

# TRADEMARK ASSIGNMENT

Electronic Version v1.1

Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	Trademark Security Agreement		
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
McNally Industries, LLC		06/30/2005	Limited Liability Company: DELAWARE
RECEIVING PARTY DATA			
Name:	KANSAS VENTURE CAPITAL, INC.		
Street Address:	6700 Antioch		
Internal Address:	Ste 460		
City:	Overland Park		
State/Country:	KANSAS		
Postal Code:	66204		
Entity Type:	CORPORATION: KANSAS		
Name:	MIDSTATES CAPITAL, L.P.		
Street Address:	7300 W 110TH STREET		
Internal Address:	7TH FLOOR		
City:	Overland Park		
State/Country:	KANSAS		
Postal Code:	66210		
Entity Type:	Limited Partnership: KANSAS		
Name:	CFB VENTURE FUND III, L.P.		
Street Address:	1000 Walnut		
Internal Address:	18th Floor		
City:	Kansas City		
State/Country:	MISSOURI		
Postal Code:	64106		
Entity Type:	Limited Partnership:		

PROPERTY NUMBERS Total: 1

900028212

TRADEMARK  
REEL: 003120 FRAME: 0692

CH \$40.00 0276565

Property Type	Number	Word Mark
Registration Number:	0276565	NORTHERN

#### CORRESPONDENCE DATA

Fax Number: (202)728-0744

*Correspondence will be sent via US Mail when the fax attempt is unsuccessful.*

Phone: 2027216405

Email: christine.wilson@t-t.com

Correspondent Name: Thomson & Thomson

Address Line 1: 1750 K Street, NW

Address Line 2: Suite 200

Address Line 4: Washington, DISTRICT OF COLUMBIA 20006

NAME OF SUBMITTER:

CHRISTINE WILSON

Signature:

/CHRISTINE WILSON/

Date:

07/13/2005

#### Total Attachments: 8

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THIS INSTRUMENT AND THE RIGHTS AND OBLIGATIONS EVIDENCED HEREBY ARE SUBORDINATE IN THE MANNER AND TO THE EXTENT SET FORTH IN THAT CERTAIN SUBORDINATION AND INTERCREDITOR AGREEMENT (THE "SUBORDINATION AGREEMENT") DATED AS OF JUNE 30, 2005 AMONG CFB VENTURE FUND III, L.P., MIDSTATES CAPITAL, L.P., KANSAS VENTURE CAPITAL, INC., MCNALLY INDUSTRIES, LLC ("MCNALLY") AND LASALLE BANK NATIONAL ASSOCIATION (TOGETHER WITH ITS SUCCESSORS AND ASSIGNS, THE "SENIOR LENDER"), TO THE INDEBTEDNESS (INCLUDING INTEREST) OWED BY THE COMPANY PURSUANT TO THAT CERTAIN LOAN AND SECURITY AGREEMENT DATED AS OF JUNE ~~30~~<sup>30</sup>, 2005, BETWEEN THE COMPANY AND THE SENIOR LENDER (AS AMENDED, MODIFIED, RESTATED OR REPLACED FROM TIME TO TIME, THE "LOAN AGREEMENT"), AND THE OTHER LOAN DOCUMENTS (AS DEFINED IN THE LOAN AGREEMENT), AS SUCH LOAN AGREEMENT AND OTHER LOAN DOCUMENTS MAY BE AMENDED, RESTATED, SUPPLEMENTED OR OTHERWISE MODIFIED FROM TIME TO TIME, AND TO INDEBTEDNESS REFINANCING THE INDEBTEDNESS THEREUNDER AS CONTEMPLATED BY THE SUBORDINATION AGREEMENT; AND EACH HOLDER OF THIS INSTRUMENT, BY ITS ACCEPTANCE HEREOF, IRREVOCABLY AGREES TO BE BOUND BY THE PROVISIONS OF THE SUBORDINATION AGREEMENT.

### **TRADEMARK SECURITY AGREEMENT**

THIS TRADEMARK SECURITY AGREEMENT (this "Agreement"), dated as of June 30, 2005, by McNALLY INDUSTRIES, LLC, a Delaware limited liability company (the "Grantor"), in favor of CFB VENTURE FUND III, L.P., KANSAS VENTURE CAPITAL, INC. and MIDSTATES CAPITAL, L.P. (collectively, the "Lender").

### **RECITALS**

A. The Grantor and the Lender have entered into that certain Amended and Restated Securities Purchase Agreement dated as of the date hereof (as amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"; capitalized terms used by not defined herein have the respective meanings ascribed thereto in the Credit Agreement) among Grantor, McNally Holdings, LLC, Thomas M. Brunts, Robert S. Levine, Levine Family Trust and the Lenders, pursuant to which the Lenders have agreed to make certain loans to Grantor.

B. Pursuant to the Credit Agreement, the Grantor is required to execute and deliver to the Lender this Agreement.

1. In consideration of the mutual agreements set forth herein and in the Credit Agreement, the Grantor does hereby grant to the Lender a continuing security interest in all of Grantor's right, title and interest in, to and under the following, whether presently existing or hereafter created or acquired:

- (a) each trademark and trademark application, including, without limitation, each trademark and trademark application referred to in Schedule 1 annexed hereto,

together with any reissues, continuations or extensions thereof and all goodwill associated therewith;

- (b) each trademark license, including, without limitation, each trademark license listed on Schedule 1 annexed hereto, together with all goodwill associated therewith;
- (c) all products and proceeds of the foregoing, including, without limitation, any claim by the Grantor against third parties for past, present or future infringement of any trademark, including, without limitation, any trademark referred to in Schedule 1 annexed hereto, any trademark issued pursuant to a trademark application referred to in Schedule 1 and any trademark licensed under any trademark license listed on Schedule 1 annexed hereto (items 1 through 3 being herein collectively referred to as the "Trademark Collateral");

2. The Lender may, but is not required, to take such actions from time to time as the Lender deems appropriate in its commercially reasonable judgment to maintain or protect the Trademark Collateral. The Lender shall have exercised reasonable care in the custody and preservation of the Trademark Collateral if the Lender takes such action as the Grantor shall reasonably request in writing which is not inconsistent with the Lender's status as a secured party, but the failure of the Lender to comply with any such request shall not be deemed a failure to exercise reasonable care; provided, however, the Lender's responsibility for the safekeeping of the Trademark Collateral shall (i) be deemed reasonable if such Trademark Collateral is accorded treatment substantially equal to that which the Lender accords its own property, and (ii) not extend to matters beyond the control of the Lender, including, without limitation, acts of God, war, insurrection, riot or governmental actions. In addition, any failure of the Lender to preserve or protect any rights with respect to the Trademark Collateral against prior or third parties, or to do any act with respect to preservation of the Trademark Collateral, not so requested by the Grantor, shall not be deemed a failure to exercise reasonable care in the custody or preservation of the Trademark Collateral. The Grantor shall have the sole responsibility for taking such action as may be necessary, from time to time, to preserve all rights of the Grantor and the Lender in the Trademark Collateral against prior or third parties. Without limiting the generality of the foregoing, where Trademark Collateral consists in whole or in part of securities, the Grantor represents to, and covenants with, the Lender that the Grantor has made arrangements for keeping informed of changes or potential changes affecting the securities (including, but not limited to, rights to convert or subscribe, payment of dividends, reorganization or other exchanges, tender offers and voting rights), and the Grantor agrees that the Lender shall have no responsibility or liability for informing the Grantor of any such or other changes or potential changes or for taking any action or omitting to take any action with respect thereto.

3. The Grantor further agrees to take any other action reasonably requested by the Lender to ensure the attachment, perfection of, and the ability of the Lender to enforce, the Lender's security interest in any and all of the Trademark Collateral, including, without limitation, (a) complying with any provision of any statute, regulation or treaty of the United States as to any Trademark Collateral if compliance with such provision is a condition to attachment, perfection or priority of, or ability of the Lender to enforce, the Lender's security

interest in such Trademark Collateral, and (b) obtaining governmental and other third party consents and approvals, including, without limitation, any consent of any licensor or other Person obligated on Trademark Collateral. The Grantor further agrees to indemnify and hold the Lender harmless against claims of any Persons not a party to this Agreement concerning disputes arising over the Trademark Collateral.

4. The Grantor hereby represents and warrants to the Lender that:
  - (a) the Grantor owns and possesses or has a license or other right to use all Trademark Collateral, as are necessary for the conduct of the businesses of the Grantor, without any infringement upon rights of others which could reasonably be expected to have a Material Adverse Change upon the Grantor;
  - (b) no material claim has been asserted and is pending by any Person challenging or questioning the use of any Trademark Collateral or the validity or effectiveness of any Trademark Collateral nor does the Grantor know of any valid basis for any such claim;
  - (c) the Grantor is the owns all right, title and interest in, under and to the Trademark Collateral, subject to no licenses or any interest therein or other agreements relating thereto, except for the Lender and Senior Lender;
  - (d) none of the Trademark Collateral is subject to any pending or, to the Grantor's knowledge, threatened challenge; and
  - (e) to its knowledge, Grantor has not committed any trademark or trade name infringement, and the present conduct of the Grantor's business does not infringe any trademarks, trade name rights or other proprietary rights of any Person.

5. Until all of the Subordinated Indebtedness is paid in full in cash, the Grantor shall maintain, preserve and renew all Trademark Collateral necessary for the conduct of its business.

6. Until all of the Subordinated Indebtedness is paid in full in cash, the Grantor shall not, either directly or indirectly, create, assume, incur or suffer or permit to exist any Lien or charge of any kind or character upon any Trademark Collateral, whether owned at the date hereof or hereafter acquired, except for Permitted Liens.

7. Upon the occurrence and during the continuance of an Event of Default, the Lender shall have all of the following rights, powers and remedies:

- (a) The Lender may sell any or all of the Trademark Collateral at public or private sale, upon such terms and conditions as the Lender may deem proper, and the Lender may purchase any or all of the Trademark Collateral at any such sale. The Grantor acknowledges that the Lender may be unable to effect a public sale of all or any portion of the Trademark Collateral because of certain legal and/or practical restrictions and provisions which may be applicable to the Trademark Collateral and, therefore, may be compelled to resort to one or more private sales to a restricted group of offerees and purchasers. The Grantor consents to any such

private sale so made even though at places and upon terms less favorable than if the Trademark Collateral were sold at public sale. The Lender may apply the net proceeds, after deducting all costs, expenses, attorneys' and paralegals' fees incurred or paid at any time in the collection, protection and sale of the Trademark Collateral and the Subordinated Indebtedness, to the payment of any Notes, returning the excess proceeds, if any, to the Grantor. The Grantor shall remain liable for any amount remaining unpaid after such application, with interest at the Default Rate. Any notification of intended disposition of the Trademark Collateral required by law shall be conclusively deemed reasonably and properly given if given by the Lender at least ten (10) calendar days before the date of such disposition. The Grantor hereby confirms, approves and ratifies all acts and deeds of the Lender relating to the foregoing, and each part thereof, and expressly waives any and all claims of any nature, kind or description which it has or may hereafter have against the Lender or its representatives, by reason of taking, selling or collecting any portion of the Trademark Collateral.

- (b) To the extent that applicable law imposes duties on the Lender to exercise remedies in a commercially reasonable manner, the Grantor acknowledges and agrees that it is not commercially unreasonable for the Lender (1) to fail to incur expenses reasonably deemed significant by the Lender to prepare Collateral for disposition or otherwise to complete raw material or work-in-process into finished goods or other finished products for disposition, (2) to fail to obtain governmental or third party consents for the collection or disposition of Trademark Collateral to be disposed of, (3) to remove liens or encumbrances on or any adverse claims against Trademark Collateral, (4) to advertise dispositions of Trademark Collateral through publications or media of general circulation, (5) to contact other Persons, whether or not in the same business as the Grantor, for expressions of interest in acquiring all or any portion of the Trademark Collateral, (6) to hire one or more professional auctioneers to assist in the disposition of Trademark Collateral, (7) to dispose of Trademark Collateral by utilizing internet sites that provide for the auction of assets of the types included in the Trademark Collateral or that have the reasonable capability of doing so, or that match buyers and sellers of assets, (8) to dispose of assets in wholesale rather than retail markets, (i) to disclaim disposition warranties, including, without limitation, any warranties of title, (9) to purchase insurance or credit enhancements to insure the Lender against risks of loss, collection or disposition of Trademark Collateral or to provide to the Lender a guaranteed return from the collection or disposition of Trademark Collateral, or (10) to the extent deemed appropriate by the Lender, to obtain the services of other brokers, investment bankers, consultants and other professionals to assist the Lender in the collection or disposition of any of the Trademark Collateral. The Grantor acknowledges that the purpose of this Section is to provide non-exhaustive indications of what actions or omissions by the Lender would not be commercially unreasonable in the Lender's exercise of remedies against the Trademark Collateral and that other actions or omissions by the Lender shall not be deemed commercially unreasonable solely on account of not being indicated in this Section. Without limitation upon the foregoing, nothing contained in this Section shall be construed to grant any rights to the

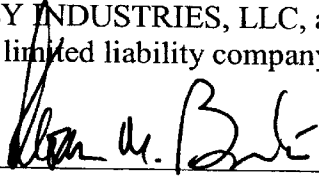
Grantor or to impose any duties on the Lender that would not have been granted or imposed by this Agreement or by applicable law in the absence of this Section.

The Grantor hereby ratifies and confirms whatever the Lender may do with respect to the Trademark Collateral and agrees that the Lender shall not be liable for any error of judgment or mistakes of fact or law with respect to actions taken in connection with the Trademark Collateral.

*[signature page follows]*

The Grantor has caused this Trademark Security Agreement to be duly executed by its duly authorized officer thereunto as of the date first set forth above.

McNALLY INDUSTRIES, LLC, a  
Delaware limited liability company

By: 

Name: Thomas M. Bruntz

Title: President

Acknowledged:

CFB VENTURE FUND III, L.P.

By: CFB Partners III, LLC, its General Partner

By: 

Name: Gregory L. Gaeddert

Title: Member

KANSAS VENTURE CAPITAL, INC.

By: 

Name: Thomas C. Blackburn

Title: President

MIDSTATES CAPITAL, L.P.

By: MidStates Partners, LLC, its General Partner

By: 

Name: Timothy J. Keeble

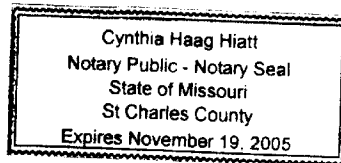
Title: Member



STATE OF Missouri)  
City) ss  
COUNTY OF St. Louis)

On this 30 day of June, 2005, before me personally appeared the person whose signature is set forth above, to me known, who, being duly sworn, did depose and say that he is the above-indicated officer of the Grantor, and which executed the above instrument; and that he signed his name thereto by authority of the board of directors or similar governing of said entity.

Cynthia Haag Hiatt  
Notary Public



SCHEDULE 1  
to  
TRADEMARK SECURITY AGREEMENT

**Trademarks, Trademark Applications and Trademark Licenses**

<b>Trademark Number</b>	<b>Trademark Registration Number</b>	<b>Date of Registration</b>
71302001	0276565	10/21/1930