME: 0059

Additional Trademark Registration Numbers

2,163,053	237,163	1,846,241
843,753	843,754	1,685,366
1,806,759		

INTELLECTUAL PROPERTY SECURITY AGREEMENT

Intellectual Property Security Agreement dated as of January 27, 2004 made by and between **THE BANK OF NOVA SCOTIA** (the "**Lender**") whose full post office address is Suite 700, Frederick Tower, 101 Frederick Street, Kitchener, Ontario, Canada N2H 6R2 and **SPINRITE LIMITED PARTNERSHIP** (the "**Grantor**") whose registered office is 30th Floor, 360 Main Street, Winnipeg, Manitoba, Canada R3C 4G1 pursuant to a commitment letter dated January 23, 2004 from the Lender and accepted by the Grantor on January 23, 2004 (as amended, restated, supplemented, modified, changed, renewed or replaced from time to time, the "**Commitment Letter** ").

CONTEXT OF THIS AGREEMENT

A. The Lender has agreed to make certain credit facilities available to the Grantor upon the terms and subject to the conditions set forth in the Commitment Letter. All references to the Commitment Letter contained herein shall include all supplements, amendments, restatements, changes, renewals and modifications thereto and replacements thereof entered into from time to time.

B. The Grantor has agreed to execute and deliver security to the Lender including, without limitation, this Agreement as security for the payment and performance of the obligations, present or future, direct or indirect, absolute or contingent, matured or unmatured, of the Grantor to the Lender including, without limitation, those obligations of the Grantor under the Commitment Letter and each of the other loan, security and guarantee documents relating to the Commitment Letter to which the Grantor is a party (each as amended, restated, supplemented, modified, changed or replaced from time to time, collectively, the "**Loan Documents**").

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged and intending to be legally bound, as collateral security for the prompt and complete payment when due of the Grantor's Indebtedness (as defined below), the Grantor hereby represents, warrants, covenants and agrees as follows:

1. **Grant of Security Interest.** As collateral security for the prompt and complete payment and performance of all of the Grantor's debts, liabilities and obligations, present or future, direct or indirect, absolute or contingent, matured or unmatured at any time due or accruing due of the Grantor to the Lender including, without limitation, under the Commitment Letter and the other Loan Documents to which the Grantor is a party (collectively, the "**Indebtedness**"), the Grantor hereby grants a first priority security interest in all of the Grantor's registered and unregistered intellectual property (all of which shall collectively referred to as the "**Intellectual Property**") including, without limitation, the following:

(a) Any and all copyright rights, copyright applications, copyright registrations and like protections in each work or authorship and derivative work thereof, whether published or unpublished and whether or not the same also constitutes a trade secret, now or hereafter acquired or held including, without limitation, those set forth on **EXHIBIT "A"** attached hereto (collectively, the "**Copyrights**");

(b) Any and all trade secrets, and any and all property rights in computer software and computer software products, including source code and object code, now or hereafter acquired or held. Software means all computer programs and databases and portions of each of the foregoing owned by the Grantor in whatever form and on whatever medium those programs or databases are expressed, fixed, embodied or stored from time to time, and the copyright therein including, without limitation, those set forth on **EXHIBIT "A"**. Software includes both the object code and the source code versions of each

such program and portions thereof and all corrections, updates, enhancements, translations, modifications, adaptations and new versions thereof together with both the media upon or in which such programs, databases and portions thereof are expressed, fixed, embodied or stored (such as disks, diskettes, tapes and semiconductor chips) and all flow charts, manuals, instructions, documentation and other material relating thereto;

(c) All patents, patent applications, like protections and inventions now or hereafter acquired or held including, without limitation, improvements, divisions, continuations, renewals, reissues, extensions and continuations-in-part of the same including, without limitation, the patents and patent applications set forth on **EXHIBIT "B"** attached hereto (collectively, the **"Patents"**);

(d) Any trademark and service mark rights, slogans, trade dress, and tradenames, internet domain names, registered or not, applications to register and registrations of the same and like protections (excluding any intent to use filings) now or hereafter acquired or held, and the entire goodwill of the business of the Grantor associated therewith including, without limitation, those set forth on **EXHIBIT "C"** attached hereto (collectively the **"Trademarks"**);

(e) Any and all industrial design rights which may be available to the Grantor now or hereafter acquired or held including, without limitation, those set forth on **EXHIBIT "D"** attached hereto (collectively, the **"Designs"**);

(f) All licenses or other rights to use any of the Copyrights, Patents, software, Designs, Trademarks, trade secrets, and all license fees and royalties due and/or payable to the Grantor arising from such use, to the extent permitted by such license or rights, including, without limitation, those set forth on **EXHIBIT "E"** attached hereto;

(g) Any and all claims for damages or compensation for past, present and future infringements of any of the rights included above, with the right, but not the obligation, to sue for and collect such damages for said use or infringement of the intellectual property rights identified above;

(h) All amendments, extensions, renewals and extensions of any of the Copyrights, Trademarks, Patents or Designs; and

(i) All proceeds and products of the foregoing including, without limitation, all payments under insurance or any indemnity or warranty payable in respect of any of the foregoing.

2. **Exception Regarding Last Day.** The last day of the term of each license granted to the Grantor pursuant to any license agreement shall be excepted from this Agreement and shall not form part of the Intellectual Property. The Grantor shall stand possessed of that day in trust to assign and dispose of it as the Lender directs.

3. **Authorization and Request.** The Grantor authorizes and requests that the Register of Copyrights and the Commissioner of Patents and Trademarks record this Agreement.

4. **Covenants and Warranties.** The Grantor represents, warrants, covenants and agrees as follows:

(a) Upon making the recordals identified in paragraphs 6, 7 and 8 of Schedule "A" to an undertaking by the Grantor and Spinrite GP Inc. to the Lender dated as of the date hereof and, subject to the satisfaction of Condition 1 or Condition 2 of Schedule 8.10 of the Asset Purchase Agreement (as defined in the Commitment Letter), the Grantor will be the sole owner of the entire right, title and interest

in the Intellectual Property, except for: (i) non-exclusive licenses granted by the Grantor to its customers in the ordinary course of business, and (ii) those rights licensed from third parties.

(b) Performance of this Agreement does not conflict with or result in a breach of any agreement to which the Grantor is bound, except to the extent that certain intellectual property agreements prohibit the assignment of the rights thereunder to a third party without the licensor's or other party's consent, and this Agreement constitutes a security interest.

(c) During the term of this Agreement, the Grantor will not transfer or otherwise encumber any interest in the Intellectual Property, except for non-exclusive licenses granted by the Grantor in the ordinary course of business or as set forth in this Agreement;

(d) To its knowledge, each item of the Intellectual Property is valid and enforceable, and no part of the Intellectual Property has been judged invalid or unenforceable, in whole or in part, and no claim has been made that any part of the Intellectual Property violates the rights of any third party;

(e) The Grantor shall advise the Lender of any material adverse change in the composition of the Intellectual Property within 60 days of the Grantor becoming aware of said material adverse change;

(f) The Grantor shall promptly advise the Lender of any right, title or interest the Grantor acquires in or to any Trademark, Patent, Copyright or Design after the date hereof;

(g) The Grantor shall (i) protect, defend and maintain the validity and enforceability of the Trademarks, Patents, Copyrights, Designs and each item of the Intellectual Property, and (ii) use its commercially reasonable efforts to detect infringements of the Trademarks, Patents, Copyrights or Designs thereof and promptly advise the Lender in writing of infringements detected;

(h) The Grantor shall, from time to time, execute and file such other instruments, and take such further actions as the Lender may reasonably request from time to time to perfect or continue the perfection of the Lender's interest in the Intellectual Property;

(i) This Agreement creates and, in the case of any of the Intellectual Property created, acquired or held by the Grantor after the date of this Agreement ("**After-Acquired Intellectual Property**"), this Agreement will create, at the time the Grantor first has rights in such After-Acquired Intellectual Property, in favor of the Lender, a valid and perfected first priority security interest in the Intellectual Property in the United States and Canada securing the payment and performance of the Indebtedness evidenced by the Commitment Letter (upon making the filings referred to in clause (j) below), and, within 60 days of the date of this Agreement or the date upon which the Grantor creates, acquires or holds the After-Acquired Intellectual Property, as the case may be, the Grantor shall file, or cause to be filed, any and all instruments necessary to perfect the Grantor's right, title and interest in the Intellectual Property, to execute and file, or cause to be executed and filed, any and all instruments necessary to perfect the Lender's security interest therein;

(j) To its knowledge, except for, and upon, the filing with the Canadian Intellectual Property Office and the United States Patent and Trademark Office with respect to the Patents, Trademarks and Designs and the Register of Copyrights with respect to the Copyrights necessary to perfect the security interest created hereunder and except as has been already made or obtained, no authorization, approval or other action by, and no notice to or filing with, any U.S. or Canadian governmental authority or U.S. or Canadian regulatory body is required either: (i) for the grant by the Grantor of the security interest granted hereby, or for the execution, delivery or performance of this

Agreement by the Grantor in the U.S. and Canada; or (ii) for the perfection in the U.S. and Canada or the exercise by the Lender of its rights and remedies thereunder;

(k) All information heretofore, herein or hereafter supplied to the Lender by or on behalf of the Grantor with respect to the Intellectual Property is accurate and complete in all material respects;

(l) The Grantor shall not enter into any agreement that would materially impair or conflict with the Grantor's obligations hereunder without the Lender's prior written consent, which consent shall not be unreasonably withheld. The Grantor shall not permit the inclusion in any material contract to which it becomes a party of any provisions that could or might in any way prevent the creation of a security interest in favour of the Lender in the Grantor's rights and interest in any property included within the definition of the Intellectual Property acquired under such contracts; and

(m) Upon any executive officer of the Grantor obtaining actual knowledge thereof, the Grantor will promptly notify the Lender in writing of any event that materially adversely affects the value of any material Intellectual Property, the ability of the Grantor to dispose of any material Intellectual Property or the rights and remedies of the Lender in relation thereto, including the levy of any legal process against any of the Intellectual Property.

5. **Lender's Rights.** The Lender shall have the right, but not the obligation, to take, at the Grantor's sole expense, any actions that the Grantor is required under this Agreement to take but which the Grantor fails to take, after fifteen (15) business days' notice by the Lender to the Grantor. The Grantor shall reimburse and indemnify the Lender for all reasonable costs and reasonable expenses incurred in the reasonable exercise of its rights under this section 5.

6. **License Agreements.** The security interest granted hereunder shall not extend or apply to any right, title or interest of the Grantor under any present or future license agreements pursuant to which the Grantor is a licensee, to the extent such license agreements prohibit such a security interest from being granted without the consent or approval of another person as specified in such agreement and the security interest or assignment granted hereunder shall only apply upon such consent or approval being obtained, but the Grantor shall hold its interest therein in trust for the benefit of the Lender and shall grant a security interest to the Lender forthwith upon obtaining the consent of the other party thereto.

7. **Inspection Rights.** The Grantor hereby grants to the Lender and its employees, representatives and agents the right to visit, during reasonable hours upon prior reasonable written notice to the Grantor, any of the Grantor's plants and facilities that manufacture, install or store products (or that have done so during the prior six-month period) that are sold utilizing any of the Intellectual Property, and to inspect the products and quality control records relating thereto upon reasonable written notice to the Grantor and as often as may be reasonably requested, but not more than once in every six (6) months; provided, however, nothing herein shall entitle the Lender access to the Grantor's trade secrets and other proprietary information.

8. **Further Assurances; Attorney in Fact.**

(a) On a continuing basis, but subject to Section 17, the Grantor will, subject to any prior licenses, encumbrances and restrictions and prospective licenses, make, execute, acknowledge and deliver, and file and record in the proper filing and recording places in the United States and Canada, all such instruments, including appropriate financing and continuation statements and collateral agreements and filings with the Canadian Intellectual Property Office and the United States Patent and Trademarks Office and the Register of Copyrights and take all such action as may reasonably be deemed necessary or

advisable, or as requested by the Lender, to perfect the Lender's security interest in all Copyrights, Patents, Trademarks and Designs, and otherwise to carry out the intent and purposes of this Agreement, or for assuring and confirming to the Lender the grant or perfection of a security interest in the Intellectual Property.

(b) The Grantor hereby irrevocably appoints the Lender as the Grantor's attorney-in-fact, with full authority in the place and stead of the Grantor and in the name of the Grantor, the Lender or otherwise, from time to time in the Lender's discretion, upon the Grantor's failure or inability to do so, to take any action and to execute any instrument which the Lender may deem necessary or advisable to accomplish the purposes of this Agreement, including:

(i) To modify, in its sole discretion, this Agreement without first obtaining the Grantor's approval of or signature to such modification by amending Exhibit "A", Exhibit "B", Exhibit "C", Exhibit "D" and Exhibit "E" hereof, as appropriate, to include reference to any right, title or interest in any Copyrights, Patents or Trademarks acquired by the Grantor after the execution hereof or to delete any reference to any right, title or interest in any Copyrights, Patents or Trademarks in which the Grantor no longer has or claims any right, title or interest; and

(ii) To file, in its sole discretion, one or more financing, financing change or continuation statements and amendments thereto, relative to any of the Intellectual Property without the signature of the Grantor where permitted by law.

9. **Events of Default.** The Granter shall be in default under this Agreement upon the occurrence of any one or more of the following events (each an "Event of Default"):

(a) an event of default occurs under the Commitment Letter;

(b) any representation or warranty made, deemed to have been made or given herein is false or erroneous in any material respect as at the date made, deemed to be made or given, and if the circumstances giving rise to such representation or warranty so being false or erroneous in such material respect are not remedied within a period of fifteen (15) days following the earlier of: (a) the date on which the Lender knew of the circumstances giving rise to such representation or warranty being false or erroneous; and (b) the date on which notice of the default is delivered from the Lender to the Grantor; or

(c) if there is any default or failure in the observance or performance of any other act hereby required to be done or any other covenant or condition hereby required to be observed or performed and, in the event that such default or failure is capable of being cured, such default or failure continues uncured for a period of fifteen (15) days following the earlier of: (a) the date on which the Lender knew of such default or failure; and (b) the date on which notice of the default is delivered from the Lender to the Grantor.

10. **Remedies.** Upon the occurrence and continuance of an Event of Default, the Lender shall have the right to exercise all the remedies of a secured party under the *Personal Property Security Act* (Ontario) (the "PPSA") including, without limitation, acceleration of the indebtedness, the right to require the Grantor to assemble the Intellectual Property and any tangible property in which the Lender has a security interest and to make it available to the Lender at a place designated by the Lender. The Lender shall have a nonexclusive, royalty free license to use the Copyrights, Patents and Trademarks to the extent reasonably necessary to permit the Lender to exercise its rights and remedies upon the occurrence and during the continuance of an Event of Default. the Grantor will pay any expenses (including reasonable legal and attorney's fees) incurred by the Lender in connection with the exercise of any of the Lender's rights hereunder, including without limitation any expense incurred in disposing of the

Intellectual Property. All of the Lender's rights and remedies with respect to the Intellectual Property shall be cumulative.

11. **Appointment of Receiver.** Upon the occurrence and during the continuance of an Event of Default, the Lender may appoint or reappoint by instrument in writing, any person or persons, whether an officer or officers or an employee or employees of the Lender or not, to be a receiver or receivers (hereinafter called a **"Receiver"**, which term when used herein shall include a receiver and manager) of the Intellectual Property (including any proceeds) and may remove any Receiver so appointed and appoint another in its stead. Any such Receiver shall, so far as concerns responsibility for its acts, be deemed the agent of the Grantor and not of the Lender, and the Lender shall not be in any way responsible for any misconduct, negligence, or non-feasance on the part of any such Receiver, its servants, agents or employees. Subject to the provisions of the instrument appointing him, any such Receiver shall have power to take possession of the Intellectual Property, to preserve the Intellectual Property or its value and to sell, license or otherwise dispose of or concur in selling, licensing or other disposing of the Intellectual Property. To facilitate the foregoing powers, any such Receiver may, to the exclusion of all others including the Grantor, enter upon, use and occupy all premises owned or occupied by the Grantor wherein the Intellectual Property may be situated, maintain the Intellectual Property upon such premises, borrow money on a secured or unsecured basis and use the Intellectual Property as security for loans or advances, as such Receiver shall, in its discretion, determine. Except as may be otherwise directed by the Lender, all money received from time to time by such Receiver in carrying out his appointment shall be received in trust for and paid over to the Lender. Every such Receiver may, in the discretion of the Lender, be vested with all and any of the rights and powers of the Lender.

12. **Exercise of Rights by Lender.** Upon the occurrence and during the continuance of an Event of Default, the Lender may, either directly or through its nominees, exercise any or all of the powers and rights given to a Receiver by virtue of Section 11.

13. **Taking Possession of Intellectual Property.** Upon the occurrence and during the continuance of an Event of Default, the Lender may take possession of, collect, demand, sue on, enforce, recover and receive the Intellectual Property and give valid and binding receipts and discharges therefor and in respect thereof, and, the Lender may sell, license or otherwise dispose of the Intellectual Property in such manner at such time or times and place or places, for such consideration and upon such terms and conditions as the Lender may deem reasonable.

14. **Rights and Remedies of Lender under the PPSA.** In addition to those rights granted herein and in any other agreement now or hereafter in effect between the Grantor and the Lender and in addition to any other rights the Lender may have at law or in equity, the Lender shall have, after the occurrence and during the continuance of an Event of Default, all rights and remedies of a secured party under the PPSA provided always, that the Lender shall not be liable or accountable for any failure to exercise its remedies, take possession of, collect, enforce, realize, sell, license or otherwise dispose of the Intellectual Property or to institute any proceedings for such purposes. Furthermore, the Lender shall have no obligation to take any steps to preserve rights against prior parties to any Instrument (as defined in the PPSA) or Chattel Paper (as defined in the PPSA) whether the Intellectual Property or proceeds and whether or not in the Lender's possession and shall not be liable or accountable for failure to do so.

15. **Cooperation of Grantor with respect to Taking Possession.** The Grantor acknowledges that the Lender or any Receiver appointed by it may take possession of the Intellectual Property wherever it may be located and by any method permitted by law and the Grantor agrees upon request from the Lender or any such Receiver to assemble and deliver possession of the Intellectual Property at such place or places as directed.

16. **Costs.** The Grantor agrees to pay all cost, charges and expenses reasonably incurred by the Lender or any Receiver appointed by it, whether directly or for services rendered (including reasonable legal counsels' and auditors' costs and other legal expenses and Receiver remuneration), in operating the Grantor's accounts, in preparing or enforcing this Agreement, taking and maintaining custody of, preserving, registering, licensing, preparing for disposition and disposing of the Intellectual Property and in enforcing or collecting the Indebtedness and all such costs, charges and expenses, together with any amounts owing as a result of any borrowing by the Lender or any Receiver appointed by it, as permitted hereby, shall be a first charge on the proceeds of realization, collection or disposition of the Intellectual Property and shall be secured hereby.

17. **Notice of Sale.** The Lender will give the Grantor such notice, if any, of the date, time and place of any public sale or of the date after which any private disposition of the Intellectual Property is to be made, as may be required by the PPSA.

18. **Reassignment.** At such time as the Grantor shall completely satisfy all of the obligations secured under this Agreement or Section 27 shall apply, the Lender shall execute and deliver to the Grantor all deeds, assignments, and other instruments as may be necessary or proper to reinvest in the Grantor full title to the property assigned hereunder, subject to any disposition thereof which may have been made by the Lender pursuant hereto.

19. **Course of Dealing.** No course of dealing, nor any failure to exercise, nor any delay in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

20. **Amendments.** This Agreement may be amended only by a written instrument signed by both parties hereto.

21. **Survival and Reliance.** All representations and warranties of the Grantor made in this Agreement or in any certificate or other document delivered by or on behalf of the Grantor for the benefit of the Lender are material and shall continue without time limit. The Lender shall be deemed to have relied upon each such representation and warranty despite any investigation the Lender may have made.

22. **License/Assignment of Intellectual Property.** For the purpose of enabling the Lender or any Receiver to exercise the rights and remedies under Sections 10 and 11 (including, without limiting the terms of Sections 10 and 11, in order to take possession of, hold, preserve, process, assemble, prepare for sale, market for sale, sell or otherwise dispose of the Intellectual Property) at and for such time as the Lender shall be lawfully entitled to exercise such rights and remedies, the Grantor shall grant to the Lender, for the benefit of the Lender, an irrevocable, non-exclusive license (exercisable without payment of royalty or other compensation to the Grantor) to use, license or sublicense any of the Intellectual Property now owned or hereafter acquired by the Grantor, and wherever the same may be located, and included in such license access to all media in which any of the licensed items may be recorded or stored and to all computer software and programs used for the compilation or printout thereof. In addition, upon receiving written demand from the Lender after an Event of Default has occurred, the Grantor shall assign the Intellectual Property to whomever the Lender directs, including to the Lender.

23. **Grantor Remains Liable.** Notwithstanding any other provision in this Agreement, the Grantor shall remain liable under all license agreements under which the Grantor is a licensor. The Grantor shall perform all of its duties and obligations thereunder just as if this Agreement had not been executed. The Grantor shall not be released from any of its duties or obligations under such license agreements by the exercise of any rights by the Lender. The Lender shall not have any obligations or liability under such license agreements by reason of this Agreement, nor shall the Lender be obliged to perform any of the obligations or duties of the Grantor thereunder or to take any action to collect or

enforce any claim for payment assigned hereunder. The rights and powers conferred on the Lender hereunder are solely to protect its interest in the Intellectual Property and shall not impose any duty upon it to exercise any such powers.

24. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original agreement and all of which shall constitute one agreement. All counterparts shall be construed together and shall constitute one and the same agreement. This Agreement, to the extent signed and delivered by means of electronic transmission (including, without limitation, facsimile and Internet transmissions), shall be treated in all manner and respects as an original agreement and should be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person..

25. **Law and Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. The parties hereby submit and attorn to the non-exclusive jurisdiction of the courts of the Province of Ontario.

26. **Confidentiality.** All information (other than periodic reports filed by the Grantor with any securities commission or regulatory authority) disclosed by the Grantor to the Lender in writing or through inspection pursuant to this Agreement that is marked confidential shall be considered confidential. The Lender agrees to use the same degree of care to safeguard and prevent disclosure of such confidential information as the Lender uses with its own confidential information, but in any event no less than a reasonable degree of care. The Lender shall not disclose such information to any third party (other than the Lender's attorneys, counsel, governmental regulators, and auditors, or to the Lender's subsidiaries and affiliates for the purposes of evaluating the Lender's rights, subject to the same confidentiality obligation set forth herein) and shall use such information only for purposes of evaluation of its investment in the Grantor and the exercise of the Lender's rights and the enforcement of its remedies and this Agreement and the other Loan Documents. The obligations of confidentiality shall not apply to any information that (a) was known to the public prior to disclosure by the Grantor under this Agreement, (b) becomes known to the public through no fault of the Lender, (c) is disclosed to the Lender by a third party having a legal right to make such disclosure, or (d) is independently developed by the Lender. Notwithstanding the foregoing, the Lender's agreement of confidentiality shall not apply if the Lender has acquired indefeasible title to any Collateral or in connection with any enforcement or exercise of the Lender's rights and remedies under this Agreement following an Event of Default, including the enforcement of the Lender's security interest in the Intellectual Property.

27. **Termination of this Agreement.** Upon termination of all rights of the Grantor to receive any additional credit from the Lender and fulfillment by the Grantor of its obligations, indebtedness and liabilities to the Lender (including, without limitation, all obligations, indebtedness and liabilities under the Commitment Letter and the Loan Documents to which the Grantor is a party), this Agreement shall become fully ended and terminated and all right, title and interest in and in respect of the Intellectual Property secured by the Grantor hereunder shall be released and all covenants and agreements of the Grantor hereunder shall be at an end and the Lender shall, upon written request of the Grantor and at the expense of the Grantor, execute such instruments and other documents and give such notifications or assurances as may be necessary to fully release, cancel and discharge this Agreement in the circumstances.

28. **Reorganization.** The Grantor acknowledges and agrees that, in the event it reorganizes with any other partnership or any other entity, it is the intention of the parties hereto that the security interests created hereby (a) shall extend to the Intellectual Property owned by each of the reorganizing partnerships or any other reorganizing entity and the reorganized partnership or reorganized entity at the time of reorganization and to any of the Intellectual Property thereafter owned or acquired by the

reorganized partnership or reorganized entity, such that the term "**Grantor**" when used herein would apply to each of the reorganizing partnerships or any other reorganizing entity and the reorganized partnership or reorganized entity and (b) shall secure the Indebtedness of each of the reorganizing partnerships or any other reorganizing entity and the reorganized partnership or reorganized entity to the Lender at the time of reorganization and any Indebtedness of the reorganized partnership or reorganized entity to the Lender thereafter arising. The security interest shall attach to the additional Intellectual Property at the time of reorganization and to any of the Intellectual Property owned or acquired by the reorganized partnership or reorganized entity when such becomes owned or is acquired.

29. **Attachment.** The Security Interest created hereby is intended to attach when this Agreement is signed by the Grantor and delivered to the Lender.

30. **Acknowledgment.** The Grantor hereby acknowledges receipt of a copy of this Agreement.

31. **Registration of Agreement.** The Grantor hereby acknowledges that the Lender may register a copy of this Agreement or notice thereof. The Grantor shall cooperate with and assist the Lender, as requested by the Lender, with respect to any registrations or notice registrations of or relating to this Agreement which the Lender deems appropriate.

32. **Severability of Provisions.** Each provision of this Agreement shall be several from every other provision of this Agreement for the purpose of determining the legal enforceability of any specific provision.

33. **Successors and Assigns.** This Agreement shall bind and enure to the benefit of the respective successors and permitted assigns of each of the parties; provided, however, that neither this Agreement nor any rights hereunder may be assigned by the Grantor without the Lender's prior written consent, which consent may be granted or withheld in the Lender's sole discretion. The Lender shall have the right without the consent of or notice to the Grantor to sell, transfer, negotiate, or grant participation's in all or any part of, or any interest in such Lender's rights and benefits hereunder.

34. **Cross Default.** For the purposes of this provision:

- (a) "**Credit Group**" shall mean the Grantor and Spinrite GP Inc. and any other individual, corporation, partnership of any kind, sole proprietorship, unincorporated association or syndicate, trust or body corporate providing a guarantee of, or security for, the indebtedness, liabilities and obligations of the Assignor to the Lender (collectively, the "**Third Party Documents**"); and
- (b) "**Credit Documents**" means the Commitment Letter, the Security referred to therein and all other documents, instruments and agreements arising therefrom, the Loan Documents and the Third Party Documents, each as amended, modified, restated, supplemented, changed, replaced or renewed from time to time.

The occurrence of any event of default under any Credit Document shall, at the Lender's election, be deemed to be an event of default by the Grantor under the Commitment Letter and the Loan Documents, and shall be deemed to be an event of default by all other members of the Credit Group under their respective Credit Documents, and shall thereby allow the Lender to exercise any remedy available to it, after an event of default, under the Credit Documents or at law.

IN WITNESS WHEREOF the parties have executed this Agreement as of the day and year first written above.

SPINRITE LIMITED PARTNERSHIP, by its
general partner, **SPINRITE GP INC.**

Per:



Eric D. Bommer
Secretary

I have the authority to bind the General Partner and the
Limited Partnership

THE BANK OF NOVA SCOTIA

Per:


Name:

Title: **ANDREW M. WRIGHT**
VICE PRESIDENT & DIRECTOR


Name:

Title: **DAVID PATTERSON**
SENIOR RELATIONSHIP MANAGER

I/We have the authority to bind the Bank

TOR_LAW\5597801 v5

EXHIBIT "A"
COPYRIGHTS

Nil.

EXHIBIT "B"
PATENTS

Nil.

EXHIBIT "C"

TRADEMARKS

A. Trademark Registrations

<u>Country</u>	<u>Trade-mark</u>	<u>Registration Number</u>
CANADA	ARCTIC	TMA297,602
	BERELLA	TMA194,212
	BERNAT	TMA502,212
	BERNATIZED	TMA123,392
	BISON BLANC: Design	TMA311,984
	BOUQUET	UCA24,053
	BOUQUET	TMA462,363
	BOUQUET & Design	TMA166,619
	"CARNIVAL"	UCA23,655
	CRAFTISANAT	TMA220,230
	DYNASTY	TMA410,057
	EAGLE DESIGN	TMA401,977
	FIRST CHOICE	TMA456,298
	GAUGUIN	TMA345774
	GLOUCESTER	TMA344,065
	GLOUCESTER SPORT	TMA347,637
	GOOD SHEPHERD & Design	TMA397,821
	GOOD SHEPHERD & Design	TMA397,820
	GOOD SHEPHERD Design	TMA407,700
	HANDICRAFTER	TMA139,235
	HANDICRAFTER	TMA460,095
	IRISH MIST	TMA270,719
	KOUNTRY KABLED KOTTON	TMA472,951
	LION & Design	TMA123,398
	NAKINA	TMA296,423
	NANTUK	TMA140,321
	NICE 'N SOFT	TMA397,286
	PHENSPUN	TMA218,395
	POLAR	TMA114,759
	POT-O-GOLD	TMA140,313
	PHENTEX	TMA392,903
	PHENTEX DESIGN	TMA404,846
	PHENTEX & DESIGN	TMA155,071

<u>Country</u>	<u>Trade-mark</u>	<u>Registration Number</u>
CANADA (con't)	SOFTEE	TMA358,616
	SPINDLECRAFT	TMA157,072
	SPINNING WHEEL	TMA155,310
	SPINNING WHEEL YARNS & Design	TMA155,320
	SUGAR 'N CREAM	TMA481,382
	TABRIZ	TMA250,380
	THE YARN MILL	TMA170,859
	WHITE BUFFALO	TMA161,267
	WHITE BUFFALO	TMA473,927
	WHITE BUFFALO & Design	TMA304,624
	WHITE BUFFALO & Design	TMA455,231
	WHITE BUFFALO & Design	TMA307,461
JAPAN	WHITE BUFFALO (Class 15)	1,504,498
UNITED STATES	BABY BRITE	1,475,015
	BERELLA 4	1,034,354
	BERNAT	765,926
	BERNAT	840,552
	BERNAT MADEIRA NEEDLEPOINT	1,318,315
	BIG DEAL	1,995,674
	BOUQUET	2,126,513
	FIRST CHOICE	2,314,332
	HANDICRAFTER	764,725
	HANDICRAFTER	2,163,053
	LILY	237,163
	NICE 'N SOFT	1,846,241
	PHENTEX	843,753
	PHENTEX	843,754
	SPINDLECRAFT	1,685,366
	ULTRA-SOFT	1,806,759

B. Trademark Applications

<u>Country</u>	<u>Trade-mark</u>	<u>Serial Number</u>
CANADA	BABY SOFT	1,168,866

C. Registered Internet Domain Names

www.patonsyarns.com
www.bernat.com
www.phentexyarns.com
www.lilyyarns.com
www.sugarncream.com
www.spinrite50thanniversary.com
www.bernatkits.com
www.berella.com
www.bernatyarns.com
www.beehiveyarns.com
www.kidz-crafts.com
www.love2knit.com
www.love2crochet.com
www.createforkids.com
www.createasweater.com
www.createanafghan.com
www.spinriteoutlet.com
www.Peachesandcreme.com
www.canadianayarns.com
www.sugarandcream.com

EXHIBIT "D"

DESIGNS

Nil.

TRADEMARK

REEL: 002942 FRAME: 0076

EXHIBIT "E"

LICENSES GRANTED

1. License Agreement dated May 5, 1999 between Coats Canada Inc. and Spinrite Inc.;
2. License Agreement dated January 3, 2003 between Debbie Mumm Inc. and Spinrite Inc.;
3. License Agreement made as of January 1, 2003 between Mary Engelbreit Studios, Inc. and Spinrite Inc.; and
4. License Agreement dated October 16, 1998 between Phentex International Inc. and Spinrite Inc.;