

TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1
Stylesheet Version v1.2

ETAS ID: TM372494

SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	SECURITY INTEREST		
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
Machinery Service & Design, LLC		01/08/2016	LIMITED LIABILITY COMPANY: KANSAS
RECEIVING PARTY DATA			
Name:	Alterra Bank		
Street Address:	11300 Tomahawk Creek Parkway		
Internal Address:	Suite 100		
City:	Leawood		
State/Country:	KANSAS		
Postal Code:	66211		
Entity Type:	state-chartered bank: KANSAS		
PROPERTY NUMBERS Total: 1			
Property Type	Number	Word Mark	
Registration Number:	4175475	NUT BUSTER	
CORRESPONDENCE DATA			
Fax Number:	9135494646		
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i>			
Phone:	9135494700		
Email:	ekdkdocket@kcpatentlaw.com		
Correspondent Name:	Arthur A. Chaykin		
Address Line 1:	8900 State Line Road, Suite 500		
Address Line 4:	Leawood, KANSAS 66206		
ATTORNEY DOCKET NUMBER:	1002.006		
NAME OF SUBMITTER:	Arthur A. Chaykin		
SIGNATURE:	/Arthur A. Chaykin/		
DATE SIGNED:	02/09/2016		
Total Attachments: 18			
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**CONDITIONAL ASSIGNMENT AND
INTELLECTUAL PROPERTY SECURITY AGREEMENT**

THIS CONDITIONAL ASSIGNMENT AND INTELLECTUAL PROPERTY SECURITY AGREEMENT (this "*Agreement*") is entered into as of the 8th day of January, 2016 by and between Machinery Service & Design, LLC, a Kansas limited liability company, with an address of 2548 Jasu Drive, Lawrence, KS 66046 ("*Borrower*") and Alterra Bank, a Kansas state-chartered bank, with offices at 11300 Tomahawk Creek Parkway, Suite 100, Leawood, Kansas 66211 ("*Lender*").

RECITALS

- A. Borrower and the Lender are parties to that certain Commercial Security Agreement effective January 8, 2016 (the "*Security Agreement*"), and related documents of even date herewith, as the same may hereafter be amended, supplemented or restated from time to time (individually or collectively referred to herein as the "*Loan Documents*"), setting forth the terms on which the Lender may now or hereafter extend credit to or for the account of the Borrower.
- B. Pursuant to the terms of the Security Agreement, the Borrower has granted to the Lender a security interest in any and all right, title and interest in and to the Collateral (which includes the IP Collateral (as hereinafter defined)), to secure the payment of all obligations of and amounts owing by the Borrower under the Loan Documents.
- C. The Borrower owns and/or uses in its business, and will in the future adopt, own, and/or so use various intangible assets, including, but not limited to, the IP Collateral.
- D. The Lender desires to be a secured creditor with respect to the IP Collateral, and Borrower agrees to create in the Lender a secured and protected interest in the IP Collateral.
- E. As a condition to extending credit to or for the account of the Borrower, the Lender has required the execution and delivery of this Agreement by the Borrower.

AGREEMENT

NOW, THEREFORE, in consideration of the promises and agreements set forth herein, the parties, each intending to be legally bound hereby, do promise and agree as follows:

1. **Definitions.** All terms defined in the Recitals hereto or in the Loan Documents that are not otherwise defined herein shall have the meanings given to them therein. In addition, the following terms have the meanings set forth below:

"*Associated Goodwill*" shall mean all goodwill of Borrower or its business, products, and services appurtenant to, associated with, or symbolized by any Intellectual Property, as applicable, and/or the use thereof.

"*Event of Default*" means (a) an Event of Default as defined in the Loan Documents; or (b) the failure of the Borrower to promptly observe or perform any covenant or agreement herein binding on it; or (c) any of the representations or warranties of the Borrower contained in this Agreement shall prove to have been incorrect in any material respect when made.

"Intellectual Property" includes all of the proprietary and intellectual property owned, created, or controlled by Borrower (including but not limited to those items set forth on Schedule I attached hereto), whether registered or not, including without limitation (a) all copyrights, works of authorship, expressions, trademarks, service marks, trade dress, company names, logos, slogans, brand names, designations of source, sponsorship, association or origin, websites, domain names, patents, software and firmware, including data files, source code, object code, application programming interfaces, architecture, files, records, schematics, computerized databases and other related specifications and documentation; (b) all applications and registrations and any renewals with respect to any Intellectual Property, (c) all works based upon, derived from, or incorporating the works covered by such Intellectual Property, (d) all income, royalties, damages, claims and payments now or hereafter payable with respect to the Intellectual Property, (e) all causes of action, either in law or in equity for past, present or future infringement based upon such Intellectual Property, with the same right to police, monitor, enforce, sue for, settle, release and collect the same, (f) any idea, design, concept, technique, invention, prototype, algorithm, process, formula, discovery or improvement, whether or not patentable, but including patents and patent applications, trade secrets, business, proprietary, and technical information, databases, data collections, and know how that are embodied in or evidenced by the Intellectual Property or required to be used or practiced in order to exercise the right, title or interest in the Intellectual Property, (g) any goodwill of all business connected with the use of and symbolized by such Intellectual Property, as applicable, and (h) all rights corresponding to the foregoing.

"IP Collateral" shall mean all of Borrower's right, title, and interest in and to all of the Intellectual Property, the Associated Goodwill, the Related Assets, and all accessions to, substitutions for, replacements of, and all products and proceeds of any and all of the foregoing.

"Obligations" means each and every debt, liability and obligation of every type and description arising under or in connection with any Loan (as defined in the Loan Documents) which the Borrower may now or at any time hereafter owe to the Lender, whether such debt, liability or obligation now exists or is hereafter created or incurred and whether it is or may be direct or indirect, due or to become due, absolute or contingent, primary or secondary, liquidated or unliquidated, independent, joint, several or joint and several, and including specifically, but not limited to, the Indebtedness (as defined in the Loan Documents).

"Related Assets" shall mean all assets, rights, and interests of Borrower that reflect or embody the Associated Goodwill, including, but not limited to, the following: all patents, inventions, copyrights, trade secrets, confidential information, formulas, methods, or processes, compounds, recipes, know-how, methods and operating systems, drawings, descriptions, formulations, manufacturing and production and delivery procedures, quality control procedures, product and service specifications, catalogs, price lists, and advertising materials, relating to the manufacture, production, delivery, provision, and sale of goods or services under or in association with any of the Intellectual Property; and the following documents and things in the possession or under the control of Borrower, or subject to its demand for possession or control, related to the manufacture, production, delivery, provision, marketing and sale by Borrower, or any affiliate, licensee, or contractor, of products or services sold by or under the authority of Borrower in connection with the Intellectual Property, whether prior to, on, or subsequent to the date hereof:

(a) All lists, contracts, ancillary documents, and other information that identify, describe, or provide information with respect to any subscribers, licensees, customers, dealers, or distributors of Borrower, its affiliates or licensees or contractors, for products or services sold under or in connection with the Intellectual Property, including but not limited to all lists and documents containing information regarding each

subscriber's, licensee's, customer's, dealer's, or distributor's name, address and other contact information, credit, payment, discount, delivery, and other sale terms, and history, pattern, and total of purchases by brand, product, style, size, and quantity;

(b) All agreements, product and service specification documents and operating, production and quality control manuals relating to or used in the design, manufacture, production, delivery, provision, marketing and sale of products or services under or in connection with the Intellectual Property;

(c) All documents and agreements relating to the identity and locations of all sources of supply, all terms of purchase and delivery, for all materials, components, raw materials, and other supplies and services used in the manufacture, production, provision, delivery, marketing and sale of products or services under or in connection with the Intellectual Property; and

(d) All agreements and documents constituting or concerning the present or future current or proposed advertising and promotion by Borrower (or any of its affiliates, licensees, or contractors) of products or services sold under or in connection with the Intellectual Property.

"Use" of any Intellectual Property shall include all uses of such Intellectual Property by, for, or in connection with Borrower or its business or for the direct or indirect benefits of Borrower or its business, including but not limited to all such uses by Borrower itself, by any of the affiliates of Borrower, or by any licensee or contractor of Borrower.

Unless otherwise defined herein or in the Loan Documents, terms used in Article 9 of the Uniform Commercial Code of the state of Kansas are used herein as therein defined.

2. Grant of Security and Conditional Assignment.

(a) As collateral security for the complete and timely payment, performance, and satisfaction of all Obligations, Borrower hereby unconditionally grants to Lender a continuing security interest in and first priority lien on the Intellectual Property, and pledges and mortgages the IP Collateral to Lender.

(b) In addition to, and not by way of limitation of, the grant, pledge, and mortgage of the IP Collateral provided in this Section 2, Borrower hereby grants, assigns, transfers, conveys, and sets over to Lender its entire right, title, and interest in and to the IP Collateral (the "*Transfer*"); provided, however, that the Transfer shall be and become of force and effect only upon or after the occurrence and during the continuance of an Event of Default and either (1) upon the written notice by the Lender to the Borrower at any time during such continuance of an Event of Default or (2) immediately and automatically (without notice or action of any kind by Lender) upon the sale or other disposition of or foreclosure upon the IP Collateral pursuant to the Security Agreement and Article 9 of the Uniform Commercial Code (including the transfer or other disposition of the IP Collateral by Borrower to Lender in lieu of foreclosure).

(c) Simultaneous with Borrower's registration of any trademark or patent with the United States Patent and Trademark Office (the "*USPTO*") or any copyright with the United States Copyright Office (the "*Copyright Office*") or on demand by Lender at any time, the Borrower shall deliver to Lender an Assignment of Patent, Trademark, Copyright, Domain Name, or other Intellectual Property in such form as Lender shall require in its sole discretion, to be held

pursuant to the terms of this Agreement. After the occurrence and continuation of an Event of Default, the Lender, at its option, may receive transfer of the IP Collateral from the Borrower pursuant to one or more Assignments. The Borrower hereby irrevocably authorizes the Lender to date undated Assignments of IP Collateral and otherwise complete such Assignments at the time of transfer. Notwithstanding the foregoing provisions of this Section 2, the Assignments of IP Collateral shall be effective only upon the occurrence of an Event of Default and upon the written notice by the Lender to the Borrower of the acceptance of the Lender of the Assignment. Unless and until the acceptance of the Assignment in accordance with the prior sentence, the Assignment shall have no effect.

(d) Borrower acknowledges and agrees that, upon the effectiveness of the Transfer, Lender shall have the cumulative rights in and to the IP Collateral as are provided in this Agreement and in the Security Agreement, and shall have the rights in and to the Collateral (other than the IP Collateral) as are provided in the Security Agreement.

(e) The parties acknowledge and agree that, contemporaneously with the execution and delivery of this Agreement, they are executing and delivering the Security Agreement pursuant to which Borrower unconditionally grants to Lender a continuing security interest in and first priority lien on the Collateral (including the IP Collateral). Such Security Agreement, and all rights and interests of Lender in and to the Collateral (including the IP Collateral) thereunder, are hereby ratified, confirmed, adopted, and approved. In no event shall this Agreement, the Transfer of the IP Collateral hereunder, or the recordation of this Agreement (or any document hereunder) with the USPTO or the Copyright Office, adversely affect or impair, in any way or to any extent, the Security Agreement, the security interest of Lender in the Collateral (including the IP Collateral) pursuant to the Security Agreement and/or this Agreement, the attachment and perfection of such security interest under the Uniform Commercial Code, or the present or future rights and interests of Lender in and to the Collateral under or in connection with the Security Agreement, this Agreement, and/or the Uniform Commercial Code. Any and all rights and interests of Lender in and to the IP Collateral (and any and all obligations of Borrower with respect to the IP Collateral) provided herein, or arising hereunder or in connection herewith, shall only supplement and be cumulative and in addition to the rights and interests of Lender (and the obligations of Borrower) in, to, or with respect to the Collateral (including the IP Collateral) provided in or arising under or in connection with the Security Agreement.

(f) Upon the effectiveness of the Transfer, Lender shall own the entire right, title, and interest in and to the IP Collateral, free and clear of any lien, charge, encumbrance, or claim of Borrower or any other party. Upon such effectiveness, in addition to all other rights and remedies of Lender, whether under law, the Loan Documents, or otherwise (all such rights and remedies being cumulative, not exclusive, and enforceable alternatively, successively, or concurrently, without notice to or consent by Borrower except as expressly provided otherwise herein), Lender's rights and remedies with respect to the IP Collateral shall include, but not be limited to, the following, without payment of royalty or compensation of any kind to Borrower except as expressly provided otherwise herein:

i. Lender may exercise, with respect to the IP Collateral all the rights and remedies of a secured party on default under the Uniform Commercial Code (regardless of whether such Uniform Commercial Code applies to the affected IP Collateral).

ii. Lender may operate the business of Borrower using the IP Collateral.

iii. Lender may, to the same extent that Borrower has the right to do so immediately prior to the effectiveness of the Transfer provided herein, license or sublicense, whether general, special, or otherwise, and whether on an exclusive or nonexclusive basis, any of the IP Collateral, throughout the world for such term or terms, on such conditions, and in such manner, as Lender shall in its sole discretion determine.

iv. Lender may (without assuming any obligations or liability thereunder), at any time, enforce (and shall have the exclusive right but not the obligation to enforce) against any licensor, licensee, or sublicensee all license rights of the Borrower in the IP Collateral, and take or refrain from taking any such action.

v. Lender may, to the extent permitted by law, in its sole discretion, without notice except as specified below, assign, sell, or otherwise transfer or dispose of the IP Collateral or any part thereof, either with or without special or other conditions or stipulations, with power to buy the IP Collateral or any part of it in one or more portions at public or private sale, at any of Lender's offices or elsewhere, at such time or times, for cash, on credit, or for future delivery, and at such price or prices and upon such other terms as Lender may deem commercially reasonable, irrespective of the impact of any such sales on the market price of any of the IP Collateral. Each such purchaser at any such sale shall hold the property sold absolutely, free from any claim or right on the part of Borrower or any party claiming through Borrower, and Borrower hereby waives (to the extent permitted by law) all rights of redemption, stay, and/or appraisal that it now has, or may at any time in the future have, under any rule of law or statute now existing or hereafter enacted. Borrower agrees that, to the extent notice of sale shall be required by law, at least ten (10) days' notice to Borrower of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification. At any sale of the IP Collateral, if permitted by law, Lender may bid (which bid may be, in whole or in part, in the form of cancellation of indebtedness) for and purchase the IP Collateral or any portion thereof for the account of Lender. Lender shall not be obligated to make any sale of the IP Collateral regardless of notice of sale having been given. Lender may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was adjourned. Borrower recognizes that Lender may elect in its sole discretion to sell all or part of the IP Collateral to one or more purchasers in privately negotiated transactions. Borrower hereby waives any claims against Lender arising by reason of the fact that the price at which any IP Collateral may have been sold at such a private sale was less than the price which might have been obtained at a public sale, even if Lender accepts the first offer received and does not offer such IP Collateral to more than one offeree. Lender shall also have the power to execute assurances and do all other acts and things for completing the assignment, sale, transfer, or disposition that Lender, in its sole discretion, deems appropriate or proper.

vi. In addition to the foregoing, in order to implement the assignments, sale, transfer, or other disposition of any of the IP Collateral pursuant to the provisions herein, Lender may, pursuant to the authority granted in the power of attorney provided for herein (such authority becoming effective after the occurrence and during the continuation of an Event of Defaults), execute and deliver on behalf of Borrower one or more instruments of assignment of the IP Collateral, in form suitable for filing, recording, or registration in any jurisdiction or country.

(g) Upon the effectiveness of the Transfer, Borrower shall have no right, title, or interest in or to any of the IP Collateral, and Borrower shall immediately cease and desist in the use of the Intellectual Property or any colorable imitation thereof, and shall, upon written demand of Lender, deliver to Lender (or Lender's designee) all IP Collateral including software code, formulas, unused or unsold goods bearing any trademarks or any other personal property representing any portion of or information related to the IP Collateral and any and all passwords, codes or other information necessary for Lender to access, manage and control all IP Collateral, including, without limitation, related to domain names and social media accounts.

(h) Upon the effectiveness of the Transfer, upon the written demand of Lender, Borrower shall execute and deliver to Lender an assignment or assignments of the IP Collateral and such other documents as are necessary or appropriate to carry out the intent and purposes of this Agreement; provided that the failure of Borrower to comply with such demand will not impair or affect the validity of the assignment effected by this Agreement. Borrower agrees that any such assignment and/or any recording thereof shall be applied to reduce the Obligations outstanding only to the extent that Lender actually receives cash proceeds in respect of the assignment, sale, or disposition of, or other realization upon, the IP Collateral.

(i) In the event of any such license, assignment, sale, transfer, or other disposition of the IP Collateral, after the occurrence and during the continuation of an Event of Default, Borrower shall supply to Lender (or Lender's designee) Borrower's know-how and expertise relating to the products and services sold and provided under or in any way related to the Intellectual Property, and other records relating to the IP Collateral and to the production, marketing, delivery, and sale of said products and services. Without limiting the generality of the foregoing, within ten (10) business days of written notice thereof from Lender, Borrower shall make available to Lender, to the extent within Borrower's power and authority, such personnel in Borrower's employ on the date of the Event of Default as Lender may reasonably designate, by name, title, or job responsibility, to permit Borrower or if Lender so elects, Lender (or Lender's designee) to continue, directly or indirectly, to manufacture, produce, supply, advertise, sell, and deliver the products or services sold by Borrower under any trademarks or in any way using or related to any Intellectual Property, such persons to be available to perform their prior functions on Lender's behalf and, if Lender so elects to use their services, to be compensated by Lender on a per diem, pro rata basis consistent with the wage, salary, and benefit structure applicable to each as of the date of such Event of Default.

(j) Nothing herein contained shall be construed as requiring Lender to take any of the foregoing actions at any time.

(k) Borrower agrees to pay when due all reasonable costs incurred in any license, assignment, sale, transfer, maintenance or other disposition of all or any portion of the IP Collateral to or by Lender, including any taxes, fees, and reasonable attorney fees, and all such costs shall be added to the Obligations. Lender may apply the proceeds actually received from any such license, assignment, sale, transfer, other disposition, or other collection or realization, to the reasonable out-of-pocket costs and expenses thereof, including, without limitation, reasonable attorney fees and all reasonable legal, travel, and other expenses that may be incurred or paid by Lender in protecting, maintaining or enforcing its rights upon or under this Agreement, the IP Collateral, the Collateral, or the Obligations, and any proceeds remaining shall be held by Lender as collateral for, and/or then or at any time thereafter applied (after payment of any amount payable to Lender) to the Obligations, in accordance with the Security Agreement; and Borrower shall remain liable and will pay Lender on demand any deficiency remaining, together with interest thereon at a rate equal to the highest rate then payable on the Obligations and the balance

of any expenses unpaid. Any surplus of such cash or cash proceeds held by Lender and remaining after payment in full of all the Obligations shall be paid over to Borrower or to whomsoever may be lawfully entitled to receive such surplus.

3. Representations, Warranties and Covenants of Borrower. Borrower represents and warrants to, and covenants and agrees with, Lender, as follows:

(a) *Existence; Authority.* Borrower is a limited liability company duly organized, validly existing and in good standing under the laws of its state of organization, and Borrower has the full power and authority to execute and deliver this Agreement, to perform its obligations hereunder, and to subject the IP Collateral to the terms hereof. The execution, delivery, and performance of this Agreement will not conflict with or contravene any contractual provision binding on Borrower with respect to the IP Collateral (including but not limited to any license agreement relating to the IP Collateral or any part thereof).

(b) *Trademarks, Patents and Copyrights.* As of the date of this Agreement, unless designated as "registered" on Schedule 1, Borrower does not have any copyrights, trademarks or patents registered with the USPTO or the U.S. Copyright Office or their foreign equivalents. Borrower will take all necessary actions on a timely basis to register any material, processes, code, original works of authorship or other any item which Borrower reasonably believes could be eligible for protection as a trademark, patent or copyright under the laws of the United States as further set forth in subsections (h) and (o).

(c) *Title.* Borrower is and will continue to be the sole and exclusive owner of the entire legal and beneficial right, title, and interest in and to the Intellectual Property and the IP Collateral, free and clear of any liens charges, security interest, or other encumbrance except for the security interest and conditional assignment created by this Agreement and the Security Agreement and liens and encumbrances permitted pursuant to the terms of the Loan Documents. Borrower will defend its right, title, and interests in and to the Intellectual Property and the IP Collateral against any and all claims of any third parties.

(d) *Validity.* Except as otherwise expressly set forth herein, the Intellectual Property rights are subsisting, and have not been adjudged invalid or unenforceable to the best of Borrower's knowledge and belief, and all of Borrower's rights in the Intellectual Property are valid and enforceable. Borrower is not aware of any claim by any third parties that any of the Intellectual Property or any of Borrower's rights therein is invalid or unenforceable.

(e) *Right to Use.* To the best of Borrower's knowledge and belief, Borrower has, and shall continue to have, the exclusive right to use all the Intellectual Property in the manner in which they are now used, with the goods and services with which they are now used, and throughout the geographic areas in which they are now used, free and clear of any liens, charges, encumbrances, claims, or rights of any third party, or restrictions on the rights of Borrower to protect or enforce any of its Intellectual Property rights against any third party.

(f) *No Other Security Interest.* There is not on file in any governmental or regulatory authority, agency, or recording office any effective financing statement, security agreement, assignment, license, or transfer or notice of any of the foregoing (other than those that may have been filed in favor of Lender) covering any of the IP Collateral, and Borrower is not aware of any such filing other than those for which duly executed termination statements have been delivered to Lender. So long as this Agreement shall be in effect, Borrower shall not

execute and shall not permit to be on file in any such office or agency any such financing statement or other document or instrument (except financing statements or other documents or instruments filed or to be filed in favor of Lender).

(g) **No Violations; Litigation.** Except as otherwise set forth herein, no claim has been made that Borrower's use of any of the Intellectual Property does or may violate the rights of any third party and there have been no adverse decisions to Borrower's claim of ownership rights in or exclusive rights to use the Intellectual Property or the IP Collateral associated therewith, or to its right to use and register the Intellectual Property in any jurisdiction or so keep and maintain such registrations in full force and effect, and there is no proceeding involving said rights threatened or pending in the USPTO or any similar office or agency of the United States, any state or foreign country or in any court. Borrower shall promptly notify Lender of the commencement of and any adverse decision in any proceeding in the USPTO or any similar office or agency of the United States or any state or any foreign country, or any court, regarding Borrower's claim of ownership in any of the Intellectual Property, or related IP Collateral, its right to register any of the same, or to keep and maintain any such registration.

(h) **Future Intellectual Property.** Borrower agrees that, upon its commencement of use of or acquisition of any right, title, or interest in or to any Intellectual Property or upon commencement of use of any Intellectual Property with (or the addition to any registration of) any new class of goods or services, the provisions of this Agreement shall automatically apply thereto, and Borrower shall promptly notify Lender thereof. Lender shall be authorized to amend this Agreement to add such Schedules, as appropriate, to include any Intellectual Property, without the necessity for Borrower's approval or signature to such amendment, and Borrower shall do all such other acts (at its own expense) deemed necessary or appropriate by Lender to implement, preserve Lender's interest therein (including but not limited to executing and delivering, and recording in all places where this Agreement is recorded, an appropriate counterpart of this Agreement). Such Intellectual Property shall be automatically included in the Intellectual Property as defined herein, and all representations and warranties of Borrower set forth herein shall be deemed to be restated by Borrower as of the date of any such amendment or addition of such Schedules with the full force and effect as though made on such date.

(i) **Maintenance.** Borrower, in the exercise of its reasonable business judgment, shall take any and all such actions (including but not limited to institution and maintenance of suits, proceedings, or actions) as may be necessary or appropriate to properly maintain, protect, preserve, care for, and enforce the Intellectual Property, Associated Goodwill, and Related Assets. Without limiting the generality of the foregoing, Borrower shall pay when due all fees, taxes, and other expenses that shall be incurred or shall accrue with respect to any of the Intellectual Property or the IP Collateral. Borrower shall continue to use the Intellectual Property in its business in the same or similar manner as it has in the past and in general shall continue to use the Intellectual Property in each and every class of goods and services applicable to Borrower's current use of the Intellectual Property in its business; all in order to maintain Borrower's rights in or to any Intellectual Property in full force, free from any claim or risk of abandonment for nonuse. Borrower shall not do any act or omit to do any acts if such act or omission is of a character that could have an adverse effect on or contribute to the abandonment of any rights in or to any Intellectual Property. Prohibited acts of the Borrower shall include, without limitation, "assignments in gross" of any Intellectual Property or the license of any Intellectual Property without both appropriate contractual use and quality control provisions and proper monitoring, supervision, and enforcement by Borrower. Notwithstanding the foregoing provisions of this Section or any other provision of this Agreement, Borrower shall, upon written notice to Lender, have the right to discontinue use, in whole or in part, of any Intellectual

Property where such discontinuance is deemed necessary or desirable by Borrower in the exercise of its reasonable business judgment.

(j) **Operations.** In order to protect and maintain the IP Collateral, Borrower shall operate its business and use the Intellectual Property in accordance with the same requirements and quality standards as in the past have been and now are applicable to its goods and services, and shall maintain the quality of all such goods and services, sold or provided under or in connection with the Intellectual Property commensurate with the quality of the business, goods, and services now and previously associated with the Intellectual Property.

(k) **Lender's Right of Inspection.** Borrower shall, upon reasonable prior notice by Lender and at reasonable times, permit Lender (or Lender's designee) from time to time to review, examine, or evaluate the offices and facilities (whether owned by Borrower, an affiliate of Borrower, or a subcontractor to Borrower) that manufacture, inspect, store, or provide goods or services under or in association with any of the Intellectual Property or where any of the Intellectual Property is maintained or in Use for any reason.

(l) **No Sale.** Borrower shall not take any actions or enter into any agreements, including but not limited to any actions or agreements for the assignment, sale, transfer, license, disposition, grant of any interest in, or encumbrance of any of the IP Collateral that are inconsistent with or would or might impair in any way Borrower's representations, warranties, and covenants herein, without the prior written consent of Lender (which consent, in the case of license agreements only, shall not be unreasonably withheld). Without limiting the generality of the foregoing, Borrower shall not permit the inclusion in any agreement to which it becomes a party of any provision which could or might in any way impair or prevent the creation of a security interest in or the conditional assignment of Borrower's rights and interests in any property acquired under such agreement which is included within the definition of IP Collateral.

(m) **Licensees.** Borrower shall do all things which may be necessary or appropriate to insure that each licensee of any Intellectual Property, in its use of any or all of the IP Collateral in its business, shall (i) comply fully with all applicable license agreements and (ii) satisfy and perform all the same standards and obligations set forth herein (with respect to Borrower's use of the IP Collateral) as fully as though such standards and obligations were set forth with respect to such licensee's use of the licensed IP Collateral. Borrower shall provide Lender 20 days' prior to Borrower's execution of any licensing agreement impacting the IP Collateral.

(n) **No Infringement.** To the best of Borrower's knowledge and belief, there is at present no material infringement or unauthorized or improper use of the Intellectual Property. Borrower shall use its best efforts to detect any such infringement or unauthorized or improper use. In the event of any such infringement or unauthorized or improper use by any third party, Borrower shall promptly notify Lender and shall have the first opportunity to sue and recover therefor and to retain any and all damages so recovered or obtained. In the event Borrower fails to so sue or bring legal action, Borrower shall notify Lender within ten (10) days after the date of original notice to Borrower of infringement or unauthorized or improper use and, thereafter, Lender shall save the right (but not the obligation), at Borrower's expense (including but not limited to reasonable attorney fees), and in the name of Borrower or Lender (in the sole discretion of Lender), to sue and recover therefor and obtain directly any and all damages recoverable on account thereof; any expenses incurred by Lender in any such case shall be added to the principal amount of the obligations and shall bear interest at the rate applicable to overdue principal on the Loans under the Loan Documents.

(o) ***Duty to Register.*** Borrower, at its own expense, shall, in the exercise of its reasonable business judgment or at the request of Lender, (i) apply to register all registrable but unregistered Intellectual Property with the USPTO and/or the Copyrights Office (and in such other jurisdictions as are commercially appropriate), and (ii) diligently prosecute its applications to register its Intellectual Property and use its best efforts to obtain such registrations. In the event any pending or hereafter filed application for registration of Intellectual Property, other than a renewal of any Intellectual Property registration, has been rejected by the USPTO, the Copyright Office or any foreign office or agency and Borrower determines in its reasonable business judgment that further prosecution of such application is not warranted, Borrower shall promptly notify Lender thereof in writing and may cease to prosecute such application ten (10) days after such notice.

(p) ***Certificates of Registration.*** Upon demand by Lender at any time, Borrower shall deliver to Lender the original or a true copy of all current official Certificates of Registration for any or all of the Intellectual Property (for any jurisdiction of registration), and forthwith upon receipt thereof the original or a true copy of all official Certificates of Registration for any Intellectual Property for which registration applications are then pending or thereafter filed.

(q) ***Records.*** Borrower has kept and will diligently keep complete and accurate records with respect to the Intellectual Property and Associated Goodwill. Borrower will at all times keep at least one set of such records at its chief executive office or principal place of business as set forth above. Borrower shall, upon reasonable prior notice by Lender and at reasonable times, permit Lender (or Lender's designee) from time to time to review, inspect, and examine such records.

(r) ***Perfection of Security Interest.*** This Agreement will create in favor of Lender a valid and perfected first priority security interest in the IP Collateral upon making the filings referred to herein. Except for the filing of financing statements with the appropriate Secretary of State's office under the Uniform Commercial Code and filings with the USPTO and/or Copyright Office with respect to the IP Collateral necessary to perfect and record the security interest and conditional assignment created hereunder, no authorization, approval, or other action by, and no notice to or filing with, any governmental or regulatory authority, agency, or office is required either (i) for the grant by Borrower or the effectiveness of the security interest and conditional assignment granted hereby or for the execution, delivery, and performance of this Agreement by Borrower, or (ii) for the perfection of or the exercise by Lender of its rights and remedies hereunder; provided, however, that the foregoing representation and warranty shall not apply to foreign Intellectual Property rights, if any.

(s) ***Financing Statements; Notice of Security Interest.*** Borrower authorizes Lender to file (i) a UCC financing statement, or alternatively, a copy of this Agreement to perfect Lender's security interest, and, as appropriate, (ii) a Notice of Grant of Security Interest, substantially in the form of Exhibit A, with the USPTO or equivalent notice with the Copyright Office. At Lender's request, Borrower additionally agrees to sign all other documents that are necessary to perfect, protect, and continue Lender's security interest in the IP Collateral.

(t) ***Information True and Correct.*** All information with respect to the IP Collateral set forth herein, in the Loan Documents, in the Security Agreement or in any schedule, certificate or other writing at any time heretofore or hereafter furnished by Borrower to Lender is and will be true, correct, and complete in all material respects as of the date furnished.

4. Consideration and Enforcement.

(a) Except as otherwise provided for herein or in the Loan Documents, Borrower shall continue to collect, at its own expense, all amounts due or to become due to Borrower in respect of the IP Collateral or any part thereof.

(b) Upon the occurrence and during the continuation of an Event of Default, Lender is hereby given full power and authority, without notice or demand, (i) to notify any and all obligors with respect to the IP Collateral or any part thereof, and (ii) to demand, take, collect, sue for, and receive for its own use and account all amounts due or to become due Borrower in respect of the IP Collateral, and in connection therewith to enforce all rights and remedies with respect to the IP Collateral or any part thereof that Borrower could enforce; and Borrower hereby ratifies any and all actions that Lender may lawfully take to enforce Lender's rights hereunder. Regardless of whether Lender shall have so notified any obligors, the Borrower shall at its expense cooperate with Lender and render all reasonable assistance to Lender in enforcing claims against such obligors.

(c) Except as otherwise provided for herein, Borrower shall have the right and the obligation to commence and prosecute in its own name, as real party in interest, for its own benefit and at its own expense, such suits, proceedings, or other actions to restrain, prevent, or recover for infringement, misuse, unfair competition, dilution, or other damage as are in its reasonable business judgment necessary or appropriate to maintain, protect, and enforce the rights in any Intellectual Property and Associated Goodwill. Lender shall cooperate with Borrower as may be reasonably necessary or appropriate in connection with any such suit, proceeding, or action, including but not limited to joining as a necessary party. Borrower shall indemnify and hold harmless Lender from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, judgments, suits, costs, expenses, or disbursements (including but not limited to attorney fees) of any kind whatsoever that may be imposed on, incurred, or suffered by or asserted against Lender in connection with or in any way arising out of such suits, proceedings, or actions.

(d) Upon the occurrence and during the continuation of an Event of Default, Lender shall have the right but in no way shall be obligated to bring suit or take such other actions in the name of Borrower or Lender (in the sole discretion of Lender), to protect, maintain, or enforce any of Borrower's rights or interests in, to, or under the IP Collateral or any part thereof, in which event Borrower shall at the request of Lender do any and all lawful acts and things and execute any and all documents and instruments requested by Lender in furtherance of such protection, maintenance, or enforcement. Borrower shall promptly, upon demand, indemnify and reimburse Lender for all liabilities, obligations, costs, expenses, or disbursements imposed on, incurred, or suffered by or asserted against Lender in the exercise of its rights hereunder. In the event Lender shall elect not to bring suit or take such other actions to protect, maintain, or enforce any such rights or interests of Borrower, Borrower shall use all reasonable measures, whether by action, suit, proceeding, or otherwise, to protect, maintain, and enforce such rights and interests, and for that purpose shall diligently maintain any such action, suit, or proceeding necessary or appropriate for such protection, maintenance, or enforcement.

5. Further Assurance. Upon the request of Lender, Borrower will use its best efforts to obtain any necessary consents of third parties to the grant and perfection of the security interest in the IP Collateral, and/or to the grant of effectiveness of the conditional assignment of the IP Collateral provided for herein.

6. Liabilities, Indemnity and Costs.

(a) Borrower shall be liable for any and all uses or misuses of any of the IP Collateral by itself and for any failure to take reasonable measures to avoid and prevent the improper use of the IP Collateral by any other party (including but not limited to any licensee of the Intellectual Property), any failure to use the Intellectual Property continuously except as expressly provided for herein, any failure to use the Intellectual Property in accordance with this Agreement, or any other claim, suit, loss, damage, expense, or liability of any kind or nature (except those resulting from any gross negligence or willful misconduct of Lender) arising out of or in connection with the IP Collateral or the production, design, manufacture, marketing, delivery, provision and sale of the goods and services provided under or in connection with any of the Intellectual Property or the IP Collateral prior to or after the effectiveness of the Transfer. Borrower shall be liable also for any claim, suit, loss, damage, expense, or liability arising out of or in connection with the improper acts or omissions of Borrower (regardless of whether such acts or omissions occurred or occur prior to or after such effectiveness).

(b) Nothing in this Agreement shall relieve Borrower from any performance of any covenant, agreement, or obligation of Borrower under any license agreement now or hereafter in effect licensing any part of the IP Collateral, or from any liability to any licensee or licensor under any such license agreement or to any other party, or shall impose any liability on Lender for any acts or omissions of Borrower in connection with any such license agreement.

(c) Borrower shall indemnify, defend and hold harmless Lender from and against, and shall pay to Lender on demand, any and all claims, actions, suits, judgments, penalties, losses, damages, costs, disbursements, expenses, obligations, or liabilities of any kind or nature (except those resulting from Lender's gross negligence or willful misconduct) arising in any way out of or in connection with this Agreement, the IP Collateral, custody, preservation, use, or operation of the IP Collateral, any alleged infringement of the intellectual property rights of any third party, the design, manufacture, production, marketing, delivery, and sale of the goods and services provided under or in connection with any of the Intellectual Property or the IP Collateral, the sale of, collection from, or other realization upon any of the IP Collateral, the failure of Borrower to perform or observe any of the provisions hereof, or matters related to any of the foregoing prior to or after the effectiveness of the Transfer. Borrower shall also indemnify, defend and hold harmless Lender from and against any and all claims, actions, suits, judgments, penalties, losses, damages, disbursements, expenses, obligations, or liabilities arising out of or in connection with any improper act or omission of Borrower (regardless of whether such act or omission occurred or occurs prior to or after such effectiveness). Borrower shall make no claim against Lender for or in connection with the exercise or enforcement by Lender of any right or remedy granted to it hereunder, or any action taken or omitted to be taken by Lender hereunder (except for the gross negligence or willful misconduct of Lender).

(d) Any and all fees, costs, and expenses, of whatever kind or nature, including but not limited to fees and disbursements of counsel and of any experts and Lenders, incurred by Lender in connection with the preparation of this Agreement and all other documents relating hereto and the consummation of the transactions contemplated hereby, the filing or recording of any documents (including all taxes in connection therewith) in public offices, the payment or discharge of any taxes, counsel fees, maintenance fees, or encumbrances, or otherwise protecting maintaining or preserving the IP Collateral, or in defending or prosecuting any actions or proceedings arising out of or related to the IP Collateral, or in exercising or enforcing any right or remedy granted to Lender hereunder, shall be borne and paid by Borrower on demand by Lender,

and until so paid shall be added to the principal amount of the Obligations and shall bear interest at the rate applicable to overdue principal on the Loans pursuant to the Loan Documents.

7. **Power of Attorney.** To facilitate the Lender's taking any action or exercising its rights under this Agreement, the Borrower hereby irrevocably appoints (which appointment is coupled with an interest) the Lender, or its delegate, as the attorney-in-fact of the Borrower with the right (but not the duty) from time to time to create, prepare, complete, execute, deliver, endorse or file, in the name and on behalf of the Borrower, any and all instruments, documents, applications, financing statements, and other agreements and writings required to be obtained, executed, delivered or endorsed by the Borrower under this Agreement, or, necessary for the Lender, after an Event of Default, to enforce or use the IP Collateral or to grant or issue any exclusive or non-exclusive license under the Intellectual Property to any third party, or to sell, assign, transfer, pledge, encumber or otherwise transfer title in or dispose of the IP Collateral to any third party. The Borrower hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof. The power of attorney granted herein shall terminate upon the termination of the Loan Documents as provided therein and the payment and performance of all Obligations.

8. **Specific Enforcement.** Due to the unique nature of the IP Collateral, and in order to preserve its value, Borrower agrees that Borrower's agreements, duties, and obligations under this Agreement shall be subject to specific enforcement and other appropriate equitable orders and remedies.

9. **Termination.** This is a continuing security interest in and conditional assignment of the IP Collateral and will continue in effect even though all or any part of the Indebtedness is paid in full and even though for a period of time Borrower may not be indebted to Lender. Upon termination of the Lender's security interest and lien on the IP Collateral in accordance with this Agreement and the Loan Documents, the Lender agrees to execute a Release of Security Agreement, which states that the Lender no longer has a lien of any type on the IP Collateral, including the lien created by this Agreement. Further, the Lender authorizes the Borrower to submit the Release of Security Agreement delivered by the Lender pursuant to the prior sentence with the USPTO, the Copyright Office, UCC, or other relevant authority to clear title to the IP Collateral.

10. **Additional Provision.** The loan secured by this lien was made under a United States Small Business Administration (SBA) nationwide program that uses tax dollars to assist small business owners. If the United States is seeking to enforce this document, then under SBA regulations:

(a) When SBA is the holder of the Note, this document and all documents evidencing or securing this Loan will be construed in accordance with federal law.

(b) Lender or SBA may use local or state procedures for purposes such as filing papers, recording documents, giving notice, foreclosing liens, and other purposes. By using these procedures, SBA does not waive any federal immunity from local or state control, penalty, tax, or liability. No Borrower or Guarantor may claim or assert against SBA any local or state law to deny any obligation of Borrower, or defeat any claim of SBA with respect to this Loan.

Any clause in this document requiring arbitration is not enforceable when SBA is the holder of the Note secured by this instrument.

11. **Cross-Collateralization.** In addition to the Note, this Agreement secures all obligations, debts and liabilities, plus interest thereon, of Borrower to Lender, or any one or more of them, as well as all claims by Lender against Borrower or any one or more of them, whether now existing or hereafter arising, whether related or unrelated to the purpose of the Note, whether voluntary or otherwise, whether

due or not due, direct or indirect, determined or undetermined, absolute or contingent, liquidated or unliquidated, whether Borrower may be liable individually or jointly with others, whether obligated as guarantor, surety, accommodation party or otherwise, and whether recovery upon such amounts may be or hereafter may become barred by any statute of limitations, and whether the obligation to repay such amounts may be or hereafter may become otherwise unenforceable.

12. **Future Advances.** In addition to the Note, this Agreement secures all future advances made by Lender to Borrower regardless of whether the advances are made (a) pursuant to a commitment or (b) for the same purposes.

13. **Security Agreement Provisions.** Unless otherwise superseded by the provisions herein, the provisions of the Section of the Security Agreement entitled "MISCELLANEOUS PROVISIONS" are hereby incorporated by reference, and all references therein to "Borrower" shall be "Borrower" for purposes of this Agreement.

14. **Miscellaneous.** All rights and remedies of the Lender shall be cumulative and may be exercised singularly or concurrently, at the Lender's option, and the exercise or enforcement of any one such right or remedy shall neither be a condition to nor bar the exercise or enforcement of any other. The Lender shall not be obligated to preserve any rights the Borrower may have against prior parties, to realize on the IP Collateral at all or in any particular manner or order, or to apply any cash proceeds of IP Collateral in any particular order of application. A carbon, photographic or other reproduction of this Agreement or of any financing statement signed by the Borrower shall have the same force and effect as the original for all purposes of a financing statement. All representations and warranties contained in this Agreement shall survive the execution, delivery, performance, and termination of this Agreement and the creation and payment of the Obligations.

15. **Waiver of Trial by Jury.** THE PARTIES HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER PARTY AGAINST THE OTHER PARTY ON ANY MATTER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE LOAN, THIS AGREEMENT OR ANY OF THE LOAN DOCUMENTS, THE RELATIONSHIPS BETWEEN BORROWER AND LENDER, OR BORROWER'S USE OF THE IP COLLATERAL.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Conditional Assignment and Intellectual Property Security Agreement as of the date first written above.

MACHINERY SERVICE & DESIGN, LLC

ALTERRA BANK

GKG CAPITAL MANAGEMENT, LLC,
Manager of Machinery Service & Design, LLC

By: Michele Walters
Michele Walters, SBA Relationship Manager

By: Gator J. Greenwill member
Gator J. Greenwill, Sole Member

EXHIBIT A

NOTICE OF GRANT OF SECURITY INTEREST IN TRADEMARKS

January 8, 2016

Assignment Recordation Branch
United States Patent and Trademark Office

To Whom It May Concern:

Please be advised that pursuant to the Conditional Assignment and Intellectual Property Security Agreement dated as of January 8, 2016, by and between Machinery Service and Design, LLC ("Borrower") and Alterra Bank ("Lender"), as the same may be amended, modified, extended, or restated from time to time (the "Agreement"), Borrower has granted a continuing security interest to Lender in any and all right, title and interest of Borrower in and to the trademarks and trademark applications set forth on the attached SCHEDULE 1 (the "Trademarks").

Borrower and Lender hereby acknowledge and agree that the security interest in the Trademarks (i) may only be terminated in accordance with the terms of the Agreement and (ii) is not to be construed as an assignment of any of the Trademarks.

Very truly yours,


MACHINERY SERVICE & DESIGN, LLC (Borrower)

GKG CAPITAL MANAGEMENT, LLC,
Manager of Machinery Service & Design, LLC

By: 
Gator J. Greenwill, Sole Member

Acknowledged and Accepted:

ALTERRA BANK (Lender)

By: 
Michele Walters, SBA Relationship Manager

SCHEDULE 1
INTELLECTUAL PROPERTY