

**TRADEMARK ASSIGNMENT**

Electronic Version v1.1  
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	SECURITY INTEREST

**CONVEYING PARTY DATA**

Name	Formerly	Execution Date	Entity Type
38 Studios, LLC		09/27/2010	LIMITED LIABILITY COMPANY: DELAWARE

**RECEIVING PARTY DATA**

Name:	RBS Citizens, National Association
Street Address:	One Citizens Plaza
City:	Providence
State/Country:	RHODE ISLAND
Postal Code:	02903
Entity Type:	INC. ASSOCIATION: RHODE ISLAND

**PROPERTY NUMBERS Total: 8**

Property Type	Number	Word Mark
Registration Number:	3523565	MASS SETTS GAME CHALLENGE 38
Serial Number:	77696544	
Serial Number:	77858987	HOW COOL WOULD IT BE IF...
Serial Number:	77858988	38 STUDIOS
Serial Number:	77858992	38 STUDIOS
Serial Number:	77883899	
Serial Number:	77883901	
Serial Number:	78903329	MENTOR MEDIA

**CORRESPONDENCE DATA**

Fax Number: (401)273-4447  
*Correspondence will be sent via US Mail when the fax attempt is unsuccessful.*  
 Phone: 401-273-4446  
 Email: clc@barjos.com  
 Correspondent Name: Carrie Coyne-Barlow, Josephs & Holmes

OP \$215.00 3523565

Address Line 1: 101 Dyer Street, 5th Floor  
Address Line 4: Providence, RHODE ISLAND 02903

ATTORNEY DOCKET NUMBER:	C067 -38 STUDIO SECURITY
NAME OF SUBMITTER:	Carrie Coyne
Signature:	<i>/carrie coyne/</i>
Date:	09/27/2010

Total Attachments: 24  
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## SECURITY AGREEMENT

THIS AGREEMENT is dated September 27, 2010, and is entered into by and between **38 Studios, LLC**, a Delaware limited liability company with its principal place of business located at 5 Clock Tower Place, Suite 140, Maynard, Massachusetts (the "Debtor"), and **RBS Citizens, National Association**, a national banking association with a place of business located at One Citizens Plaza, Providence, Rhode Island (the "Secured Party").

NOW THEREFORE, in consideration of the provisions herein contained, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

### I. DEFINITIONS

**1.1 Code Definitions.** Capitalized terms not otherwise defined herein shall have the meanings ascribed to (a) those terms in Section 9-102(a) of the Code, or (b) those terms defined elsewhere in the Code and referred to in Section 9-102(b) of the Code.

**1.2 Other Definitions.**

**1.2.1 "Code"** shall, unless otherwise specifically set forth herein, mean the Uniform Commercial Code as the same may be in effect from time to time in the State of Rhode Island.

**1.2.2 "Collateral"** shall have the meaning ascribed to it in Section 2.1 of this Agreement. Collateral shall not include any right, title or interest of the Debtor in and to that certain video game project currently entitled "Project Mercury" and any rights therein and thereto, and all properties and things of value pertaining thereto (collectively, the "Excluded Collateral").

**1.2.3 "Debtor's Address"** shall mean 5 Clock Tower Place, Suite 140, Maynard, Massachusetts 01754.

**1.2.4 "Event of Default"** shall mean an Event of Default set forth in Section 7.1 hereof.

**1.2.5 "Intellectual Property"** shall mean all Patents, Trademarks and Copyrights, as further defined herein and as listed in Exhibit A attached hereto. "Patents" include all original and reissued utility, provisional and/or design patents granted, all divisions and continuations thereof, including the subject matter of any and all claims which may be obtained in every such patent and all priority rights under the International Convention for the Protection of Industrial Property for every country of the Union, and all applications for letters patent which hereafter be filed in any country or

countries foreign to the United States, and all extensions, renewals and reissues thereof. "Trademarks" include any common law trademarks, any pending trademark registration applications, whether state or federal, and any registrations, whether state or federal, together with the good will of the business in connection with which the trademarks are used. "Copyrights", regardless of how said copyright rights are obtained, including any original works of authorship, any works for hire and any copyrights obtained by or through assignment.

**1.2.6** "Interest Rate Cap Agreements" shall mean any and all interest rate swap agreements, interest rate cap agreements and interest rate collar agreements designed to protect the Debtor against fluctuations in interest rates or currency exchange rates.

**1.2.7** "Lien" shall mean any mortgage, pledge, hypothecation, assignment, security interest, lien, charge or encumbrance, or preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including, without limitation, any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, and the filing of, or agreement to give, any financing statement under the Code or comparable law of any jurisdiction).

**1.2.8** "Loan Agreement" shall mean that certain Revolving Credit Agreement of even date by and among the Debtor, 38 Studios Baltimore, LLC, a Delaware limited liability company, and the Secured Party.

**1.2.9** "Note" shall mean that certain Secured Promissory Note of the Debtor and 38 Studios Baltimore, LLC, payable to the order of the Secured Party, dated of even date and in the principal amount of Three Million Dollars (\$3,000,000).

**1.2.10** "Obligations" shall mean all indebtedness, obligations and liabilities of the Debtor to the Secured Party of every kind and description, direct or indirect, secured or unsecured, joint or several, absolute or contingent, due or to become due, whether for payment or performance, now existing or hereafter arising, regardless of how the same arise or by what instrument, agreement or book account they may be evidenced, or whether evidenced by any instrument, agreement or book account, including, without limitation, all loans (including any loan by renewal or extension), all indebtedness, all undertakings to take or refrain from taking any action, all indebtedness, liabilities or obligations owing from the Debtor to others which the Secured Party may have obtained by purchase, negotiation, discount, assignment or otherwise, and all interest, taxes, fees, charges, expenses and attorneys' fees chargeable to the Debtor or incurred by the Secured Party under this Agreement, or any other document or instrument delivered in connection herewith; further including, without limitation, all obligations and liabilities of the Debtor under any Interest Rate Cap Agreements; and further including, without limitation, all obligations of the Debtor to the Secured Party pursuant to the Note and the Loan Agreement.

**1.2.11** "Perfection Certificate" means that certain Perfection Certificate of the Debtor in the form attached hereto as Exhibit B and incorporated herein by reference.

**1.2.12** "Permitted Liens" means "Permitted Encumbrances" as such term is defined in the Loan Agreement.

**1.2.13** "Secured Party's Address" shall mean One Citizens Plaza, Providence, Rhode Island 02903 Attention: James J. O'Connor, Jr., Senior Vice President.

## **II. GRANT OF SECURITY INTEREST; PERFECTION**

**2.1** Collateral and Grant of Security Interest. As collateral security for the payment and performance of all of the Obligations, the Debtor hereby grants, assigns, conveys, pledges and transfers to the Secured Party, a continuing security interest in all of the personal property of the Debtor, including, but not limited to, the following assets and properties of the Debtor, any and all substitutions therefor and replacements thereof, and any and all additions and Accessions thereto, whether now owned or hereafter acquired or in which the Debtor may now have or hereafter acquire an interest, wherever located, excluding the Excluded Collateral (all of which are hereinafter collectively referred to as the "Collateral"):

**2.1.1** All Accounts;

**2.1.2** [RESERVED];

**2.1.3** All Chattel Paper (including all Electronic Chattel Paper and Tangible Chattel Paper);

**2.1.4** [RESERVED];

**2.1.5** All Deposit Accounts;

**2.1.6** All Documents;

**2.1.7** All Equipment;

**2.1.8** [RESERVED];

**2.1.9** All Fixtures;

**2.1.10** All General Intangibles (including all Payment Intangibles and Software);

- 2.1.11 All Goods;
- 2.1.12 All Instruments (including all Promissory Notes);
- 2.1.13 All Intellectual Property;
- 2.1.14 All Inventory;
- 2.1.15 All Investment Property;
- 2.1.16 All Letter of Credit Rights;
- 2.1.17 [RESERVED];

2.1.18 Any and all rights to receive and collect any sums payable to the Debtor under any Interest Rate Cap Agreements; provided, however, notwithstanding anything herein to the contrary, the Secured Party shall not be deemed to have assumed any of the obligations or duties of the Debtor under the Interest Rate Cap Agreements;

2.1.19 All Supporting Obligations;

2.1.20 To the extent not otherwise included, all Proceeds (including all Cash Proceeds and Noncash Proceeds) and products of any and all of the foregoing.

**2.2 Possession of the Collateral.** Until the occurrence of an Event of Default, the Debtor may have possession of the Collateral and use it in any lawful manner not inconsistent with this Agreement or with the terms or conditions of any policy of insurance thereon.

**2.3 Perfection of Security Interests.**

2.3.1 **Filing.** The Debtor hereby irrevocably authorizes the Secured Party at any time and from time to time to file a Financing Statement and any amendments thereto that (a) indicate the Collateral as all assets of the Debtor or words of similar effect, regardless of whether any particular asset comprising a portion of the Collateral is within the scope of Article 9 of the Code, and (b) contain any other information required by Part 5 of Article 9 of the Code for the sufficiency, or filing office acceptance, of any Financing Statement or amendment thereto. The Debtor shall furnish any such information to the Secured Party promptly upon request. The Debtor also hereby ratifies its authorization for the Secured Party to have filed any like Financing Statements or amendments thereto if filed prior to the date hereof.

2.3.2 **Possession.**

**2.3.2.1 Promissory Notes and Tangible Chattel Paper.** If the Debtor shall at any time hold or acquire any Promissory Notes or Tangible Chattel Paper, the Debtor shall forthwith endorse, assign and deliver the same to the Secured Party, accompanied by such instruments of transfer or assignment duly executed in blank as the Secured Party may from time to time specify.

**2.3.2.2 Collateral in the Possession of a Bailee.** If any Goods are at any time in the possession of a bailee, the Debtor shall promptly notify the Secured Party thereof and, if requested by the Secured Party, shall promptly obtain an acknowledgment from the bailee, in form and substance satisfactory to the Secured Party, that the bailee holds such Collateral for the benefit of the Secured Party and shall act upon the instructions of the Secured Party, without the further consent of the Debtor. The Secured Party agrees with the Debtor that the Secured Party shall not give any such instructions unless an Event of Default has occurred and is continuing or would occur after taking into account any action by the Debtor with respect to the bailee.

**2.3.2.3 Investment Property - Certificated Securities.** If the Debtor shall at any time hold or acquire any Certificated Securities, the Debtor shall forthwith endorse, assign and deliver the same to the Secured Party, accompanied by such instruments or transfer or assignment duly executed in blank as the Secured Party may from time to time specify.

**2.3.3 Control.**

**2.3.3.1 Deposit Accounts.** For each Deposit Account that the Debtor at any time opens or maintains, the Debtor shall, at the Secured Party's request and option, pursuant to an agreement in form and substance satisfactory to the Secured Party, either (a) cause the depository bank to agree to comply at any time with instructions from the Secured Party to such depository bank directing the disposition of funds from time to time credited to such Deposit Account, without further consent of the Debtor, or (b) arrange for the Secured Party to become the customer of the depository bank with respect to the Deposit Account, with the Debtor being permitted, only with the consent of the Secured Party, to exercise rights to withdraw funds from such Deposit Account. The Secured Party agrees with the Debtor that the Secured Party shall not give any such instructions or withhold any withdrawal rights from the Debtor, unless an Event of Default has occurred and is continuing, or, after giving effect to any withdrawal not otherwise permitted by the Loan Agreement, would occur. The provisions of this paragraph shall not apply to (i) any Deposit Account for which the Debtor, the depository bank and the Secured Party have entered into a cash collateral agreement specially negotiated among the Debtor, the depository bank and the Secured Party for the specific purpose set forth therein, (ii) Deposit Accounts for which the Secured Party is the depository and (iii) Deposit Accounts specifically and exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of the Debtor's salaried employees.

**2.3.3.2 Investment Property - Uncertificated Securities.** If any Securities now or hereafter acquired by the Debtor are uncertificated and are issued to the Debtor or its nominee directly by the Issuer thereof, the Debtor shall immediately notify the Secured Party thereof and, at the Secured Party's request and option, pursuant to an agreement in form and substance satisfactory to the Secured Party, either (a) cause the Issuer to agree to comply with instructions from the Secured Party as to such Securities, without further consent of the Debtor or such nominee, or (b) arrange for the Secured Party to become the registered owner of the Securities. If any Securities, whether Certificated or Uncertificated, or other Investment Property now or hereafter acquired by the Debtor are held by the Debtor or its nominee through a Securities Intermediary or Commodity Intermediary, the Debtor shall immediately notify the Secured Party thereof and, at the Secured Party's request and option, pursuant to an agreement in form and substance satisfactory to the Secured Party, either (i) cause such Securities Intermediary or (as the case may be) Commodity Intermediary to agree to comply with entitlement orders or other instructions from the Secured Party to such Securities Intermediary as to such Securities or other Investment Property, or (as the case may be) to apply any value distributed on account of any commodity contract as directed by the Secured Party to such Commodity Intermediary, in each case without further consent of the Debtor or such nominee, or (ii) in the case of Financial Assets or other Investment Property held through a Securities Intermediary, arrange for the Secured Party to become the Entitlement Holder with respect to such Investment Property, with the Debtor being permitted, only with the written consent of the Secured Party, to exercise rights to withdraw or otherwise deal with such Investment Property. The Secured Party agrees with the Debtor that the Secured Party shall not give any such entitlement orders or instructions or directions to any such Issuer, Securities Intermediary or Commodity Intermediary, and shall not withhold its consent to the exercise of any withdrawal or dealing rights by the Debtor, unless an Event of Default has occurred and is continuing, or, after giving effect to any such investment and withdrawal rights not otherwise permitted by the Loan Agreement, would occur. The provisions of this paragraph shall not apply to any Financial Assets credited to a Securities Account for which the Secured Party is the Securities Intermediary.

**2.3.3.3 Electronic Chattel Paper and Transferable Records.** If the Debtor at any time holds or acquires an interest in any Electronic Chattel Paper or any "transferable record," as that term is defined in Section 201 of the federal Electronic Signatures in Global and National Commerce Act, or in § 16 of the Uniform Electronic Transactions Act as in effect in any relevant jurisdiction, the Debtor shall promptly notify the Secured Party thereof and, at the request of the Secured Party, shall take such action as the Secured Party may reasonably request to vest in the Secured Party control under Section 9-105 of the Code of such Electronic Chattel Paper or control under Section 201 of the federal Electronic Signatures in Global and National Commerce Act or, as the case may be, §16 of the Uniform Electronic Transactions Act, as so in effect in such jurisdiction, of such transferable record. The Secured Party agrees with the Debtor that the Secured Party will arrange, pursuant to procedures satisfactory to the Secured Party and so long as such procedures will not result in the



Secured Party's loss of control, for the Debtor to make alterations to the Electronic Chattel Paper or transferable record permitted under Section 9-105 of the Code or, as the case may be, Section 201 of the federal Electronic Signatures in Global and National Commerce Act or § 16 of the Uniform Electronic Transactions Act for a party in control to make without loss of control, unless an Event of Default has occurred and is continuing or would occur after taking into account any action by the Debtor with respect to such Electronic Chattel Paper or transferable record.

**2.3.3.4 Letter of Credit Rights.** If the Debtor is at any time a Beneficiary under a Letter of Credit now or hereafter issued in favor of the Debtor, the Debtor shall promptly notify the Secured Party thereof and, at the request and option of the Secured Party, the Debtor shall, pursuant to an agreement in form and substance satisfactory to the Secured Party, either (i) arrange for the Issuer and any confirmer of such Letter of Credit to consent to an assignment to the Secured Party of the Proceeds of any drawing under the Letter of Credit or (ii) arrange for the Secured Party to become the transferee Beneficiary of the Letter of Credit, with the Secured Party agreeing, in each case, that the Proceeds of any drawing under the Letter of Credit are to be applied to the payment of the Obligations.

**2.3.3.5 Commercial Tort Claims.** If the Debtor shall at any time hold or acquire a commercial tort claim, the Debtor shall immediately notify the Secured Party in a writing signed by the Debtor of the brief details thereof and grant to the Secured Party in such writing a security interest therein and in the Proceeds thereof, all upon the terms of this Agreement, with such writing to be in form and substance satisfactory to the Secured Party.

**2.3.3.6 Intellectual Property.** If the Debtor shall at any time hold, develop or acquire additional Intellectual Property other than previously listed in Exhibit A, the Debtor shall immediately notify the Secured Party in a writing signed by the Debtor of the brief details thereof and grant to the Secured Party in such writing a security interest therein, all upon and subject to the terms of this Agreement, with such writing to be in form and substance satisfactory to the Secured Party.

**2.3.4 Marking.** The Debtor will not create any Chattel Paper without placing a legend thereon acceptable to the Secured Party indicating that the Secured Party has a security interest therein.

**2.3.5 Other Actions as to any and all Collateral.** The Debtor further agrees to take any other action reasonably requested by the Secured Party to insure the attachment, perfection and first priority of, and the ability of the Secured Party to enforce, the Secured Party's security interest in any and all of the Collateral including, without limitation, (a) executing, delivering and, where appropriate, filing Financing Statements and amendments relating thereto under the Code, to the extent, if any, that the Debtor's signature thereon is required therefor, (b) causing the Secured Party's name to be noted as secured party on any certificate of title for a titled good if such

notation is a condition to attachment, perfection or priority of, or ability of the Secured Party to enforce, the Secured Party's security interest in such Collateral, (c) complying with any provision of any statute, regulation or treaty of the United States as to any Collateral if compliance with such provision is a condition to attachment, perfection or priority of, or ability of the Secured Party to enforce, the Secured Party's security interest in such Collateral, (d) obtaining governmental and other third party consents and approvals, including without limitation, any consent of any licensor, lessor or other person obligated on such Collateral, (e) obtaining waivers from mortgagees and landlords in form and substance satisfactory to the Secured Party, and (f) taking all actions required by any earlier versions of the Code or by other law, as applicable in any relevant jurisdiction, or by other law as applicable in any foreign jurisdiction.

**2.4 Relation to Other Security Documents.** The provisions of this Agreement supplement the provisions of any real estate mortgage or deed of trust granted by the Debtor to the Secured Party and securing the payment or performance of any of the Obligations. Nothing contained in any such real estate mortgage or deed of trust shall derogate from any of the rights or remedies of the Secured Party hereunder.

### **III. REPRESENTATIONS AND WARRANTIES**

The Debtor represents and warrants to the Secured Party, and such representations and warranties shall be continuing representations and warranties so long as any Obligations shall remain outstanding, as follows:

**3.1 Title to Collateral.** Except for the security interest granted hereby and the Permitted Liens, the Debtor has or in the case of after-acquired Collateral will have, good and marketable title to the Collateral free from any adverse lien, security interest or encumbrance; and the Debtor will defend the Collateral against all claims and demands of all persons claiming the same or any interest therein.

**3.2 Accuracy of Statements.** All warranties, representations, statements and other information furnished to the Secured Party by or in behalf of the Debtor are or will be when the same are made or furnished, accurate and complete in all material respects, including, without limitation, the warranties, representations, statements and other information contained in the Perfection Certificate.

**3.3 Location of Collateral.** Except as set forth in the Perfection Certificate, the Collateral is or will be kept at the Debtor's Address, and the Debtor will give the Secured Party ten (10) days' prior written notice of any change in, addition to or discontinuance of the location where the Collateral is kept, and, unless otherwise provided herein, the Debtor will not remove any Collateral from the Debtor's Address, or from the other addresses identified in the Perfection Certificate, without the prior written consent of the Secured Party.

**3.4 Landlord Waivers.** If the Collateral or any part thereof is attached to real estate prior to the perfection of the security interest granted hereby, the Debtor will, upon demand of the Secured Party, furnish to the Secured Party a disclaimer or disclaimers satisfactory to the Secured Party and signed by all persons having an interest in such real estate.

**3.5 Financing Statements.** Except for the Permitted Liens, no financing statement covering any of the Collateral or any Proceeds thereof is on file in any public office; and, at the request of the Secured Party, the Debtor will join with the Secured Party in executing one or more financing statements pursuant to the Code in form satisfactory to the Secured Party and will pay the cost of filing the same in all public offices wherever filing is deemed by the Secured Party to be necessary or desirable.

**3.6 Tradenames.** Except as set forth in the Perfection Certificate, the Debtor (a) utilizes no tradenames in the conduct of its business and (b) has not changed its name, been the surviving entity in a merger or acquired any businesses.

**3.7 Tax Returns.** The Debtor has filed all federal, state and local tax returns and other reports it is required to file (after giving effect to all applicable extensions) and has paid or made adequate provision for payment of all such taxes, assessments and other governmental charges except those being contested in good faith and by appropriate proceedings.

**3.8 Legally Enforceable Agreement.** This Agreement and any document or instrument delivered in connection herewith and the transactions contemplated hereby or thereby have been duly authorized, executed and delivered; and this Agreement and such other documents and instruments constitute valid and legally binding obligations of the Debtor and are enforceable against the Debtor in accordance with their respective terms, except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally and except as certain remedies thereunder may be subject to equitable principles.

**3.9 Defense Department Contracts.** The Debtor does not have any contractual relationship with the United States Department of Defense.

#### **IV. GENERAL COVENANTS**

The Debtor hereby covenants and agrees that so long as any of the Obligations remain outstanding:

**4.1 Sale of Collateral.** Except for licenses of General Intangibles in the ordinary course of business and except as provided in Sections 5.1.1 and 5.2.3 hereof, the Debtor will not sell or offer to sell or otherwise transfer the Collateral or any interest therein without the prior written consent of the Secured Party.

**4.2 Insurance.** The Debtor shall have and maintain insurance at all times with respect to all Collateral against risks of fire and such other risks customarily insured against by companies engaged in similar businesses to that of the Debtor. Such insurance shall be payable to the Secured Party as loss payee as its interest may appear. The Debtor shall furnish to the Secured Party certificates or other evidence satisfactory to the Secured Party of compliance with these insurance requirements. If any Proceeds under any insurance policies are paid to the Secured Party while any Obligations remain outstanding, the Secured Party at its election may apply such Proceeds to the payment of such Obligations or release such Proceeds to the Debtor for the purpose of replacing the lost, damaged or destroyed Collateral with respect to which such Proceeds were paid. The Debtor will maintain such insurance with financially sound and reputable companies acceptable to the Secured Party (i.e. insurance companies authorized to write insurance in the State of Rhode Island or The Commonwealth of Massachusetts and which have at all times a general policyholder's rating of A or A+ in Best's latest rating guide). All of said policies of insurance or certificates thereof, including all endorsements thereof and those required hereunder, shall be deposited with the Secured Party; and such policies shall contain provisions that no such insurance may be cancelled or decreased without thirty (30) days' prior written notice to the Secured Party.

**4.3 Taxes and Assessments.** The Debtor will pay promptly when due all taxes, assessments and governmental charges or levies imposed upon the Collateral or in respect of its income or profits therefrom, as well as all claims of any kind (including claims for labor, materials and supplies), except that no such charge need be paid if:

- (a) the validity thereof is being contested in good faith by appropriate proceedings;
- (b) such proceedings do not permit any sale, forfeiture or loss of any of the Collateral or any interest therein; and
- (c) such charge is adequately reserved against in accordance with generally accepted accounting principles consistently applied.

**4.4 Defense of Collateral.** The Debtor will not create, permit or suffer to exist, and will defend the Collateral against and take such other action as is necessary to remove, any Lien, claim or right, on or to the Collateral, other than the Lien created hereunder and the Permitted Liens, and will defend the right, title and interest of the Secured Party in and to any of the Collateral against the Liens, claims and demands of all other parties.

**4.5 Access.** The Secured Party shall at all times have complete access during normal business hours with reasonable advance notice to all of the books, correspondence and records of the Debtor relating to the Collateral; and, the Secured

Party or its representatives may examine the same, take extracts therefrom and make photocopies thereof, and the Debtor agrees to render to the Secured Party, at the Debtor's cost and expense, such clerical and other assistance as may be reasonably requested with regard thereto. The Secured Party and its representatives shall at all times also have the right to enter into and upon any premises with reasonable advance notice where any of the Inventory and Equipment is located for the purpose of inspecting the same, observing its use, or otherwise protecting its interest therein.

**4.6 Notice of Loss or Default.** The Debtor will immediately notify the Secured Party of any event causing a substantial loss or diminution in the value of all or any material part of the Collateral and the amount or an estimate of the amount of such loss or diminution. The Debtor shall promptly notify the Secured Party of any condition or event which constitutes, or would constitute with the passage of time or giving of notice or both, an Event of Default under this Agreement, and promptly inform the Secured Party of any events or changes in the financial condition of the Debtor occurring since the date of the last financial statement of the Debtor delivered to the Secured Party, which individually or cumulatively when viewed in light of prior financial statements, may result in a material adverse change in the financial condition of the Debtor.

**4.7 Additional Instruments.** At any time and from time to time upon request of the Secured Party, the Debtor shall execute and deliver to the Secured Party, in form and substance satisfactory to the Secured Party, such documents and chattel paper as the Secured Party shall deem necessary or desirable to perfect or maintain perfected the security interest of the Secured Party in the Collateral or which may be necessary to comply with the provisions of the law of the State of Rhode Island or the law of any other state where such Debtor is "located" as determined in accordance with Section 9-301 of the Code, or in which any of the Collateral may be located.

**4.8 Notice of Defense Contracts.** The Debtor will immediately notify the Secured Party in writing of any contractual relationship entered into by and between the Debtor and the United States Department of Defense.

**4.9 Debtor's Legal Status.** The Debtor agrees that: (a) it will not, without providing at least ten (10) days prior written notice to the Secured Party, change its name, its place of business or, if more than one, its chief executive office, or its mailing address or organizational identification number if it has one, (b) if it does not have an organizational identification number and it later obtains one, the Debtor shall forthwith notify the Secured Party in writing of such organizational identification number, and (c) it will not change its type of organization, jurisdiction of organization or other legal structure without the prior written consent of the Secured Party.

## **V. SPECIFIC REPRESENTATIONS, WARRANTIES AND COVENANTS WITH RESPECT TO THE COLLATERAL**

With respect to the Collateral, the Debtor hereby represents, warrants and covenants with the Secured Party, as follows:

**5.1 Inventory.** As to Inventory:

**5.1.1** The Debtor shall not sell, lease or otherwise transfer any interest in the Inventory except that the Debtor may, until an Event of Default occurs, hold, process, sell, use or consume the Inventory in the ordinary course of its business, excluding, however, any sale or transfer made in partial or total satisfaction of a debt.

**5.1.2** The Debtor shall keep current stock, cost and sales records of the Inventory, accurately itemizing and describing the types and quantities of the Inventory and the cost and selling price thereof; and all books, records and documents relating to the Inventory are and will be genuine, complete and correct.

**5.1.3** None of the Inventory is or at any time or times hereafter will be, stored with a bailee or consignee without the prior written consent of the Secured Party.

**5.1.4** The Debtor shall, at the Secured Party's request, deliver to the Secured Party any and all evidence of ownership of, certificates of title to or other documents evidencing any interest in, any and all of the Inventory.

**5.2 Equipment.** As to Equipment:

**5.2.1** The Debtor shall keep and maintain all Equipment in good operating condition and repair, make all necessary repairs thereto and replacement of parts thereof so that the value and operating efficiency thereof shall at all times be maintained and preserved; and the Debtor shall keep complete and accurate books and records with respect to the Equipment, including maintenance records.

**5.2.2** The Debtor shall deliver to the Secured Party any and all evidence of ownership of, and certificates of title to, any and all of the Equipment.

**5.2.3** The Debtor shall not, without the prior written consent of the Secured Party, sell, offer to sell, lease or in any other manner dispose of any of the Equipment; provided, however, so long as no Event of Default has occurred, the Debtor may sell or dispose of obsolescent items of Equipment in the ordinary course of business consistent with past practices.

**5.3 Accounts.** As to Accounts:

**5.3.1** Accounts constituting a portion of the Collateral and all papers and Documents relating thereto are genuine and in all respects what they purport to be; the same are valid and subsisting and arise out of bona fide sales of

goods, or out of or for services heretofore rendered by the Debtor to the Account Debtors and each of them; and the amount of the Accounts represented by the Debtor's records as owing by each such account debtor, except for normal cash discounts, is not disputed, and except for such normal cash discounts is not subject to any set-offs, credits, deductions or counter charges. Similar representations and warranties will be assumed to exist as to Accounts hereafter arising except as to set-offs, credits, deductions, counter charges and disputes as to which the Debtor gives prompt written notice to the Secured Party.

**5.3.2** The Secured Party shall have the right in its own name or in the name of the Debtor to demand, collect, receive, sue for, compromise and give acquittance for, any and all amounts due or to become due on the Accounts constituting a portion of the Collateral and to endorse the name of the Debtor on all commercial paper given in payment or part payment thereof, and in its discretion, to file any claim or take any other action which the Secured Party may deem necessary or appropriate to protect and preserve and realize upon its security interest in the Accounts and the Proceeds thereof.

**5.3.3** The Secured Party may require the Debtor to mark its records to reflect the assignment to the Secured Party of the Accounts constituting a part of the Collateral.

**5.3.4** The Secured Party shall have the right to notify any and all Account Debtors to make payment thereof directly to the Secured Party; but to the extent the Secured Party does not so elect, the Debtor shall continue to collect the Accounts. All Proceeds of the Accounts, in whatsoever form received by the Debtor, shall be immediately delivered by the Debtor to the Secured Party in the form as received by the Debtor, and until so delivered, the Debtor agrees that all sums so collected shall be the property of the Secured Party, held in trust by the Debtor for the Secured Party, and not commingled with the Debtor's other funds; provided, however, that the Secured Party in its discretion to such extent and for such periods, if any, as it sees fit, may authorize the Debtor to use or retain some or all of the sums so collected from such Accounts for other purposes. Proceeds transmitted to the Secured Party may be handled and administered by the Secured Party in and through a remittance account or similar mechanism; but the Debtor acknowledges that the maintenance of such an account is solely for the convenience of the Secured Party in facilitating its own operations, and that the Debtor has not and shall not have any right, title or interest in said account or in the amounts at any time appearing to the credit thereof. Except to the extent the Secured Party may from time to time in its discretion release Proceeds to the Debtor for use in the business, all Proceeds received by the Secured Party shall be applied on the due and payable indebtedness secured hereby, but the Secured Party need not apply nor give credit for any item included in such Proceeds until such Secured Party has received final payment thereof at its office in cash or solvent credit accepted by the Secured Party as such.

**5.3.5** If any Account arises out of a purchase order or other Contract with the United States or any other Governmental Unit, which provides for aggregate payments to the Debtor of One Thousand Dollars (\$1,000) or more, the Debtor shall immediately notify the Secured Party thereof in writing and shall execute any instruments furnished by the Secured Party and reasonably necessary to provide that all monies due or to become due under such purchase order or other Contract shall be assigned to the Secured Party and that notice thereof shall be given to such Governmental Unit under the Federal Assignment of Claims Act or other applicable law or regulation.

**5.3.6** The Debtor shall provide the Secured Party, at its request, from time to time with (a) confirmatory assignment schedules, (b) copies of all invoices relating to the Accounts, (c) evidence of shipment or delivery of the Inventory, and (d) such further information and/or schedules as the Secured Party may reasonably require, all in a form satisfactory to the Secured Party.

**5.4 Other Collateral.**

**5.4.1** None of the Collateral constitutes, or are the Proceeds of, Farm Products.

**5.4.2** Except as set forth in the Perfection Certificate, the Debtor holds no Commercial Tort Claim.

**5.4.3** The Debtor has at all times operated its business in compliance with all applicable provisions of the federal Fair Labor Standards Act, as amended, and with all applicable provisions of federal, state and local statutes and ordinances dealing with the control, shipment, storage or disposal of "oil," "hazardous materials," "hazardous wastes" or "hazardous substances", as defined in the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq., as amended, the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, M.G.L. Chapter 21E, as amended, the Massachusetts Hazardous Waste Management Act, M.G.L. Chapter 21C, as amended, or any similar statute, and the regulations adopted pursuant thereto.

**5.4.4** All other information set forth on the Perfection Certificate pertaining to the Collateral is accurate and complete in all material respects.

**VI. SECURED PARTY'S APPOINTMENT AS ATTORNEY-IN-FACT**

**6.1 Appointment and Powers.** The Debtor hereby irrevocably constitutes and appoints the Secured Party and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the name and stead of the Debtor or in 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 and all appropriate action and to execute any and all documents and instruments which may be necessary or desirable to accomplish the purposes of this Agreement and, without limiting the generality of the foregoing, hereby gives the Secured Party the power and right, in behalf of the Debtor, after an Event of Default and notice to the Debtor, to do the following:

(a) To communicate with any party to any Contract or any Account Debtor with regard to any aspect of any Contract or Account and to ask, demand, collect, receive or give acquittances and receipt for any and all monies due or to become due under any Account or Contract and, in the name of the Debtor or its own name or otherwise, to take possession of and endorse and collect any checks, drafts, notes, acceptances or other instruments for the payment of monies due under any Account or Contract and to file any claim or to take any other action or proceeding in any court of law or equity or otherwise deemed appropriate by the Secured Party for the purpose of collecting any and all such monies due under any Account or Contract whenever payable;

(b) To pay or discharge taxes, Liens, security interests or other encumbrances levied or placed on or threatened against the Collateral;

(c) To effect any required repairs to the Collateral;

(d) To obtain any insurance required pursuant to this Agreement and to pay all or any part of the premiums therefor;

(e) To receive payment of and receipt for any and all monies, claims and other amounts due or to become due at any time in respect of or arising out of any Collateral;

(f) To sign and endorse any invoices, freight or express bills, bills of lading, storage or warehouse receipts, drafts against debtors, assignments, verifications and notices in connection with Accounts and other documents relating to the Collateral;

(g) To commence and prosecute any suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect the Collateral or any part thereof and to enforce any other right in respect of any Collateral;

(h) To defend any suit, action or proceeding brought against the Debtor with respect to any Collateral;

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

(j) Generally, to sell, transfer, pledge, make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though the Secured Party was the absolute owner thereof for all purposes including, without limitation, the execution of assignments, bills of sale or other instruments of conveyance or transfer with respect to the Collateral;

(k) To do, at the Secured Party's option and at the Debtor's expense, at any time or from time to time, all acts or things which the Secured Party reasonably deems necessary to protect, preserve or realize upon the Collateral and the security interest granted by this Agreement, all as fully and effectively as the Debtor might do;

(l) To exercise all rights, powers, privileges and preferences pertaining to the Collateral and to cause the Collateral, where applicable, to be registered in the Secured Party's name or in the name of its nominee;

(m) To complete and fill in any blank collateral endorsements, applications, renewals or like documents;

(n) To take such further action as the Secured Party may deem necessary to exercise all of its right, title and interest in the Collateral; and

(o) With respect to Intellectual Property, whenever requested, to testify in any legal proceeding, sign all lawful papers, execute all divisional, continuing, reissue and foreign applications, make all rightful oaths and generally do everything possible to aid the Secured Party in obtaining and enforcing proper protection of the Intellectual Property in all countries.

**6.2 Irrevocable Power of Attorney.** The power of attorney granted under Section 6.1 hereof is a power coupled with an interest and shall be irrevocable until all Obligations are paid and performed in full.

**6.3 The Secured Party's Lack of Duty.** The Debtor agrees that the powers conferred on the Secured Party hereunder 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 only be accountable for the amounts that it actually receives as a result of the exercise of such powers and neither it nor any of its officers, directors, employees or agents shall be responsible to the Debtor for any act or failure to act, except for the Secured Party's own gross negligence or willful misconduct.

## **VII. EVENTS OF DEFAULT AND ACCELERATION**

**7.1 Events of Default.** The occurrence of any Event of Default (as defined in the Loan Agreement) shall constitute an Event of Default hereunder.

**7.2 Acceleration.** If any Event of Default shall occur, then at any time thereafter while such Event of Default shall continue, the Secured Party may declare all Obligations to be immediately due and payable, without notice, protest, presentment or demand, all of which are hereby expressly waived by the Debtor.

## **VIII. REMEDIES**

**8.1 In General.** If an Event of Default shall occur and be continuing:

**8.1.1** All payments received by the Debtor under or in connection with any of the Collateral shall be held by the Debtor in trust for the Secured Party, shall be segregated from other funds of the Debtor, and shall forthwith, upon receipt by the Debtor, be turned over to the Secured Party in the same form received by the Debtor (duly endorsed by the Debtor to the Secured Party, if required).

**8.1.2** Any and all such payments so received by the Secured Party (whether from the Debtor or otherwise) may, in the sole discretion of the Secured Party, be held by the Secured Party as collateral security for, and/or then or at any time thereafter, applied in whole or in part by the Secured Party against all or any part of the Obligations, in such order as the Secured Party shall elect. Any balance of such payments held by the Secured Party and remaining after payment in full of all the Obligations shall be paid over to the Debtor or to whomsoever may be lawfully entitled to receive the same.

**8.2 The Secured Party's Rights and Remedies Upon Acceleration.** The Debtor agrees that if an Event of Default shall occur and be continuing:

**8.2.1** The Secured Party may exercise, in addition to all other rights and remedies granted to it in this Agreement and in any other instrument or agreement securing, evidencing or relating to the Obligations, all rights and remedies of a Secured Party under the Code or under the applicable law of any other jurisdiction, including, without limitation, any jurisdiction where the Collateral may be located.

**8.2.2** Without limiting the generality of the foregoing, 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 the Debtor or any other party (all and each of which demands, advertisements and/or notices are hereby expressly waived), may forthwith collect, receive, appropriate and realize upon the Collateral or any part thereof and/or may forthwith sell, lease, assign, give 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 any of the Secured Party's offices or elsewhere at such prices as it may deem best, for cash or on credit or for future delivery without assumption of any credit risk.

**8.2.3** The Secured Party shall have the right upon any such public sale or sales, and, to the extent permitted by law, upon any such private sale or sales, to purchase the whole or any part of said Collateral so sold, free of any right or equity of redemption in the Debtor, which right or equity is hereby expressly waived and released.

**8.2.4** At the Secured Party's request, the Debtor shall assemble the Collateral and make it available to the Secured Party at places which the Secured Party shall reasonably select, whether at the Debtor's premises or elsewhere.

**8.2.5** The Secured Party shall retain the net Proceeds of the Collateral arising from any collection, sale, recovery, receipt or appropriation, after the payment of all expenses of every kind incurred therein or incidental to the care, safekeeping or otherwise of any or all of the Collateral or in any way relating to the rights of the Secured Party hereunder, including reasonable attorneys' fees and legal expenses, for application by it first to the payment of all fees, expenses and other amounts due to the Secured Party (excluding principal and interest), then to accrued interest, and the balance on account of outstanding principal; provided, however, that after the occurrence of an Event of Default, payments will be applied to the obligations of the Debtor to the Secured Party as the Secured Party determines in its sole discretion. If the Secured Party sells any of the Collateral upon credit, the Debtor will be credited only with payments actually made by the purchaser, received by the Secured Party and applied to the indebtedness of the purchaser. Upon the final payment and satisfaction in full of all of the Obligations and after making any payments required by Sections 9-608(a)(1)(C) or 9-615(a)(3) of the Code, any excess shall be returned to the Debtor, and the Debtor shall remain liable for any deficiency in the payment of the Obligations.

**8.2.6** Unless the Collateral is perishable or threatens to decline speedily in value or is of the type customarily sold on a recognized market, the Secured Party must give at least ten (10) days' notice of the time and place of any public sale or of the time after which a private sale may take place; the Debtor further agrees that such notice is reasonable notification of such matters and that no notification need be given by the Secured Party to the Debtor if the Debtor has executed, after the occurrence of an Event of Default, a statement renouncing or modifying any right to notification of sale or other intended disposition.

**8.2.7** The Debtor shall pay on demand all expenses of the Secured Party in connection with the preparation, administration, default, collection, waiver or amendment of loan terms, or in connection with the Secured Party's exercise, preservation or enforcement of any of its rights, remedies or options hereunder, including, without limitation, fees of outside legal counsel or the allocated costs of in-house legal counsel, accounting, consulting, brokerage or other similar professional fees or expenses, and any fees or expenses associated with travel or other costs relating to any appraisals or examinations conducted in connection with the Obligations

or the Collateral, and the amount of all such expenses shall, until paid, bear interest at the rate under the Note (including any default rate) and be an obligation secured by the Collateral.

**8.2.8** With respect to Intellectual Property, at the Secured Party's request, the Debtor will testify in any legal proceeding, sign all lawful papers, execute all divisional, continuing, reissue and foreign applications, make all rightful oaths and generally do everything possible to aid the Secured Party in obtaining and enforcing proper protection of the Intellectual Property in all countries.

**8.3 Standards for Exercising Remedies.** To the extent that applicable law imposes duties on the Secured Party to exercise remedies in a commercially reasonable manner, the Debtor acknowledges and agrees that it is not commercially unreasonable for the Secured Party (a) to fail to incur expenses reasonably deemed significant by the Secured Party to prepare Collateral for disposition or otherwise to complete raw material or work in process into finished goods or other finished products for disposition, (b) to fail to obtain third party consents for access to Collateral to be disposed of, or to obtain or, if not required by other law, to fail to obtain governmental or third party consents for the collection or disposition of Collateral to be collected or disposed of, (c) to fail to exercise collection remedies against Account Debtors or other persons obligated on Collateral or to remove Liens or encumbrances on or any adverse claims against Collateral, (d) to exercise collection remedies against Account Debtors and other persons obligated on Collateral directly or through the use of collection agencies and other collection specialists, (e) to advertise dispositions of Collateral through publications or media of general circulation, whether or not the Collateral is of a specialized nature, (f) to contact other persons, whether or not in the same business as the Debtor, for expressions of interest in acquiring all or any portion of the Collateral, (g) to hire one or more professional auctioneers to assist in the disposition of Collateral, whether or not the Collateral is of a specialized nature, (h) to dispose of Collateral by utilizing Internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capability of doing so, or that match buyers and sellers of assets, (i) to dispose of assets in wholesale rather than retail markets, (j) to disclaim disposition warranties, (k) to purchase insurance or credit enhancements to insure the Secured Party against risks of loss, collection or disposition of Collateral or to provide to the Secured Party a guaranteed return from the collection or disposition of Collateral, or (l) to the extent deemed appropriate by the Secured Party, to obtain the services of other brokers, investment bankers, consultants and other professionals to assist the Secured Party in the collection or disposition of any of the Collateral. The Debtor acknowledges that the purpose of this Section 8.3 is to provide non-exhaustive indications of what actions or omissions by the Secured Party would not be commercially unreasonable in the Secured Party's exercise of remedies against the Collateral and that other actions or omissions by the Secured Party shall not be deemed commercially unreasonable solely on account of not being indicated in this Section 8.3. Without limitation upon the foregoing, nothing contained in this Section 8.3 shall be construed to grant any rights to the Debtor or to impose any duties on the Secured

Party that would not have been granted or imposed by this Agreement or by applicable law in the absence of this Section 8.3.

### **IX. SET-OFF**

The Secured Party shall, at all times after the occurrence of an Event of Default, have the right to set-off, without notice to the Debtor, any and all deposits or other sums at any time or times credited by or due from the Secured Party to the Debtor, whether in a special account or other account or represented by a certificate of deposit (whether or not matured) which deposits and other sums shall at all times constitute additional security for the Obligations and may be set-off against all or any part of the Obligations at any time if the Debtor is a primary obligor with respect to such Obligations, or at any time after the maturity of the Obligations if the Debtor is a secondary obligor.

### **X. LIMITATION ON SECURED PARTY'S DUTY WITH RESPECT TO CARE OF COLLATERAL**

The Secured Party shall not have any duty as to any Collateral which is not in its possession or control. The Secured Party's sole duty with respect to the custody, safe keeping and physical preservation of the Collateral in its possession shall be to deal with such Collateral in the same manner as the Secured Party deals with similar property for its own account.

### **XI. NOTICES**

Any demand or notice required or permitted to be given hereunder shall be deemed effective when deposited in the United States Mail and sent by certified mail, return receipt requested, postage prepaid, addressed to the Secured Party at the Secured Party's Address (with a copy to Robert A. Migliaccio, Esq., Cameron & Mittleman, LLP, 301 Promenade Street, Providence, Rhode Island 02908) or to the Debtor at the Debtor's Address (with a copy to Earl Mellott, Esq., Foley Hoag LLP, 155 Seaport Boulevard, Boston, MA 02210), as applicable, or to such other address as may be provided by the party to be notified, on ten (10) days' prior written notice to the other party.

### **XII. GENERAL PROVISIONS**

**12.1 Severability.** Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable that provision in any other jurisdiction.

**12.2 No Waiver by the Secured Party; Cumulative Remedies.** The Secured Party shall not by any act, delay, omission or otherwise be deemed to have

waived any of its rights or remedies hereunder, and no waiver shall be valid unless in writing and signed by the Secured Party, and then only to the extent therein set forth. A waiver by the Secured Party of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy which the Secured Party would otherwise have had on any future occasion. Neither failure to exercise nor any delay in exercising on the part of the Secured Party, of any right, power or privilege hereunder, shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies hereunder provided are cumulative and may be exercised singly or concurrently, and are not exclusive of any rights or remedies provided by law. None of the terms or provisions of this Agreement may be waived, modified, amended or supplemented except by an instrument in writing, duly executed by the Secured Party.

**12.3 Successors and Assigns.** Each reference herein to the Secured Party shall be deemed to include its successors and assigns, and each reference to the Debtor and any pronouns referring thereto as used herein shall be construed in the masculine, feminine, neuter, singular or plural, as the context may require, and shall be deemed to include the legal representatives, successors and assigns of the Debtor, all of whom shall be bound by the provisions hereof. The term "Debtor" as used herein shall, if the Agreement is signed by more than one Debtor, mean, unless this Agreement otherwise provides or unless the context otherwise requires, the "Debtor and each of them" and each and every representation, promise, agreement and undertaking shall be joint and several, except that the granting of the security interest, right of set-off and lien shall be by each of the Debtors in its several respective property. In the event that there is more than one Debtor, any loan which is secured by this Agreement shall be deemed to be made at the request of and for the benefit of each Debtor.

**12.4 Governing Law.** This Agreement is delivered in the State of Rhode Island to the Secured Party and the rights, remedies, duties and obligations of the parties hereto and all provisions hereof shall be governed by and construed in accordance with the internal laws (and not the law of conflicts) of the State of Rhode Island, except to the extent the laws of another jurisdiction must govern with respect to the security interests created hereby.

**12.5 Further Indemnification.** The Debtor agrees to pay, and to save the Secured Party harmless from, any and all liabilities with respect to or resulting from any delay in paying any and all excise, sales or other taxes which may be payable or determined to be payable with respect to any of the Collateral or in connection with any of the transactions contemplated by this Agreement.

**12.6 Complete Agreement.** This Agreement contains the entire understanding between the parties hereto with respect to the transactions contemplated herein and such understanding shall not be modified except in writing signed by or in behalf of the parties hereto.

**12.7 Section Headings.** The section headings herein are included for convenience only and shall not be deemed to be a part of this Agreement.

**12.8 Assignment by Secured Party.** The Secured Party may, from time to time, without notice to the Debtor, sell, assign, transfer or otherwise dispose of all or any part of the Obligations and/or the Collateral therefor; provided that any immediate and successive purchaser, assignee, transferee or holder of all or any part of the Obligations and/or the Collateral that contains confidential information, shall agree in writing to maintain the confidentiality of such information in accordance with the terms of Section 9.26 of the Loan Agreement. In such event, each and every immediate and successive purchaser, assignee, transferee or holder of all or any part of the Obligations and/or the Collateral shall have the right to enforce this Agreement by legal action or otherwise for its own benefit as fully as if such purchaser, assignee, transferee or holder were herein by name specifically given such rights. The Secured Party shall have an unimpaired right to enforce this Agreement for its benefit to that portion of the Obligations of the Debtor as the Secured Party has not sold, assigned, transferred or otherwise disposed of.

**12.9 Suretyship Waivers by the Debtor.** The Debtor waives demand, notice, protest, notice of acceptance of this Agreement, notice of loans made, credit extended, Collateral received or delivered or other action taken in reliance hereon and all other demands and notices of any description. With respect to both the Obligations and the Collateral, the Debtor assents to any extension or postponement of the time of payment or any other indulgence, to any substitution, exchange or release of or failure to perfect any security interest in any Collateral, to the addition or release of any party or person primarily or secondarily liable, to the acceptance of partial payment thereon and the settlement, compromising or adjusting of any thereof, all in such manner and at such time or times as the Secured Party may deem advisable. The Secured Party shall have no duty as to the collection or protection of the Collateral or any income thereon, nor as to the preservation of rights against prior parties, nor as to the preservation of any rights pertaining thereto beyond the safe custody thereof as set forth in Article X hereof. The Debtor further waives any and all other suretyship defenses.

**12.10 Marshaling.** The Secured Party shall not be required to marshal any present or future collateral security (including but not limited to this Agreement and the Collateral) for, or other assurances of payment of, the Obligations or any of them or to resort to such collateral security or other assurances of payment in any particular order. To the extent that it lawfully may, the Debtor hereby agrees that it will not invoke any law relating to the marshaling of collateral which might cause delay in or impede the enforcement of the Secured Party's right under this Agreement or under any other instrument creating or evidencing any of the Obligations or under which any of the Obligations is outstanding or by which any of the Obligations is secured or payment thereof is otherwise assured, and, to the extent that it lawfully may, the Debtor hereby irrevocably waives the benefits of all such laws.




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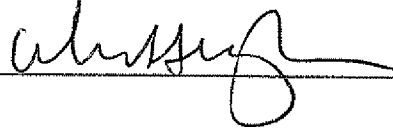
IN WITNESS WHEREOF, this Agreement has been executed by the duly authorized officers of the parties hereto as of the date first above written.

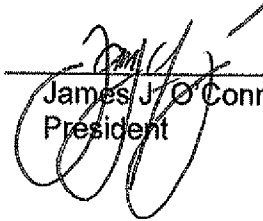
WITNESS:

38 Studios, LLC

  
Richard A. Westor, CFO

By:   
William C. Thomas, Secretary, Treasurer  
RBS Citizens, National Association



By:   
James J. O'Connor, Jr., Senior Vice  
President

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