

O: JAMES S. CHESLOCK COMPANY: 7373 BROADWAY, SUITE 500

TRADEMARK ASSIGNMENT

Electronic Version v1.1
Stylesheet Version v1.106/26/2009
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SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	LIEN		
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
Digital Blue, Inc.		08/18/2009	CORPORATION:
RECEIVING PARTY DATA			
Name:	McCombs Family Partners, Ltd.		
Street Address:	755 E. Mulberry		
Internal Address:	Suite 600		
City:	San Antonio		
State/Country:	TEXAS		
Postal Code:	78212		
Entity Type:	LIMITED PARTNERSHIP: Texas		
General Partner: McCombs Family Partners GP, LLC, a Texas limited liability company			
PROPERTY NUMBERS Total: 6			
Property Type	Number	Word Mark	
Registration Number:	3080077	DIGITAL BLUE	
Registration Number:	2880027	DIGITAL BLUE	
Serial Number:	77732252	FLUX JR.	
Registration Number:	3233022	PIX + CLICK	
Serial Number:	77097184	FLIX	
Registration Number:	3092976	DIGITAL BLUE	
CORRESPONDENCE DATA			
Fax Number:	(210)821-6672		
<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>			
Phone:	210-829-7722		
Email:	jcheslock@kreagerlaw.com		
Correspondent Name:	James S. Cheslock		
Address Line 1:	7373 Broadway, Suite 500		
Address Line 4:	San Antonio, TEXAS 78209		

OP \$165.00 3030077

RECEIVED 06-29-'09 11:53 FROM- USPTO

TO- The Kreager Law Firm P004/016

TRADEMARK

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REEL: 004014 FRAME: 0283

NAME OF SUBMITTER:	James S. Cheslock
Signature:	/James S. Cheslock/
Date:	08/26/2009
Total Attachments: 11 source=Revolving Loan, Security and Royalty Agreement (06-18-09)#page1.tif source=Revolving Loan, Security and Royalty Agreement (06-18-09)#page2.tif source=Revolving Loan, Security and Royalty Agreement (06-18-09)#page3.tif source=Revolving Loan, Security and Royalty Agreement (06-18-09)#page4.tif source=Revolving Loan, Security and Royalty Agreement (06-18-09)#page5.tif source=Revolving Loan, Security and Royalty Agreement (06-18-09)#page6.tif source=Revolving Loan, Security and Royalty Agreement (06-18-09)#page7.tif source=Revolving Loan, Security and Royalty Agreement (06-18-09)#page8.tif source=Revolving Loan, Security and Royalty Agreement (06-18-09)#page9.tif source=Revolving Loan, Security and Royalty Agreement (06-18-09)#page10.tif source=Revolving Loan, Security and Royalty Agreement (06-18-09)#page11.tif	

EXECUTION VERSION

Revolving Loan, Security and Royalty Agreement

This Revolving Loan, Security and Royalty Agreement (as amended, supplemented, or modified from time to time, this "Agreement"), is made and entered into this 18th day of June, 2009 (the "Effective Date"), by and between DIGITAL BLUE, INC. ("Borrower"), having its chief executive office at 1517 Johnson Ferry Road, Building 100, Marietta, Georgia 30062, and MCCOMBS FAMILY PARTNERS, LTD., a Texas limited partnership ("Lender"), having a principal place of business at 755 E. Mulberry, Suite 600, San Antonio, Texas 78212.

1. Definitions.

1.1. **Defined Terms.** The following defined terms shall have the following meanings for purposes of this Agreement:

- (a) "**Account**" shall have the meaning set forth in the UCC.
- (b) "**Accountants**" means a certified public accounting firm retained by Borrower and acceptable to Lender in its reasonable discretion; provided, however, the accounting firm Frazier & Deeter, LLC is hereby acceptable to Lender.
- (c) "**Advances**" shall mean any loan or advance by Lender to Borrower, including, without limitation, pursuant to Section 2.
- (d) "**Affiliate**" means, with respect to any Person, (i) each Person that, directly or indirectly, owns or controls, whether beneficially, or as a trustee, guardian or other fiduciary, five percent (5%) or more of the equity interests of such Person having ordinary voting power in the election of directors of such Person, (ii) each Person that controls, is controlled by or is under common control with such Person, (iii) each of such Person's officers, directors, joint venturers and partners and (iv) in the case of Borrower, the immediate family members, spouses and lineal descendants of individuals who are equity holders, officers, managers or directors of Borrower. For the purposes of this definition, "control" of a Person shall mean the power, directly or indirectly, to direct or cause the direction of such Person's management or policies, whether through the ownership of voting securities, by contract or otherwise.
- (e) "**Approved Purposes**" means expenditures for Borrower's Inventory, pursuant to purchase order or "flows" from Borrower's customers, plus, in connection with the first Disbursement, the payment and full satisfaction of the outstanding amounts owed to Borrower's existing factor, Prestige Capital Corporation, in the aggregate amount of approximately \$550,000.
- (f) "**Balance**" shall mean, at any given time, the outstanding principal due hereunder (and the Note), plus accrued interest, plus all other Obligations then due and owing.
- (g) "**Bank**" means PINNACLE NATIONAL BANK (and its successors in interest).

EXECUTION VERSION

(h) "Bank Facility" means that certain loan in favor of Bank, not in excess of the principal amount of \$21 million.

(i) "Borrowing Base" means, at any time, an amount equal to the sum of:

(i) 50% of Borrower's Inventory Available for Advances as computed in accordance with the Borrowing Base Certificate;

(ii) plus 75% of Borrower's A/R Available for Advances computed in accordance with the Borrowing Base Certificate; provided, however that all accounts receivable included in the Borrowing Base shall be less than 120 days in age.

(j) "Borrowing Base Certificate" means, as of any date of preparation, a certificate setting forth the Borrowing Base (in substantially the form of Exhibit C attached hereto) prepared by and certified by the chief financial officer of Borrower.

(k) "Business Day" means any day other than a Saturday, Sunday or other day on which commercial banks in Texas are authorized or required by law to close.

(l) "Collateral" means all of Borrower's now existing and hereafter created or acquired Accounts, Chattel Paper (including Electronic Chattel Paper), Instruments, and all Supporting Obligations including Letter-of-Credit Rights, General Intangibles (including Intellectual Property) and Documents arising out of or relating to the foregoing; Deposit Accounts, Equipment, Goods, Investment Property, Inventory, including, without limitation, all merchandise and other goods, and all additions, substitutions and replacements thereof, together with all goods and materials used or usable in manufacturing, processing, packaging or shipping such Inventory, all Returned Inventory; all reserves, matured funds, credit balances and other property of Borrower in Lender's possession; all rights of stoppage in transit; replevin, repossession, reclamation and all other rights and remedies of an unpaid vendor; all of Borrower's Records; all insurance policies, proceeds or rights relating to the foregoing and all proceeds of the foregoing.

(m) "Commitment" means the obligation of Lender to make Advances to Borrower under the terms of this Agreement.

(n) "Control Agreement" means, with respect to any Collateral consisting of Deposit Accounts, an agreement evidencing that Secured Party has "control" (as defined in the UCC) of such Collateral.

(o) "Copyright" means all of the following (a) all copyrights, rights and interests in copyrights, works protectable by copyrights, copyright registrations and copyright applications; (b) all renewals of any of the foregoing; (c) all income, royalties, damages and payments now or hereafter due and/or payable under any of the foregoing or with respect to any of the foregoing, including damages or payments for past, present or future infringements of any

EXECUTION VERSION

- (cc) "Goods" has the meaning set forth in the UCC.
- (dd) "Instrument" has the meaning set forth in the UCC.
- (ee) "Intellectual Property" means collectively, all Copyrights, Patents, Trademarks, and all Trade Secrets.
- (ff) "Intercreditor Agreement" means that certain Intercreditor Agreement, between Borrower and Bank, of even date herewith, in the form attached hereto as Exhibit A.
- (gg) "Interest Rate" shall mean an annual percentage rate of 18%.
- (hh) "Inventory" has the meaning set forth in the UCC.
- (ii) "In-Transit Inventory" shall mean all Inventory that is the subject of a purchaser order with a Customer that is in-transit from its place of manufacture to the ultimate destination of Customer's place of receipt.
- (jj) "Investment Property" has the meaning set forth in the UCC.
- (kk) "Laws" means all statutes, laws, ordinances, regulations, orders, writs, injunctions, or decrees of the United States, any city or municipality, state, commonwealth, nation, country, territory, possession, or any Tribunal.
- (ll) "Lego Net Sales" means the difference between the (i) sale price of Borrower's Inventory using the Lego[®] based designs, less (ii) ordinary trade discounts, freight and taxes, as computed in accordance with GAAP.
- (mm) "Liens" as applied to the property of any Person means:
 - (i) any mortgage, deed to secure debt, deed of trust, lien, pledge, charge, lease constituting a capitalized lease obligation, conditional sale or other title retention agreement, or other security interest, security title or encumbrance of any kind in respect of any property of such Person, or upon the income or profits therefrom,
 - (ii) any arrangement, express or implied, under which any property of such Person is transferred, sequestered or otherwise identified for the purpose of subjecting the same to the payment of Indebtedness or performance of any other obligation in priority to the payment of the general, unsecured creditors of such Person, and
 - (iii) the filing of, or any agreement to give, any financing statement under the Uniform Commercial Code or its equivalent in any jurisdiction, excluding informational financing statements relating to property leased by such Person.
- (nn) "Letter-of-Credit Right" has the meaning set forth in the UCC.

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4

EXECUTION VERSION

(aaa) "Records" has the meaning set forth in the UCC, including, without limitation, all of Borrower's accounting and financial records and all records and information pertaining to the Collateral, wherever located.

(bbb) "Returned Inventory" has the meaning set forth in Section 7.6 of this Agreement.

(ccc) "Supporting Obligations" has the meaning set forth in the UCC.

(ddd) "Taxes" means all taxes (including withholding), assessments, fees, levies, imposts, duties, deductions, withholdings, or other charges of any nature whatsoever from time to time or at any time imposed by any Laws or by any Tribunal, excluding state and local sales and use taxes.

(eee) "Trademarks" means, collectively, all of the foregoing: (i) all trademarks, tradenames, corporate names, company names, business names, fictitious business names, trade styles, service marks, logos, other business identifiers, prints and labels on which any of the foregoing have appeared or appear, all registrations and recordings thereof, and all applications in connection therewith; (ii) all renewals thereof; (iii) all income, royalties, damages and payments now or hereafter due and/or payable under any of the foregoing or with respect to any of the foregoing including damages and payments for past, present and future infringements of any of the foregoing; (iv) the right to sue for past, present and future infringements of any of the foregoing; (v) all rights corresponding to any of the foregoing throughout the world; and (vi) all goodwill associated with and symbolized by any of the foregoing.

(fff) "Trade Secrets" means all of Borrower's confidential and proprietary trade secrets including without limitation the trade secrets listed on Schedule 3 hereto.

(ggg) "Tribunal" means any state, commonwealth, federal, foreign, territorial or other court or government body, subdivision, agency, department, commission, board, bureau or instrumentality of a governmental body.

(hhh) "UCC" means the Uniform Commercial Code as in effect on the original date of this Agreement in the State of Texas.

(iii) "Writing" or "Written" shall mean a visible communication in characters between Persons by handwriting, or type, whether delivered physically, by facsimile, by email or other electronic transmission acceptable to Lender.

1.2. **Interpretation.** Each definition in this Agreement includes the singular and the plural, and reference to the neuter gender includes the masculine and feminine where appropriate. All accounting terms used in this Agreement, unless otherwise indicated, shall have the meanings given to such terms in accordance with GAAP, consistently applied. All other terms contained in this Agreement, unless otherwise indicated, shall have the meanings provided by the UCC, to the extent such terms are defined therein. References to any agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof

EXECUTION VERSION

have received on or before the day of such Advance the items described in paragraphs (c) and (n) of Section 2.8, each dated as of the date given (unless otherwise indicated), and that items (a) and (b) are true and correct and no change has occurred with respect to items (d) through (g) and (i) through (k) have occurred.

3. Security Interest.

3.1. Grant. In order to secure the payment of all indebtedness and Obligations of Borrower to Lender, Borrower hereby grants to Lender (i) a first priority continuing security interest in and lien upon all of Borrower's right, title and interest in and to all of Borrower's presently existing and hereafter arising Accounts, In-Transit Inventory, and Returned Inventory, and (ii) a second priority continuing security interest in and lien upon all of Borrower's right, title and interest in and to all of Borrower's presently existing or hereafter arising Collateral. Subject to the Intercreditor Agreement, Borrower agrees to comply with all appropriate laws in order to perfect Lender's security interest in and to the Collateral and to execute such documents as Lender may require from time to time. Borrower authorizes Lender to file at such times and places as Lender may designate such financing statements, continuations and amendments thereto as are necessary or desirable to perfect Lender's rights in and give notice of Lender's purchase of the Accounts under the Uniform Commercial Code in effect in any applicable jurisdiction and Lender's security interest in the Collateral. Lender may at any time and from time to time file financing statements, continuation statements and amendments thereto that describe the Collateral as "all assets" of Borrower or words of similar effect and which contain any other information required by the UCC for the sufficiency or filing office acceptance of any financing statement, continuation statement or amendment, including whether Borrower is an organization, the type of organization and any organization identification number issued to Borrower. Borrower agrees to furnish any such information to Lender promptly upon request. Any such financing statements, continuation statements or amendments may be signed by Lender on behalf of Borrower or filed by Lender without the signature of Borrower and may be filed at any time in any jurisdiction. Borrower acknowledges that it is not authorized to file any financing statement or amendment or termination statement with respect to any financing statement naming Borrower as the debtor and Lender as the secured party without the prior written consent of Lender, and Borrower agrees that it shall not do so without the prior written consent of Lender. Borrower hereby ratifies any UCC financing statements previously filed by Lender.

3.2. Power of Attorney. Borrower hereby grants to Lender an irrevocable power of attorney authorizing and permitting Lender, at its option, without notice to Borrower to do any or all of the following: (a) endorse the name of Borrower on any checks or other evidences of payment whatsoever that may come into the possession of Lender regarding Accounts, In-Transit Inventory, and Returned Inventory, and, subject to the Intercreditor Agreement, other Collateral; (b) put Lender's address on any statements mailed to Customers relating to Account; (c) pay, settle, compromise, prosecute or defend any action, claim, conditional waiver and release, or proceeding relating to Accounts, In-Transit Inventory, and Returned Inventory; (d) upon an Event of Default, receive, open and dispose of any mail addressed to Borrower and notify in the name of the Borrower, the U.S. Post Office to change the address for delivery of mail addressed to Borrower to such address as Lender may designate, however, Lender shall immediately turn

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11

EXECUTION VERSION

encumbrance, security interest or lien other than in favor of Lender; and (j) shall not be altered or in any way modified without the prior Written consent of Lender.

6.11. Financial Information. All financial statements of Borrower delivered heretofore or hereafter to Lender have been, and will be, prepared in accordance with GAAP (subject to the absence of notes for interim financial statements), and fairly represent the financial condition of Borrower as of the date of each such financial statement (subject to reasonable year end adjustments for interim financial statements). There are and will be no material liabilities, direct or indirect, fixed or contingent, as of the date of each such financial statement which are not reflected therein or in the notes thereto. Except for transactions directly related to, or specifically contemplated by, this Agreement and transactions heretofore disclosed in writing to Lender, there has been no material adverse change in the financial condition of Borrower as shown by the financial statements for Borrower most recently provided to Lender between the date of such financial statements and the Effective Date, nor has Borrower incurred any material liability, direct or indirect, fixed, or contingent, except as otherwise disclosed in writing to Lender.

6.12. Deposit Accounts. With respect to the Deposit Accounts, (i) Debtor maintains each Deposit Account with the bank listed on Schedule 1 hereto, (ii) Debtor shall, within thirty (30) days of the Effective Date, cause each such bank to acknowledge to Lender that each such Deposit Account is subject to the security interest and liens herein created, that the pledge of such Deposit Account has been recorded in the books and records of such bank, and that Lender shall have "control" (as defined in the UCC) over such Deposit Account, and (iii) Debtor has the legal right to pledge and assign to Lender the funds deposited and to be deposited in each such Deposit Account.

6.13. Intellectual Property. Schedule 2 attached hereto lists each Patent, Trademark, and Copyright owned by Borrower as of the Effective Date. Borrower owns all such Patents, Trademarks and Copyrights listed on Schedule 2 hereto free and clear of all Liens other than the Liens of the Bank.

7. Covenants.

7.1. Negative Covenants. Borrower shall not:

- (a) Without giving Lender at least thirty (30) days prior written notice:
 - (i) change Borrower's legal name;
 - (ii) change Borrower's organizational identification number (or acquire an organizational number if Borrower does not have one as of the Effective Date);
 - (iii) change Borrower's type of organization;
 - (iv) change Borrower's jurisdiction of organization; or

EXECUTION VERSION

10.7. Notices. Unless otherwise specified herein, all notices pursuant to this Agreement shall be in Writing and sent either (a) by hand, (b) by certified mail, return receipt requested, (c) by recognized overnight courier service, to the other party at the address set forth herein, or to such other addresses as a party may from time to time furnish to the other party by notice. Any notice hereunder shall be deemed to have been given on (i) the day of hand delivery, (ii) the third business day after the day it is deposited in the U.S. Mail, if sent as aforesaid, or (iii) the day after it is delivered to a recognized overnight courier service with instructions for next day delivery, or (d) by e-mail, the next Business Day following transmission of same to the e-mail address set forth herein.

10.8. Assignment. Lender shall have the right to assign this Agreement; Borrower shall have no right to assign this Agreement; and this Agreement shall inure to the benefit of and shall bind Lender and Borrower and their respective successors and assigns.

10.9. Severability. If any provision of this Agreement is found to be unenforceable or otherwise invalid under applicable law, such provision shall be ineffective only to the extent of such invalidity and the remaining provisions of this Agreement shall remain in full force and effect.

10.10. Integration. This Agreement is the result of full and complete negotiation at arm's length by all parties hereto. No prior drafts or memoranda prepared by any party shall be used to construe or interpret any provision hereof, nor shall any one party be construed the "drafter" of this Agreement for the purpose of construing the terms, conditions or obligations set forth herein. This Agreement sets forth the entire understanding of the parties with respect to the matters set forth herein and supersedes in their entirety any and all understandings and agreements, whether written or oral, of the parties with respect to the foregoing. This Agreement cannot be changed, modified or amended in any respect except by a Writing executed by the party to be charged.

10.11. Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement shall become effective when Lender has received counterparts bearing the signatures of all parties hereto. Delivery of an executed signature page by telecopy or electronic mail shall be effective as delivery of a manually executed counterpart of this Agreement.

10.12. Survival. All covenants, agreements, undertakings, representations, and warranties made in any of the Loan Documents shall survive all closings under the Loan Documents and shall continue in full force and effect so long as any part of the Obligations remains and, except as otherwise indicated, shall not be affected by any investigation made by any party. Notwithstanding anything contained herein to the contrary, the covenants, agreements, undertakings, representations, and warranties made in Sections 4, 7.10, 8, 9, and 10 shall survive the expiration or termination of this Agreement, regardless of the means of such expiration or termination.

10.13. STATUTE OF FRAUDS NOTICE. THIS WRITTEN LOAN AGREEMENT AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT

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25

EXECUTION VERSION

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

DIGITAL BLUE, INC.

By: _____
Timothy Hall, President

Address for Notices:
Digital Blue, Inc.
1517 Johnson Ferry Road
Building 100
Marietta, Georgia 30062
Attn: Timothy Hall
tim@digiblue.com

McCOMBS FAMILY PARTNERS, LTD.
BY: McCOMBS FAMILY PARTNERS GP,
L.L.C., ITS GENERAL PARTNER

By: Gary V. Woods
Gary V. Woods, President

Address for Notices:
McCombs Family Partners, Ltd.
755 E. Mulberry, Suite 600
San Antonio, Texas 78212
Attn: Gary V. Woods, President

EXECUTION VERSION

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

DIGITAL BLUE, INC.

By: 
Timothy Hall, President

Address for Notices:
Digital Blue, Inc.
1517 Johnson Ferry Road
Building 100
Marietta, Georgia 30062
Attn: Timothy Hall
tim@digiblue.com

MCCOMBS FAMILY PARTNERS, LTD.
BY: MCCOMBS FAMILY PARTNERS GP,
L.L.C., ITS GENERAL PARTNER

By: _____
Gary V. Woods, President

Address for Notices:
McCombs Family Partners, Ltd.
755 E. Mulberry, Suite 600
San Antonio, Texas 78212
Attn: Gary V. Woods, President

Schedule 2

Patents, Trademarks and Copyrights

A. Issued Patents and Patent Applications:

None

B. Registered Trademarks and Trademark Applications:

Owner of Record	Country of Registration	Trademark	Goods and Services	App. No.	Issue Date	Status
Digital Blue	USA	DIGITAL BLUE	computerized hardware and software used to create the sounds of musical instruments, namely pianos, keyboards, organs, guitars, string instruments, woodwind instruments, horns, harps, percussion instruments, and sound mixers; computer game software programs and video game software programs; interactive computer programs; children's educational computer software; computer and video imaging devices, namely digital video and photographic cameras, video and photographic cameras, photographic scanners and printers; video game interactive remote control units; computer peripherals; musical instrument adaptors; computer graphics software to enhance and manipulate the audio or visual capabilities of multimedia applications with the integration of sound, text, audio, graphics, moving and still images; handheld personal computers featuring imaging apparatus; microscopes and telescopes	3080077	6/18/02	registered
Digital Blue	USA	DIGITAL BLUE	Toys, namely battery-powered computer games with LCD screens featuring images, animation, and sound effects, hand-held electronic games, electronic musical toys and electronic educational game machines for children	2880027	8/31/04	registered

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EXECUTION VERSION

Class of Record	Country of Registration	Applicant	Goods and Services	App. No.	Filing Date	Status
Digital Blue	USA	FLIX JR.	bags and cases specially adapted for holding or carrying portable telephones and telephone equipment and accessories; Computer hardware and computer software programs for the integration of text, audio, graphics, still images and moving pictures into an interactive delivery for multimedia applications; Digital camera accessory in the nature of a digital photo viewer; Videocameras	77732252	5/8/09	pending
Digital Blue	USA	PIX + CLICK	Digital cameras	3233022	2/1/07	registered
Digital Blue	USA	FLIX	Digital video recorders; Sound and video recording and playback machines; Video cameras; Videocameras	77097184	2/1/07	suspended
Digital Blue	USA	DIGITAL BLUE	Musical instruments; electronic musical instruments for use with personal computers	3092976	5/24/05	registered

C. Registered Copyrights and Copyright Applications:

None.

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