

**TRADEMARK ASSIGNMENT**

Electronic Version v1.1  
 Stylesheet Version v1.1

<b>SUBMISSION TYPE:</b>	NEW ASSIGNMENT		
<b>NATURE OF CONVEYANCE:</b>	SECURITY INTEREST		
<b>CONVEYING PARTY DATA</b>			
<b>Name</b>	<b>Formerly</b>	<b>Execution Date</b>	<b>Entity Type</b>
Songbird Hearing Inc.		08/24/2005	CORPORATION: DELAWARE
<b>RECEIVING PARTY DATA</b>			
<b>Name:</b>	The Procter & Gamble Company		
<b>Street Address:</b>	One Procter & Gamble Plaza		
<b>City:</b>	Cincinnati		
<b>State/Country:</b>	OHIO		
<b>Postal Code:</b>	45202		
<b>Entity Type:</b>	CORPORATION: OHIO		
<b>PROPERTY NUMBERS Total: 1</b>			
<b>Property Type</b>	<b>Number</b>	<b>Word Mark</b>	
Registration Number:	2701207	SONGBIRD DIGITAL	
<b>CORRESPONDENCE DATA</b>			
<b>Fax Number:</b>	(513)579-6457		
	<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>		
<b>Phone:</b>	513-579-6469		
<b>Email:</b>	trademarks@kmlaw.com		
<b>Correspondent Name:</b>	F. Mark Reuter, KMK Law		
<b>Address Line 1:</b>	One East Fourth Street		
<b>Address Line 2:</b>	Suite 1400		
<b>Address Line 4:</b>	Cincinnati, OHIO 45202		
<b>NAME OF SUBMITTER:</b>	F. Mark Reuter		
<b>Signature:</b>	/F. Mark Reuter/		
<b>Date:</b>	09/08/2005		

OP \$40.00 2701207

Total Attachments: 16

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## SECURITY AGREEMENT

THIS SECURITY AGREEMENT dated as of August 24, 2005 ("*Security Agreement*"), is made by and between SONGBIRD HEARING INC., a Delaware corporation ("*Grantor*"), and The PROCTER & GAMBLE COMPANY (the "*Secured Party*").

### Recitals

A. The Secured Party has made and has agreed to make certain advances of money to Grantor as evidenced by that certain Secured Convertible Promissory Note dated August 24, 2005 executed by Grantor in favor of the Secured Party and such other Secured Convertible Promissory Notes which may be executed by Grantor in favor of the Secured Party after the date hereof (each, a "*Note*" and, collectively, the "*Notes*") pursuant to that certain Secured Note and Warrant Purchase Agreement dated as of August 24, 2005 by and between Grantor and the Secured Party (the "*Purchase Agreement*"), such advances being referred to herein as the "*Loans*".

B. The Secured Party is willing to make the Loans to Grantor, but only upon the condition, among others, that Grantor shall have executed and delivered to the Secured Party this Security Agreement.

### Agreement

NOW, THEREFORE, in order to induce the Secured Party to make the Loans and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound, Grantor hereby represents, warrants, covenants and agrees as follows:

1. **DEFINED TERMS.** When used in this Security Agreement the following terms shall have the following meanings (such meanings being equally applicable to both the singular and plural forms of the terms defined):

"*Bankruptcy Code*" means Title XI of the United States Code.

"*Collateral*" shall have the meaning assigned to such term in Section 2 of this Security Agreement.

"*Contracts*" means all contracts (including any customer, vendor, supplier, service or maintenance contract), leases, licenses, undertakings, purchase orders, permits, franchise agreements or other agreements (other than any right evidenced by Chattel Paper, Documents or Instruments), whether in written or electronic form, in or under which Grantor now holds or hereafter acquires any right, title or interest, including, without limitation, with respect to an Account, any agreement relating to the terms of payment or the terms of performance thereof.

"*Copyright License*" means any agreement, whether in written or electronic form, in which Grantor now holds or hereafter acquires any interest, granting any right in or to any Copyright or Copyright registration (whether Grantor is the licensee or the licensor thereunder)

including, without limitation, licenses pursuant to which Grantor has obtained the exclusive right to use a copyright owned by a third party.

**“Copyright”** means all of the following now owned or hereafter acquired or created (as a work for hire for the benefit of Grantor) by Grantor or in which Grantor now holds or hereafter acquires or receives any right or interest, in whole or in part: (a) all copyrights, whether registered or unregistered, held pursuant to the laws of the United States, any State thereof or any other country; (b) registrations, applications, recordings and proceedings in the United States Copyright Office or in any similar office or agency of the United States, any State thereof or any other country; (c) any continuations, renewals or extensions thereof; (d) any registrations to be issued in any pending applications, and shall include any right or interest in and to work protectable by any of the foregoing which are presently or in the future owned, created or authorized (as a work for hire for the benefit of Grantor) or acquired by Grantor, in whole or in part; (e) prior versions of works covered by copyright and all works based upon, derived from or incorporating such works; (f) income, royalties, damages, claims and payments now and hereafter due and/or payable with respect to copyrights, including, without limitation, damages, claims and recoveries for past, present or future infringement; (g) rights to sue for past, present and future infringements of any copyright; and (h) any other rights corresponding to any of the foregoing rights throughout the world.

**“Event of Default”** means (i) any “Event of Default” as defined in the Notes; (ii) any breach by Grantor of any warranty, representation, or covenant set forth herein or in any other Loan Documents; and (iii) this Security Agreement is deemed unenforceable by Secured Party in Secured Party’s reasonable discretion, or any material portion of the Collateral is no longer subject to a security interest in favor of the Secured Party.

**“Intellectual Property”** means any intellectual property, in any medium, of any kind or nature whatsoever, now or hereafter owned or acquired or received by Grantor or in which Grantor now holds or hereafter acquires or receives any right or interest, and shall include, in any event, any Copyright, Trademark, Patent, trade secret, customer list, internet domain name (including any right related to the registration thereof), proprietary or confidential information, mask work, source, object or other programming code, invention (whether or not patented or patentable), technical information, procedure, design, knowledge, know-how, software, data base, data, skill, expertise, recipe, experience, process, model, drawing, material or record.

**“License”** means any Copyright License, Patent License, Trademark License or other license of rights or interests, whether in-bound or out-bound, whether in written or electronic form, now or hereafter owned or acquired or received by Grantor or in which Grantor now holds or hereafter acquires or receives any right or interest, and shall include any renewals or extensions of any of the foregoing thereof.

**“Lien”** means any mortgage, lien, deed of trust, charge, pledge, security interest or other encumbrance.

**“Loan Documents”** shall have the meaning set forth in the Purchase Agreement.

**“Patent License”** means any agreement, whether in written or electronic form, in which Grantor now holds or hereafter acquires any interest, granting any right with respect to any invention on which a Patent is in existence (whether Grantor is the licensee or the licensor thereunder).

**“Patents”** means all of the following in which Grantor now holds or hereafter acquires any interest: (a) all letters patent of the United States or any other country, all registrations and recordings thereof and all applications for letters patent of the United States or any other country, including, without limitation, registrations, recordings and applications in the United States Patent and Trademark Office or in any similar office or agency of the United States, any State thereof or any other country; (b) all reissues, divisions, continuations, renewals, continuations-in-part or extensions thereof; (c) all petty patents, divisionals and patents of addition; (d) all patents to issue in any such applications; (e) income, royalties, damages, claims and payments now and hereafter due and/or payable with respect to patents, including, without limitation, damages, claims and recoveries for past, present or future infringement; and (f) rights to sue for past, present and future infringements of any patent.

**“Permitted Lien”** means: (a) [Reserved]; (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 Grantor 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 Grantor’s business if such are otherwise permitted under this Security Agreement and do not interfere in any material respect with the business of Grantor; (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 the Loan Documents; (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 Grantor; (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 \$50,000 at any one time.

**“Secured Obligations”** means (a) the obligation of Grantor to repay the Secured Party all of the unpaid principal amount of, and accrued interest on (including any interest that accrues after the commencement of bankruptcy), the Loans and any fees, costs and expenses of the Secured Party pursuant to Section 6(b) hereof and (b) the obligations of Grantor under the Notes and the other Loan Documents.

**"Security Agreement"** means this Security Agreement and all Schedules hereto, as the same may from time to time be amended, modified, supplemented or restated.

**"Trademark License"** means any agreement, whether in written or electronic form, in which Grantor now holds or hereafter acquires any interest, granting any right in and to any Trademark or Trademark registration (whether Grantor is the licensee or the licensor thereunder).

**"Trademarks"** means any of the following in which Grantor now holds or hereafter acquires any interest: (a) any trademarks, tradenames, corporate names, company names, business names, trade styles, service marks, logos, other source or business identifiers, prints and labels on which any of the foregoing have appeared or appear, designs and general intangibles of like nature, now existing or hereafter adopted or acquired, all registrations and recordings thereof and any applications in connection therewith, including, without limitation, registrations, recordings and applications in the United States Patent and Trademark Office or in any similar office or agency of the United States, any State thereof or any other country (collectively, the "Marks"); (b) any reissues, extensions or renewals thereof; (c) the goodwill of the business symbolized by or associated with the Marks; (d) income, royalties, damages, claims and payments now and hereafter due and/or payable with respect to the Marks, including, without limitation, damages, claims and recoveries for past, present or future infringement; and (e) rights to sue for past, present and future infringements of the Marks.

**"UCC"** means the Uniform Commercial Code as the same may from time to time be in effect in the State of Delaware; *provided, however*, in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection or priority of the Secured Party's security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of Delaware, the term "UCC" shall mean the Uniform Commercial Code (including the Articles thereof) as in effect at such time in such other jurisdiction for purposes of the provisions hereof relating to such attachment, perfection or priority and for purposes of definitions related to such provisions.

In addition, the following terms shall be defined terms having the meaning set forth for such terms in the UCC: "Account" (including health-care-insurance receivables), "Account Debtor", "Chattel Paper" (including tangible and electronic chattel paper), "Commercial Tort Claims", "Commodity Account", "Deposit Account", "Documents", "Equipment" (including all accessions and additions thereto), "Fixtures", "General Intangible" (including payment intangibles and software), "Instrument", "Inventory" (including all goods held for sale or lease or to be furnished under a contract of service, and including returns and repossessions), "Investment Property" (including securities and securities entitlements), "Letter-of-Credit Right" (whether or not the letter of credit is evidenced by a writing), "Payment Intangibles", "Proceeds", "Promissory Notes", "Securities Account", and "Supporting Obligations". Each of the foregoing defined terms shall include all of such items now owned, or hereafter acquired, by Grantor.

2. **GRANT OF SECURITY INTEREST.** As collateral security for the full, prompt, complete and final payment and performance when due (whether at stated maturity, by acceleration or otherwise) of all the Secured Obligations and in order to induce the Secured Party to cause the Loans to be made, Grantor hereby assigns, conveys, mortgages, pledges,

hypothecates and transfers to the Secured Party, and hereby grants to the Secured Party, subject to any and all Permitted Liens, a first, best and only security interest in all of Grantor's right, title and interest in, to and under the following, whether now owned or hereafter acquired, (all of which being collectively referred to herein as the "*Collateral*"):

- (a) All Accounts of Grantor;
- (b) All Chattel Paper of Grantor;
- (c) All Commercial Tort Claims of Grantor;
- (d) All Contracts of Grantor;
- (e) All Deposit Accounts of Grantor;
- (f) All Documents of Grantor;
- (g) All Equipment of Grantor that is not pledged as of the date hereof in connection with a Permitted Lien, *provided, however*, that should such Equipment of Grantor cease to be pledged in connection with a Permitted Lien subsequent to the date hereof, such Equipment shall thereafter be included in "Collateral;"
- (h) All Fixtures of Grantor;
- (i) All General Intangibles of Grantor, including, without limitation, Payment Intangibles, all Copyrights, Patents, Trademarks, Licenses, designs, drawings, technical information, marketing plans, customer lists, trade secrets, proprietary or confidential information, inventions (whether or not patentable), procedures, know-how, models and data;
- (j) All Instruments of Grantor, including, without limitation, Promissory Notes;
- (k) All Inventory of Grantor;
- (l) All Investment Property of Grantor;
- (m) All Letter-of Credit Rights of Grantor;
- (n) All Supporting Obligations of Grantor;
- (o) All property of Grantor held by the Secured Party, or any other party for whom the Secured Party is acting as agent hereunder, including, without limitation, all property of every-description now or hereafter in the possession or custody of or in transit to the Secured Party or such other party for any purpose, including, without limitation, safekeeping, collection or pledge, for the account of Grantor, or as to which Grantor may have any right or power;

(p) All other goods and personal property of Grantor, wherever located, whether tangible or intangible, and whether now owned or hereafter acquired, existing, leased or consigned by or to Grantor; and

(q) To the extent not otherwise included, all Proceeds of each of the foregoing and all accessions to, substitutions and replacements for and rents, profits and products of each of the foregoing.

Notwithstanding the foregoing provisions of this Section 2, the grant, assignment and transfer of a security interest as provided herein shall not extend to, and the term "*Collateral*" shall not include: (a) "intent-to-use" trademarks in existence as of the date hereof at all times prior to the first use thereof, whether by the actual use thereof in commerce, the recording of a statement of use with the United States Patent and Trademark Office or otherwise or (b) any Contract, Instrument or Chattel Paper in which Grantor has any right, title or interest if and to the extent such Contract, Instrument or Chattel Paper includes a provision containing a restriction on assignment such that the creation of a security interest in the right, title or interest of Grantor therein would be prohibited and would, in and of itself, cause or result in a default thereunder enabling another person party to such Contract, Instrument or Chattel Paper to enforce any remedy with respect thereto; *provided* that the foregoing exclusion shall not apply if (i) such prohibition has been waived or such other person has otherwise consented to the creation hereunder of a security interest in such Contract, Instrument or Chattel Paper or (ii) such prohibition would be rendered ineffective pursuant to Sections 9-407(a) or 9-408(a) of the UCC, as applicable and as then in effect in any relevant jurisdiction, or any other applicable law (including the Bankruptcy Code) or principles of equity); *provided further* that immediately upon the ineffectiveness, lapse or termination of any such provision, the Collateral shall include, and Grantor shall be deemed to have granted a security interest in, all its rights, title and interests in and to such Contract, Instrument or Chattel Paper as if such provision had never been in effect; and *provided further that* the foregoing exclusion shall in no way be construed so as to limit, impair or otherwise affect the Secured Party's unconditional continuing security interest in and to all rights, title and interests of Grantor in or to any payment obligations or other rights to receive monies due or to become due under any such Contract, Instrument or Chattel Paper and in any such monies and other proceeds of such Contract, Instrument or Chattel Paper.

### **3. Rights Of Secured Party.**

(a) Notwithstanding anything contained in this Security Agreement to the contrary, Grantor expressly agrees that it shall remain liable under each of its Contracts and each of its Licenses to observe and perform all the conditions and obligations to be observed and performed by it thereunder and that it shall perform all of its duties and obligations thereunder, all in accordance with and pursuant to the terms and provisions of each such Contract or License. The Secured Party shall not have any obligation or liability under any Contract or License by reason of or arising out of this Security Agreement or the granting to the Secured Party of a lien therein or the receipt by the Secured Party of any payment relating to any Contract or License pursuant hereto, nor shall the Secured Party be required or obligated in any manner to perform or fulfill any of the obligations of Grantor under or pursuant to any Contract or License, or to make any payment, or to make any inquiry as to the nature or the sufficiency of any payment received by it or the sufficiency of any performance by any party under any Contract or License, or to



present or file any claim, or to take any action to collect or enforce any performance or the payment of any amounts which may have been assigned to it or to which it may be entitled at any time or times.

(b) The Secured Party authorizes Grantor to collect its Accounts. Upon the occurrence and during the continuance of any Event of Default, at the request of the Secured Party, Grantor shall deliver to the Secured Party all original and other documents evidencing and relating to the performance of labor or service which created such Accounts, including, without limitation, all original orders, invoices and shipping receipts.

(c) The Secured Party may at any time, upon the occurrence and during the continuance of any Event of Default and the written consent of the Secured Party, notify Account Debtors of Grantor, parties to the Contracts of Grantor, obligors in respect of Instruments of Grantor and obligors in respect of Chattel Paper of Grantor that the Accounts and the right, title and interest of Grantor in and under such Contracts, Instruments and Chattel Paper have been assigned to the Secured Party and that payments shall be made directly to the Secured Party. Upon the request of the Secured Party, Grantor shall so notify such Account Debtors, parties to such Contracts, obligors in respect of such Instruments and obligors in respect of such Chattel Paper. Upon the occurrence and during the continuance of any Event of Default, the Secured Party may communicate with such Account Debtors, parties to such Contracts, obligors in respect of such Instruments and obligors in respect of such Chattel Paper to verify with such parties, to such Secured Party's satisfaction, the existence, amount and terms of any such Accounts, Contracts, Instruments or Chattel Paper.

**4. REPRESENTATIONS AND WARRANTIES.** Grantor hereby represents and warrants to the Secured Party that:

(a) Except for the security interest granted to the Secured Party under this Security Agreement and Permitted Liens, Grantor is the sole legal and equitable owner of each item of the Collateral, having good and marketable title thereto and the power to transfer free and clear of any and all Liens, except for Permitted Liens.

(b) No effective security agreement, financing statement, equivalent security or lien instrument or continuation statement covering all or any part of the Collateral exists, except such as may have been filed by Grantor in favor of the Secured Party pursuant to this Security Agreement and except for Permitted Liens.

(c) This Security Agreement creates a legal, valid and continuing security interest on and in all of the Collateral in which Grantor now has rights and all filings and other actions necessary or desirable to perfect and protect such security interest have been duly taken. Accordingly, the Secured Party has a fully perfected first priority security interest in all of the Collateral in which the Grantor now has rights subject only to Permitted Liens. This Security Agreement will create a legal, valid and fully perfected first priority security interest in the Collateral in which the Grantor later acquires rights, when the Grantor acquires those rights subject only to Permitted Liens and additional filings to be made with the United States Copyright Office and/or Patent and Trademark Office as are necessary to perfect the Secured

Party's security interest in subsequent ownership rights and interests of the Grantor in Copyrights, Patents, Trademarks and Licenses.

(d) Grantor's taxpayer identification number is, and chief executive office, principal place of business, and the place where Grantor maintains its records concerning the Collateral are presently located at the address set forth on the signature page hereof. Grantor shall not change its taxpayer identification number, jurisdiction of organization or such chief executive office, principal place of business or remove or cause to be removed, the records concerning the Collateral from those premises without prior written consent of the Secured Party.

5. **COVENANTS.** Unless the Secured Party otherwise consents in writing (which consent shall not be unreasonably withheld), Grantor covenants and agrees with the Secured Party that from and after the date of this Security Agreement and until the Secured Obligations have been performed and paid in full:

5.1 **Disposition of Collateral.** Grantor shall not sell, lease, transfer or otherwise dispose of any of the Collateral (each, a "*Transfer*"), or attempt or contract to do so, other than (a) the sale of Inventory in the ordinary course of business, (b) the granting of Licenses in the ordinary course of business, (c) the disposal of worn-out or obsolete Equipment and (d) Transfers of Equipment for fair market value as determined by Grantor in its good faith business judgment, not exceeding \$100,000 in the aggregate in any given fiscal year.

5.2 **Change of Jurisdiction of Organization, Relocation of Business.** Grantor shall not change its jurisdiction of organization or relocate its chief executive office, principal place of business or its records from such address(es) provided to the Secured Party pursuant to Section 4(d) above without at least seven (7) days prior notice to the Secured Party.

5.3 **Limitation on Liens on Collateral.** Grantor shall not, directly or indirectly, create, permit or suffer to exist, and shall defend the Collateral against and take such other action as is necessary to remove, any Lien on the Collateral, except (a) Permitted Liens and (b) the Lien granted to the Secured Party under this Security Agreement.

5.4 **Insurance.** Grantor shall maintain insurance policies insuring the Collateral against loss or damage from such risks and in such amounts and forms and with such companies as are customarily maintained by businesses similar to Grantor.

5.5 **Taxes, Assessments, Etc.** Grantor shall pay promptly when due all property and other taxes, assessments and government charges or levies imposed upon, and all claims (including claims for labor, materials and supplies) against, the Equipment, Fixtures or Inventory, except to the extent the validity or amount thereof is being contested in good faith and adequate reserves are being maintained in connection therewith.

5.6 **Defense of Intellectual Property.** Grantor shall use commercially reasonable efforts to (i) protect, defend and maintain the validity and enforceability of all Copyrights, Patents and Trademarks material to Grantor's business and (ii) detect infringements of all Copyrights, Patents and Trademarks material to Grantor's business.

**5.7 Further Assurances.** At any time and from time to time, upon the written request of the Secured Party, and at the sole expense of the Grantor, the Grantor shall promptly and duly execute and deliver any and all such further instruments and documents and take such further action as the Secured Party may reasonably deem necessary or desirable to obtain the full benefits of this Security Agreement, including, without limitation, (a) using its best efforts to secure all consents and approvals necessary or appropriate for the grant of a security interest to the Secured Party in any Contract held by the Grantor or in which the Grantor has any right or interest not heretofore assigned, (b) executing, delivering and causing to be filed any financing or continuation statements (including "in lieu" continuation statements) under the UCC with respect to the security interests granted hereby, (c) filing or cooperating with the Secured Party in filing any forms or other documents required to be recorded with the United States Patent and Trademark Office, United States Copyright Office, or any actions, filings, recordings or registrations in any foreign jurisdiction or under any international treaty, required to secure or protect the Secured Party's interest in the Grantor's Collateral, (d) transferring the Grantor's Collateral to the Secured Party's possession (if a security interest in such Collateral can be perfected by possession), (e) at the Secured Party's reasonable request, placing the interest of the Secured Party as lienholder on the certificate of title (or similar evidence of ownership) of any vehicle or other Equipment constituting Collateral owned by the Grantor which is covered by a certificate of title (or similar evidence of ownership), (f) executing and delivering and causing the applicable depository institution, securities intermediary, commodity intermediary or issuer or nominated party under a letter of credit to execute and deliver a collateral control agreement with respect to each new Deposit Account, Securities Account or Commodity Account or Letter-of-Credit Right in or to which the Grantor has any right or interest in order to perfect the security interest created hereunder in favor of the Secured Party (including giving the Secured Party "control" over such Collateral within the meaning of the applicable provisions of Article 8 and Article 9 of the UCC), (g) at the Secured Party reasonable request, executing and delivering or causing to be delivered written notice to insurers of the Secured Party's security interest in, or claim in or under, any policy of insurance (including unearned premiums) and (h) at the Secured Party's reasonable request, using its best efforts to obtain acknowledgments from bailees having possession of any Collateral and waivers of liens from landlords and mortgagees of any location where any of the Collateral may from time to time be stored or located. Without limitation of the foregoing, the Grantor shall at any time and from time to time, take such steps as the Secured Party may reasonably request for the Secured Party (i) to obtain an acknowledgment, in form and substance reasonably satisfactory to the Secured Party, of any bailee having possession of any of the Collateral that the bailee holds such Collateral for the Secured Party, (ii) to obtain "control" of any investment property, deposit accounts, letter-of-credit rights or electronic chatter paper, with any agreements establishing control to be in form and substance reasonably satisfactory to the Secured Party, and (iii) otherwise to insure the continued perfection and priority of the Secured Party's security interest in any of the Collateral and of the preservation of their rights therein. The Grantor also hereby authorizes the Secured Party to file any such financing, amendment or continuation statement (including, "in lieu" continuation statements) and amendments without the authentication of the Grantor to the extent permitted by applicable law. A reproduction of this Agreement shall be sufficient as a financing statement (or as an exhibit to a financing statement on form UCC-1) for filing in any jurisdiction.

**5.8 Maintenance of Records.** The Grantor will keep and maintain at its own expense complete and satisfactory records of the Collateral.

**5.9 Inspection Rights.** The Secured Party shall have full access during normal business hours, and upon prior notice, to all the books, correspondence and other records of the Grantor relating to the Collateral. The Secured Party or its representatives may examine such records and make photocopies or otherwise take extracts from such records. The Grantor agrees to render to the Secured Party, at the Grantor's expense such clerical and other assistance as the Secured Party may reasonably request with regard to the exercise of its rights pursuant to this paragraph.

**5.10 Compliance with Laws.** The Grantor (i) will comply with all laws, rules, regulations and orders of any governmental authority applicable to any part of the Collateral or to the operation of the Grantor's business and (ii) shall not use or permit any Collateral to be used in violation of any provision of any Loan Documents, any law, rule or obligation or order of any governmental authority, or any policy of insurance covering the Collateral.

**5.11 Limitation on Filing of Financing Statements.** The Grantor acknowledges that it is not authorized to file any financing statement or amendment or termination statement with respect to any financing statement without the prior written consent of the Secured Party and agrees that it will not do so without the prior written consent of the Secured Party, subject to the Grantor's rights under Section 9509(d)(2) of the UCC.

**6. RIGHTS AND REMEDIES UPON DEFAULT.** Beginning on the date which is ten (10) business days after any Event of Default shall have occurred:

(a) Upon the written consent of the Secured Party, the Secured Party may exercise in addition to all other rights and remedies granted to it under this Security Agreement and the Purchase Agreement, all rights and remedies of a secured party under the UCC. Without limiting the generality of the foregoing, Grantor expressly agrees that in any such event the Secured Party, without demand of performance or other demand, advertisement or notice of any kind (except the notice specified below of time and place of public or private sale) to or upon Grantor or any other person, may (i) reclaim, take possession, recover, store, maintain, finish, repair, prepare for sale or lease, shop, advertise for sale or lease and sell or lease (in the manner provided herein) the Collateral, and in connection with the liquidation of the Collateral and collection of the accounts receivable pledged as Collateral, use any Trademark, Copyright, or process used or owned by Grantor and (ii) forthwith collect, receive, appropriate and realize upon the Collateral, or any part thereof, and may forthwith sell, lease, assign, give an option or options to purchase or sell or otherwise dispose of and deliver said Collateral (or contract to do so), or any part thereof, in one or more parcels at public or private sale or sales, at any exchange or broker's board or at the Secured Party's offices or elsewhere at such prices as it may deem commercially reasonable, for cash or on credit or for future delivery without assumption of any credit risk. Grantor further agrees, at the Secured Party's request, to assemble its Collateral and make it available to the Secured Party at places which the Secured Party shall reasonably select, whether at Grantor's premises or elsewhere. The Secured Party shall apply the net proceeds of any such collection, recovery, receipt, appropriation, realization or sale as provided in Section 6(e), below, with Grantor remaining liable for any deficiency remaining unpaid after such application. Grantor agrees that the Secured Party need not give more than twenty (20) days' notice of the time and place of any public sale or of the time after which a private sale may take place and that such notice is reasonable notification of such matters.

(b) Grantor also agrees to pay all fees, costs and expenses of the Secured Party, including, without limitation, reasonable attorneys' fees, incurred in connection with the enforcement of any of its rights and remedies hereunder, and any such fees, costs and expenses shall be Secured Obligations hereunder.

(c) Grantor hereby waives presentment, demand, protest or any notice (to the maximum extent permitted by applicable law) of any kind in connection with this Security Agreement or any Collateral.

(d) The Proceeds of any sale, disposition or other realization upon all or any part of the Collateral shall be distributed by the Secured Party in the following order of priorities:

**FIRST**, to the Secured Party in an amount sufficient to pay in full the actual reasonable costs of such Secured Party in connection with such sale, disposition or other realization, including all fees, costs, expenses, liabilities and advances incurred or made by the Secured Party in connection therewith, including, without limitation, reasonable attorneys' fees;

**SECOND**, to the Secured Party in the amount of the then unpaid Secured Obligations of the Secured Party; and

**FINALLY**, upon payment in full of the Secured Obligations, to Grantor or its representatives, in accordance with the UCC or as a court of competent jurisdiction may direct.

(e) The Grantor hereby appoints the Secured Party and any officer or agent of such Secured Party, with full power of substitution, as its attorney-in-fact with full irrevocable power and authority in the place of the Grantor and in the name of the Grantor or its own name, from time to time in the Secured Party's discretion, for the purpose of carrying out the terms of this Agreement, to take any appropriate action and to authenticate any instrument which may be necessary or desirable to accomplish the purposes of this Agreement. Without limiting the foregoing, the Secured Party shall have the right, without notice to, or the consent of, the Grantor, to do any of the following on the Grantor's behalf:

(i) to pay or discharge any taxes or Liens levied or placed on or threatened against the Collateral;

(ii) to direct any party liable for any payment under any of the Collateral to make payment of any and all amounts due or to become due thereunder directly to the Secured Party or as the Secured Party directs;

(iii) to ask for or demand, collect, and receive payment of and receipt for, any payments due or to become due at any time in respect of or arising out of any Collateral;

(iv) to commence and prosecute any suits, actions or proceedings at law or in equity in any court of competent jurisdiction to enforce any right in respect of any Collateral;

(v) to defend any suit, action or proceeding brought against the Grantor with respect to any Collateral;

(vi) to settle, compromise or adjust any suit, action or proceeding described in subsection (v) above and to give such discharges or releases in connection therewith as the Secured Party may deem appropriate;

(vii) to assign any patent right included in the Collateral of the Grantor (along with the goodwill of the business to which any such patent right pertains), throughout the world for such term or terms, on such conditions, and in such manner, as the Secured Party shall in its sole discretion determine; and

(viii) generally, to sell, transfer, pledge and make any agreement with respect to or otherwise deal with any of the Collateral and to take, at the Secured Party's option and the Grantor's expense, any actions which the Secured Party deems necessary to protect, preserve or realize upon the Collateral and the Secured Party's Liens on the Collateral and to carry out the intent of this Agreement, in each case to the same extent as if the Secured Party were the absolute owner of the Collateral for all purposes.

The Grantor hereby ratifies whatever actions the Secured Party shall lawfully do or cause to be done in accordance with this Section 6. This power of attorney shall be a power coupled with an interest and shall be irrevocable.

(f) The powers conferred on the Secured Party by this Section 6 are solely to protect the Secured Party's interests in the Collateral and shall not impose any duty upon it to exercise any such powers. The Secured Party shall be accountable only for amounts that it actually receives as a result of the exercise of such powers, and neither the Secured Party nor any of its officers, directors, employees or agents shall be responsible to the Grantor for any act or failure to act pursuant to this Section 6. The Secured Party's sole duty with respect to the custody, safekeeping and preservation of the Collateral, under the UCC or otherwise, shall be to deal with it in the same manner as such Secured Party deals with similar property for its own account. Neither the Secured Party nor any of its directors, officers, employees or agents shall be liable for failure to demand, collect or realize upon all or any part of the Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of the Grantor or otherwise.

7. **INDEMNITY.** Grantor agrees to defend, indemnify and hold harmless the Secured Party and its officers, directors, employees, and agents (collectively, the "Indemnitees") against (a) all obligations, demands, claims, and liabilities claimed or asserted by any other party in connection with the transactions contemplated by this Security Agreement and (b) all losses or expenses in any way suffered, incurred, or paid by any Indemnitees as a result of or in any way arising out of, following or consequential to transactions between any Indemnitee and Grantor, whether under this Security Agreement or otherwise (including without limitation, reasonable

attorneys fees and expenses), except for losses arising from or out of such Indemnitee's gross negligence or willful misconduct.

**8. REINSTATEMENT.** This Security Agreement shall remain in full force and effect and continue to be effective should any petition be filed by or against Grantor for liquidation or reorganization, should Grantor become insolvent or make an assignment for the benefit of creditors or should a receiver or trustee be appointed for all or any significant part of Grantor's property and assets, and shall continue to be effective or be reinstated, as the case may be, if at any time payment and performance of the Secured Obligations, or any part thereof, is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee of the Secured Obligations, whether as a "voidable preference," "fraudulent conveyance," or otherwise, all as though such payment or performance had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned, the Secured Obligations shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

**9. MISCELLANEOUS.**

**9.1 Waivers; Modifications.** None of the terms or provisions of this Security Agreement may be waived, altered, modified or amended except by an instrument in writing, duly executed by Grantor and the Secured Party.

**9.2 Termination of this Security Agreement.** This Security Agreement shall terminate upon the payment and performance in full of the Secured Obligations.

**9.3 Successor and Assigns.** This Security Agreement and all obligations of Grantor hereunder shall be binding upon the successors and assigns of Grantor, and shall, together with the rights and remedies of the Secured Party hereunder, inure to the benefit of the Secured Party, any future holder of any of the Secured Obligations and its respective successors and assigns. No sales of participations, other sales, assignments, transfers or other dispositions of any agreement governing or instrument evidencing the Secured Obligations or any portion thereof or interest therein shall in any manner affect the lien granted to the Secured Party hereunder.

**9.4 Governing Law.** In all respects, including all matters of construction, validity and performance, this Security Agreement and the Secured Obligations arising hereunder shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware applicable to contracts made and performed in such state, without regard to the principles thereof regarding conflict of laws, except to the extent that the UCC provides for the application of the law of Grantor's State.

*[Signature pages follow.]*

IN WITNESS WHEREOF, each of the parties hereto has caused this Security Agreement to be executed and delivered by its duly authorized officer on the date first set forth above.

**SECURED PARTY:**

**GRANTOR:**

**THE PROCTER & GAMBLE COMPANY**

**SONGBIRD HEARING INC.**

By:  \_\_\_\_\_

By: \_\_\_\_\_

Name: *J.P. Goodwin*  
Title: *Treasurer*

Name:  
Title:

**ADDRESS OF SECURED PARTY**

**ADDRESS OF GRANTOR**

The Procter & Gamble Company  
One P&G Plaza, Fl. C-10  
Cincinnati, Ohio 45202-3115  
Attention: David J. LaNeve

5 Cedar Brook Drive  
Cranbury, New Jersey 08512  
Attention: Chief Executive Officer

*with a copy (which shall not constitute notice) to:*

*with a copy (which shall not constitute notice) to:*

Keating Maething & Kleckamp PLL  
One East Fourth Street  
Suite 1400  
Cincinnati, Ohio 45202  
Attention: Gail T. King, Esq.

Morgan, Lewis & Bockius  
502 Carnegie Center  
Princeton, New Jersey 08540  
Attention: Denis Segota, Esq.

**TAXPAYER IDENTIFICATION NUMBER OF GRANTOR**

22-3522489



IN WITNESS WHEREOF, each of the parties hereto has caused this Security Agreement to be executed and delivered by its duly authorized officer on the date first set forth above.

**SECURED PARTY:**

**THE PROCTER & GAMBLE COMPANY**

By: \_\_\_\_\_

Name:  
Title:

**ADDRESS OF SECURED PARTY**

The Procter & Gamble Company  
One P&G Plaza, Fl. C-10  
Cincinnati, Ohio 45202-3115  
Attention: David J. LeNeveu

*with a copy (which shall not constitute notice) to:*

Keating Meehan & Kiskamp PLL  
One East Fourth Street  
Suite 1400  
Cincinnati, Ohio 45202  
Attention: Gail T. King, Esq.

**GRANTOR:**

**SONGBIRD HEARING INC.**

By: S. Lincar

Name: Srdjan Lincar  
Title: President

**ADDRESS OF GRANTOR**

5 Cedar Brook Drive  
Cranbury, New Jersey 08512  
Attention: Chief Executive Officer

*with a copy (which shall not constitute notice) to:*

Morgan, Lewis & Bockius  
502 Carnegie Center  
Princeton, New Jersey 08540  
Attention: Denis Segota, Esq.

**TAXPAYER IDENTIFICATION NUMBER OF  
GRANTOR**

22-3522489

SCHEDULE A

TRADEMARK REGISTRATIONS

<u>Trademark Description</u>	<u>U.S. Serial/Registration No.</u>	<u>Date Registered</u>
THE SIMPLEST WAY TO IMPROVE YOUR HEARING	2,917,161	1-11-2005
SONGBIRD HEARING	2,905,280	11-23-2004
SONGBIRD DIGITAL	2,701,207	3-25-2003
SONGBIRD	2,460,177	6-12-2001
SONGBIRD DIGITAL THE DISPOSABLE HEARING AID	2,701,206	3-25-2003

PATENT APPLICATIONS

<u>Patent Application Description</u>	<u>U.S. Application No.</u>	<u>Date Applied</u>
"Hearing aid format selector"	20010033664	3-13-2001
"Remote programming and control means for a hearing aid"	20020015506	3-13-2001

1501005.1