

**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>
Fortessa, Inc.		05/09/2006	CORPORATION: VIRGINIA
<b>RECEIVING PARTY DATA</b>			
<b>Name:</b>	PNC Bank, National Association		
<b>Street Address:</b>	1600 Market Street		
<b>City:</b>	Philadelphia		
<b>State/Country:</b>	PENNSYLVANIA		
<b>Postal Code:</b>	19103		
<b>Entity Type:</b>	Bank: PENNSYLVANIA		
<b>PROPERTY NUMBERS Total: 4</b>			
<b>Property Type</b>	<b>Number</b>	<b>Word Mark</b>	
Registration Number:	3090308	OCEANA	
Registration Number:	2594039	FORTESSA	
Registration Number:	2672923	FORTALUXE	
Registration Number:	2660461	ALESSANDRA	
<b>CORRESPONDENCE DATA</b>			
<b>Fax Number:</b>	(215)864-9790		
	<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>		
<b>Phone:</b>	215-864-8222		
<b>Email:</b>	steffen@ballardspahr.com		
<b>Correspondent Name:</b>	Sally A. Steffen		
<b>Address Line 1:</b>	1735 Market Street		
<b>Address Line 2:</b>	51st Floor		
<b>Address Line 4:</b>	Philadelphia, PENNSYLVANIA 19103-7599		
<b>NAME OF SUBMITTER:</b>	Sally A. Steffen		
<b>Signature:</b>	/Sally A. Steffen/		

**CH \$115.00 3090308**

Date:

06/12/2006

**Total Attachments: 9**

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# Rider to Loan Agreement – Trademarks



**THIS RIDER TO LOAN AGREEMENT (“Rider”)** is executed as of this 9th day of May, 2006, by and between **FORTESSA, INC.** (the “**Grantor**”) with an address at 22601 Davis Drive, Sterling, VA 20164, and **PNC BANK, NATIONAL ASSOCIATION**, as agent for the Lenders (as defined in the Loan Agreement referred to below) (the “**Agent**”), with an address at 1600 Market Street, Philadelphia, PA 19103. This Rider is incorporated into and made part of that certain Revolving Credit and Security Agreement (“**Loan Agreement**”) among the Grantor, Gatco of Virginia, Inc. (“**Gatco**”), Eschenbach USA, Inc. (“**Eschenbach**”; and together with the Grantor and Gatco, collectively, the “**Borrowers**”), the Lenders party thereto and the Agent dated as of even date herewith, and also into certain other financing documents and security agreements executed by and among the Borrowers, the Lenders and the Agent (all such documents including this Rider being collectively referred to as “**Loan Documents**”). All capitalized terms not otherwise defined in this Rider shall have the same meanings ascribed to such terms in the other Loan Documents.

The Grantor owns and has adopted, used and is using (or has filed applications, other than intent-to-use applications, for the registration of) the trademarks, service marks and trade names listed on Schedule “A” attached hereto and made part hereof (all such marks or names hereinafter referred to as the “**Trademarks**”).

The Agent desires to acquire a lien and security interest, for the ratable benefit of the Lenders, on the Trademarks and the registration thereof, together with all the goodwill of the Grantor associated therewith and represented thereby, as security for all of the Obligations (as defined in the Loan Agreement) to the Lenders, and the Agent desires to have its security interest in such Trademarks confirmed by a document identifying same and in such form that it may be recorded in the United States Patent and Trademark Office.

**NOW, THEREFORE**, with the foregoing background deemed incorporated by reference and made part hereof, the parties hereto, intending to be legally bound hereby, covenant and agree as follows:

**1. Grant of Security Interest.** In consideration of and pursuant to the terms of the Loan Documents, and for other good, valuable and sufficient consideration, the receipt and sufficiency of which is hereby acknowledged, and to secure payment and performance of the Obligations, the Grantor grants a lien and security interest to the Agent, for the ratable benefit of the Lenders, in all its present and future right, title and interest in and to the Trademarks, together with all the goodwill and other tangible assets of the Grantor associated with and represented by the Trademarks, and the non-intent-to-use applications for and registration thereof and the right (but not the obligation) to sue for past, present and future infringements, and the proceeds thereof, including, without limitation, license royalties and proceeds of infringement suits.

**2. Representations and Warranties.** The Grantor represents, warrants and covenants that: (a) the Trademarks are subsisting and have not been abandoned, suspended, voluntarily terminated or canceled by the Grantor, have not been adjudged invalid or unenforceable, and to the best of the Grantor’s knowledge, there is no reason why the Trademarks should be adjudged invalid or unenforceable; (b) each of the Trademarks is valid and enforceable; (c) the Grantor is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each of the Trademarks, and each of the Trademarks is free and clear of any liens, charges and encumbrances, including, without limitation, pledges, assignments, licenses and covenants by the Grantor not to sue third persons except as Permitted

Encumbrances; (d) the Grantor has the unqualified right to enter into this Rider and perform its terms; (e) the Grantor has used, and will continue to use for the duration of this Rider, proper notice, as required by 15 U.S.C. §§ 1051-1127 in connection with its use of the Trademarks; (f) the Grantor (in its reasonable business judgment) has used, and will continue to use for the duration of this Rider, consistent standards of quality in products leased or sold under the Trademarks; and (g) the Grantor will not (and will exercise its best reasonable efforts in order to ensure that no licensee thereof will) do any act or knowingly omit to do any act whereby any of the Trademarks may become invalidated, abandoned, unenforceable, avoided, avoidable or otherwise materially diminished in value, and shall notify the Agent promptly if it knows of any reason or has any reason to know of any grounds under which any of the foregoing may occur.

3. **Verification of Quality Control.** Subject to Section 4.10 of the Loan Agreement, the Grantor hereby grants to the Agent and its employees and agents the right to visit the Grantor's locations which lease, sell, or store products under any of the Trademarks and to inspect the products and quality control records relating thereto at reasonable times during regular business hours to ensure the Grantor's compliance with paragraph 2(f).

4. **Covenants.** The Grantor further covenants to the Agent that until all of the Obligations have been satisfied in full and the Loan Agreement has been irrevocably terminated: (a) the Grantor shall maintain the Trademarks in full force and effect, except to the extent that no Event of Default exists and the Grantor has determined in its reasonable commercial judgment that the maintenance of any such Trademark is not justified in light of the economic value thereof; provided, however, that to the extent the Grantor elects not to maintain a Trademark, the Grantor shall promptly provide notice to the Agent of such election; (b) the Grantor will not enter into any agreements which are inconsistent with the Grantor's obligations under this Rider or which restrict or impair the Agent's rights hereunder; and (c) if the Grantor acquires rights to any new non-intent-to-use Trademarks, the provisions of this Rider shall automatically apply thereto and the Grantor shall give the Agent prompt written notice thereof along with an amended Schedule A; provided, however, that notwithstanding anything to the contrary contained in this Agreement, the Grantor shall have the right to enter into agreements in the ordinary course of business with respect to the Trademarks.

5. **Exclusive Use of Trademarks.** So long as this Rider is in effect and so long as the Grantor has not received notice from the Agent or any Lender that an Event of Default has occurred and is continuing and that the Agent has elected to exercise its rights to assignment hereunder, the Grantor shall continue to have the exclusive right to use the Trademarks including licenses thereof, and the Agent shall have no right to use the Trademarks or issue any exclusive or non-exclusive license with respect thereto, or assign, pledge or otherwise transfer title in the Trademarks to anyone else.

6. **Negative Pledge.** The Grantor agrees not to sell, assign (by operation of law or otherwise) or further encumber its rights and interest in the Trademarks (other than Permitted Encumbrances) without prior written consent of the Agent. The Grantor shall defend the Trademarks against and shall take other action as is necessary to remove any lien, security interest, claim, right or other encumbrance of any nature whatsoever in or to the Trademarks, and will defend the right, title and interest of the Agent in and to any of the Grantor's rights under the Trademarks against the claims or demands of all persons whatsoever.

7. **No Additional Trademarks.** As of the date hereof, the Grantor does not own any Trademarks, or have any Trademarks registered in or the subject of pending applications in the United States Patent and Trademark Office or any similar office or agency in any other country or any political subdivision thereof, other than those grants, registrations or applications for registrations listed on Schedule A annexed hereto and made a part hereof.

**8. Pledge of Additional Trademarks.** In the event the Grantor, either itself or through any agent, employee, licensee or designee shall:

- (a) file or record an application for the registration of any Trademark with the United States Patent and Trademark Office or any similar office or agency of the United States, any State thereof, or any other country or any political subdivision thereof; or
- (b) file or record any assignment of any Trademark which the Grantor may acquire, own or license from a third party, with the United States Patent and Trademark Office or any similar office or agency of the United States, any State thereof or any other country or any political subdivision thereof;

the Grantor shall promptly, but in no event more than fifteen (15) days subsequent to such filing, notify the Agent thereof, and, upon request of the Agent shall promptly, but in no event more than twenty (20) days subsequent to such notice, execute and deliver any and all assignments, agreements, instruments, documents and papers as the Agent may reasonably request to evidence the Agent's interest in such Trademark and the goodwill of the Grantor associated thereto or represented thereby. The Grantor hereby grants the Agent a power of attorney, irrevocable until the Obligations have been fully paid and satisfied in full and the Loan Agreement shall have been irrevocably terminated, to modify this Rider by amending Schedule A, as applicable, to include any future Trademarks or Licenses, including, without limitation, registrations or applications appurtenant thereto, covered by this Rider.

**9. Remedies Upon Default.** (a) Anything herein contained to the contrary notwithstanding, if and while an Event of Default exists under the Loan Documents, the Grantor hereby covenants and agrees that the Agent, as the holder of a security interest, for the ratable benefit of the Lenders, under the Uniform Commercial Code, may take such action permitted under the Loan Documents or permitted by law, in its exclusive discretion, to foreclose upon the Trademarks covered hereby.

(b) For such purposes, and in the event an Event of Default exists, the Grantor hereby authorizes and empowers the Agent to make, constitute and appoint any officer or agent of the Agent as the Agent may select, in its exclusive discretion, as the Grantor's true and lawful attorney-in-fact, with the power to endorse the Grantor's name on all applications, documents, papers and instruments necessary for the Agent to use the Trademarks or to grant or issue any exclusive or non-exclusive license under the Trademarks to anyone else, or necessary for the Agent to assign, pledge, convey or otherwise transfer title in or dispose of the Trademarks to anyone else. The Grantor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof, except for the gross negligence or willful misconduct of such attorney. This power of attorney shall be irrevocable for the life of this Rider and the Loan Documents until all the Obligations have been satisfied in full and the Loan Agreement shall have been irrevocably terminated.

(c) The Grantor expressly acknowledges that this Rider shall be recorded with the Patent and Trademark Office in Washington, D.C. Contemporaneously herewith, the Grantor shall also execute and deliver to the Agent such documents as the Agent shall reasonably request, including, without limitation, the Trademark Assignment attached hereto, to permanently assign all rights in the Trademarks to the Agent, which documents shall be held by the Agent, until the occurrence and during the continuance of an Event of Default. After the occurrence and during the continuance of an Event of Default, the Agent may, at its sole option, record such documents with the Patent and Trademark Office.

10. **Subject to Loan Agreement.** This Rider shall be subject to the terms, provisions, and conditions set forth in the Loan Agreement and may not be modified without the written consent of the party against whom enforcement is being sought.

11. **Inconsistent with Loan Agreement.** All rights and remedies herein granted to the Agent shall be in addition to any rights and remedies granted to the Agent under the Loan Documents. In the event of an inconsistency between this Rider and the Loan Agreement, the language of the Loan Agreement shall control. The terms and conditions of the Loan Agreement are hereby incorporated herein by reference.

12. **Termination of Agreement.** Upon payment and performance of all Obligations under the Loan Documents and the irrevocable termination of the Loan Agreement, the Agent shall execute and deliver to the Grantor all documents necessary to re-vest all rights in and to the Trademarks in the Grantor and/or terminate any interest of the Agent therein.

13. **Prosecution of Trademark Applications.** (a) Subject to the terms of the Loan Documents and Section 4(a), the Grantor shall have the duty to prosecute diligently any trademark application with respect to the Trademarks pending as of the date of this Rider or thereafter, until the Obligations shall have been satisfied in full and the obligations of the Lenders to make Advances shall have been terminated, to preserve and maintain all rights in the registration and grant of the Trademarks, to halt any infringement of the Trademarks, and upon reasonable request of the Agent, the Grantor shall make federal application on registrable but unregistered trademarks belonging to the Grantor. Any reasonable expenses incurred in connection with such applications or defense of said Trademarks shall be borne by the Grantor. Subject to Section 4 hereof, the Grantor shall not abandon any Trademark without the written consent of the Agent.

(b) The Grantor shall have the right to bring suit in its own name to enforce the Trademarks, in which event the Agent may, if the Grantor deems it necessary or after the occurrence and during the continuation of an Event of Default, be joined as a nominal party to such suit if the Agent shall have been satisfied that it is not thereby incurring any risk of liability because of such joinder. The Grantor shall promptly, upon demand, reimburse and indemnify the Agent for all damages, reasonable costs and reasonable expenses, including reasonable attorneys' fees, incurred by the Agent in the fulfillment of the provisions of this paragraph.

14. **Responsibility and Liability.** The Grantor assumes all responsibility and liability arising from the use of the Trademarks, and hereby indemnifies and holds the Agent and each director, officer, employee, affiliate and agent thereof, harmless from and against any claim, suit, loss, damage or expense (including reasonable attorneys' fees and expenses) arising out of any alleged defect in any product manufactured, promoted or sold by the Grantor in connection with any of the Trademarks or otherwise arising out of the Grantor's operation of its business from the use of the Trademarks. In any suit, proceeding or action brought by the Agent under any License for any sum owing thereunder, or to enforce any provisions of such License, the Grantor will indemnify and keep the Agent harmless from and against all reasonable expense, loss or damage suffered by reason of any defense, set off, recoupment, claim, counterclaim, reduction or liability whatsoever of the obligee thereunder or arising out of a breach of the Grantor of any obligation thereunder or arising out of any agreement, indebtedness or liability at any time owing to or in favor of such obligee or its successors from the Grantor, and all such Obligations of the Grantor shall be and remain enforceable against and only against the Grantor and shall not be enforceable against the Agent.

15. **Agent's Rights.** The Agent may, in its reasonable discretion upon prior notice to Grantor (except if an Event of Default shall exist, then no prior notice shall be required), pay any amount or do

any act required of the Grantor hereunder or requested by the Agent to preserve, defend, protect, maintain, record or enforce the Grantor's obligations contained herein, the Obligations of the Borrowers to the Agent, the Trademarks (to the extent that Grantor has not made an election not to maintain any such Trademark in accordance with Section 4(a) hereof), or the right, title and interest granted the Agent herein, and which the Grantor fails to do or pay, and any such payment shall be deemed an advance by the Agent to the Grantor and shall be payable on demand together with interest thereon at the Default Rate specified in the Loan Documents.

16. **Protection of the Trademarks.** The Grantor agrees that if it learns of any use by any person or any term or design likely to cause confusion with any Trademark, or of any claim of any lien, security interest, claim, right or other encumbrance of any nature whatsoever in or to the Trademarks, the Grantor shall promptly notify the Agent of such use, lien, security interest, claim, right or other encumbrance and, if requested by the Agent, shall join with the Agent, at the Grantor's expense, in such action as the Agent, in its reasonable discretion, may deem advisable for the protection of the Agent's interest in and to the Trademarks, it being understood that the foregoing shall not preclude the Grantor from bringing an action against a person for the protection of the Grantor's interest in and to such Trademarks.

17. **Additional Remedies.** Upon the occurrence and during the continuation of an Event of Default, the Agent may, without any obligation to do so, complete any obligation of the Grantor hereunder, in the Grantor's name or in the Agent's name, but at the Grantor's expense, and the Grantor hereby agrees to reimburse the Agent in full for all reasonable expenses, including reasonable attorney's fees, incurred by the Agent in protecting, defending and maintaining the Trademarks.

18. **Governing Law.** THIS RIDER WILL BE INTERPRETED AND THE RIGHTS AND LIABILITIES OF THE PARTIES HERETO DETERMINED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, EXCLUDING ITS CONFLICT OF LAWS RULES, EXCEPT THAT THE FEDERAL LAWS OF THE UNITED STATES OF AMERICA SHALL GOVERN TO THE EXTENT APPLICABLE.

19. **Counterparts.** This Rider may be signed in any number of counterpart copies and by the parties hereto on separate counterparts, but all such copies shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Agreement by facsimile transmission shall be effective as delivery of a manually executed counterpart. Any party so executing this Agreement by facsimile transmission shall promptly deliver a manually executed counterpart, provided that any failure to do so shall not affect the validity of the counterpart executed by facsimile transmission.

**[Signatures to Follow]**

WITNESS the due execution hereof as a document under seal, as of the date first written above.

FORTESSA, INC.

By: Martin G. Hamburger

Print Name: MARTIN G. HAMBURGER

Title: EVP, Sec'y/Treas

PNC BANK, NATIONAL ASSOCIATION,  
as Agent for the Lenders

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

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_



WITNESS the due execution hereof as a document under seal, as of the date first written above.

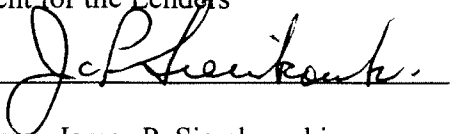
FORTESSA, INC.

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

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

PNC BANK, NATIONAL ASSOCIATION,  
as Agent for the Lenders

By: 

Print Name: James P. Sierakowski

Title: Vice President

**SCHEDULE A TO RIDER TO LOAN AGREEMENT - TRADEMARKS**

<u>TRADEMARK</u>	<u>APPLICATION OR REGISTRATION NO.</u>	<u>REGISTRATION OR COUNTRY</u>	<u>FILING DATE</u>
Oceana	3,090,308	United States	June 2, 2005
Evita	003096856	European Union	October 12, 2004
Fortessa	2,594,039	United States	December 29, 2000
Fortaluxe	2,672,923	United States	December 14, 2000
Alessandra	2,660,461	United States	December 14, 2000

**TRADEMARK ASSIGNMENT**

**WHEREAS, FORTESSA, INC.** (the “Grantor”) is the owner of the entire right, title and interest in and to the United States trademarks, trade names and registrations listed on Schedule A attached hereto and made a part hereof (collectively, the “Trademarks”), which are registered in the United States Patent and Trademark Office or which are subject of pending applications in the United States Patent and Trademark Office; and

**WHEREAS, PNC BANK, NATIONAL ASSOCIATION**, having a place of business at 1600 Market Street, Philadelphia, PA 19103, identified as the “Agent” under that certain Rider to Loan Agreement - Trademarks (the “Rider”) of even date herewith (the “Grantee”) is desirous of acquiring said Trademarks;

**WHEREAS**, the Grantee has a security interest in the assets of the Grantor adequate to carry on the business of the Grantor; and

**WHEREAS**, the Rider provides that this Assignment shall become effective upon the occurrence during the continuation of an Event of Default as defined in the Revolving Credit and Security Agreement dated as of May 9, 2006 by and among the Grantor, Gatco of Virginia, Inc., Eschenbach USA, Inc. and the Grantee.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Grantor, for itself and its successors and assigns does hereby collaterally transfer, assign and set over unto Grantee, its successors, transferees and assigns, all of its present and future right, title and interest in and to the Trademarks, the goodwill of the business associated with such Trademarks and all proceeds thereof and all rights and proceeds associated therewith.

**IN WITNESS WHEREOF**, the undersigned has caused this Trademark Assignment to be executed by its duly authorized officer on this 9<sup>th</sup> day of May, 2006.

FORTESSA, INC

By: 

Print Name: Martin G. Hamburger

Title: FVP, Secy/Treas