

06-08-1998

HEET

U.S. DEPARTMENT OF COMMERCE

Patent and Trademark Office

To the Honorable Commissioner of

100731148

checked original documents or copy thereof

## 1. Name of conveying party(ies):

NexCycle, Inc.

☐ Individual(s) ☐ Association☐ General Partnership ☐ Other☒ Corporation Delaware

Additional name(s) of conveying party(ies) attached?

☐ Yes ☒ No

## 3. Nature of Conveyance:

☐ Assignment☐ Merger☒ Security Agreement☐ Change of Name☐ OtherExecution Date: February 27, 1998

## 2. Name and address of receiving party(ies):

Name: NationsBank of Texas, NA

Internal Address:

Street Address: 901 Main StreetCity: Dallas State: TXZIP: 75202☐ Individual(s) citizenship☐ Association☐ General Partnership☐ Limited Partnership☐ Limited Liability Corporation-State☒ Other National Banking AssociationIf assignee is not domiciled in the United States, a domestic representative designation is attached: ☐ Yes ☐ No  
(Designations must be a separate document from Assignment)Additional name(s) & address(es) attached? ☐ Yes ☒ No

## 4. Application number(s) or registration number(s):

A. Trademark Application No.(s)

75/136,121

75/136,122

75/136,123

B. Trademark Registration No.(s)

Additional numbers attached? ☐ Yes ☒ No

## 5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Jeffrey M. Becker

Internal Address:

Street Address: 901 Main Street, Suite 3100City: Dallas State: Texas ZIP: 75202-3789

## 6. Total number of applications and registrations involved: .....

3

7. Total fee (37 CFR 3.41) \$ 90.00☒ Enclosed☐ Authorized to be charged to deposit account

## 8. Deposit Account Number:

(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

## 9. Statement and Signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Jeffrey M. Becker

Name of Person Signing

Jeffrey M. Becker

Signature

May 18, 1998

Date

Total Number of Pages Comprising Cover Sheet

1

06/04/1998 DCOATES 00000241 75136121

01 FC 481 40.00 OP

02 FC 482 50.00 OP

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TRADEMARK  
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## COLLATERAL ASSIGNMENT OF INTELLECTUAL PROPERTY

THIS AGREEMENT is entered into as of February 27, 1998, between NEXCYCLE, INC., a Delaware corporation having a principal place of business at 5221 North O' Connor Road, Suite 850, Irving, Texas 75039-3756 ("**Assignor**"), and NATIONSBANK OF TEXAS, N.A., a national banking association having a principal place of business at 901 Main Street, Dallas, Texas 75202 (in its capacity as Collateral Agent for the Lenders now or in the future party to the Credit Agreement described below, "**Collateral Agent**").

1. **Defined Terms.** Unless otherwise defined herein, capitalized terms used in this agreement have the meanings assigned in the Credit Agreement (as hereinafter defined) and the following terms shall have the following meanings:

**"Books and Records"** are defined in *Section 2(d)* hereof.

**"Borrower"** means NexCycle Canada Ltd., a corporation incorporated under the laws of Ontario, Canada.

**"Chattel Paper"** shall have the meaning assigned to such term in the Code.

**"Code"** shall mean Chapter 9 of the Uniform Commercial Code as in effect from time to time in the State of Texas as amended (or any successor statute).

**"Collateral"** shall have the meaning assigned to such term in *Section 2* hereof.

**"Copyrights"** shall have the meaning assigned to such term in *Section 2* hereof.

**"Credit Agreement"** shall mean that certain Facility B Credit Agreement executed by and among Borrower, NationsBank of Texas, N.A., as Administrative Agent and Collateral Agent, and other Lenders, dated as of the date hereof.

**"Event of Default"** shall have the meaning assigned to such term in *Section 6* hereof.

**"Instruments"** shall have the meaning assigned to such term in the Code.

**"Patents"** shall have the meaning assigned to such term in *Section 2* hereof.

**"Secured Obligation"** shall have the meaning assigned to such term in *Section 3* hereof.

**"Trademarks"** shall have the meaning assigned to such term in *Section 2* hereof.

2. **Grant of Security Interest.** For value received and as collateral security for the Secured Obligation, Assignor hereby grants to Collateral Agent for the benefit of the Lenders a security interest, lien and mortgage in and to, and agrees and acknowledges that Collateral Agent has, and shall continue to have, a security interest, lien and mortgage in and to, its rights in all those assets and properties of Assignor of the types described below, wherever located, however arising or created, and whether now owned or existing or hereafter arising, created or acquired:

- (a) All patents, patent applications, and patent rights, together with (i) all reissues, divisions, substitutions, continuations, continuations-in-part, renewals and extensions thereof, (ii) all income, royalties, damages and payments for past or future infringements thereof, (iii) the right to sue for past, present and future infringements thereof, and (iv) all rights corresponding thereto throughout the world (all of the foregoing patents, patent applications and patent rights are hereinafter referred to as the "*Patents*"), including but not limited to those listed on *Exhibit A* attached hereto;
- (b) All trademarks and service marks, and all trademark registrations, service mark registrations, trade names, trade name rights, trademark applications, service mark applications, trade styles, logos, together with (i) all renewals thereof, (ii) all income, royalties, damages, and payments now or hereafter due and payable with respect thereto, including, without limitation, damages and payments for past or future infringements thereof, (iii) the right to sue for past, present and future infringements thereof, and (iv) all rights corresponding thereto throughout the world (all of the foregoing trademarks, service marks, trademark registrations, service mark registrations, trade names, trade name rights, trademark applications, service mark applications, trade styles and logos, are hereinafter referred to as the "*Trademarks*"), and the goodwill of Assignor's business connected with and symbolized by the Trademarks, including but not limited to those listed on *Exhibit A* attached hereto;
- (c) All original works of authorship fixed in any tangible medium of expression, including but not limited to all musical works, lyrics, sound recordings, literary works (including without limitation, computer software), dramatic works, pictorial, graphic and sculptural works, architectural works, and mask works, all whether published or unpublished, complete or incomplete, joint or sole works, and whether or not subject to an existing copyright, including the rights to reproduce them, prepare derivative works, distribute them, publicly perform or display them, arrange or contract for the exploitation of all or any part of them, and make any alterations, additions, deletions or other changes to them, and all copyrights and copyright registrations and recordings thereof in the United States or in countries foreign thereto, including, without limitation, applications, registrations and recordings in the United States Copyright Office or in any similar office or agency of the United States, any State thereof, or any foreign country, together with (i) all extensions, reissues or renewals thereof, (ii) all income, royalties, damages and payments for past, present or future infringements thereof, (iii) the right to sue for past, present and future infringements thereof, and (iv) all rights corresponding thereto throughout the world (all of the foregoing hereinafter referred to as the "*Copyrights*"), including but not limited to those listed on *Exhibit A* attached hereto;
- (d) All books, records, files, computer programs, data processing records, computer software, documents and other information, property, or general intangibles, at any time evidencing, describing, or pertaining to, and all containers and packages for, the property described or referred to in *subsections (a) through (c)* above (the "*Books and Records*"); and
- (e) All products and proceeds (as defined in the Code) of any of the property described above in any form, and all proceeds of such proceeds, including, without limitation, all cash and credit balances, all payments under any indemnity, warranty or guaranty with respect to

any of such property, all awards for taking by eminent domain, all proceeds of fire or other insurance, including any refunds of unearned premiums in connection with any cancellation, adjustment, or termination of any insurance policy, all proceeds obtained as a result of any legal action or proceeding with respect to any of such property, and claims by Assignor against third parties for loss or damage to, or destruction of, any of such property.

The property described or referred to in *subsections (a) through (e)* above is hereinafter collectively called the "*Collateral*."

3. **Indebtedness Secured.** The security interest contained herein is granted to secure the payment and performance of:

- (a) the "*Canadian Obligation*" (as is defined in the Credit Agreement) and Assignor's guarantee of the Canadian Obligation, including, without limitation, all present and future indebtedness, liabilities, and obligations of Assignor arising under this agreement (the "*Indebtedness*");
- (b) All costs and expenses reasonably incurred by Collateral Agent to obtain, preserve, perfect and enforce the security interest granted hereby and all other liens and security interests securing payment of the Indebtedness, to collect the Indebtedness and, to the extent any guarantors of the Indebtedness or Borrower is obligated to pay such costs and expenses pursuant to the Credit Agreement or any other Loan Document, to maintain, preserve and collect the Collateral, including, but not limited to, taxes, assessments, insurance premiums, repairs, reasonable attorneys' fees and legal expenses, rent, storage charges, advertising costs, brokerage fees and expenses of sale; and
- (c) All renewals, extensions and modifications of the Indebtedness or any part thereof.

The Indebtedness and costs mentioned in this *Section 3* are hereinafter collectively referred to herein as the "*Secured Obligation*."

4. **Assignor's Warranties and Representations.** Assignor represents and warrants to Collateral Agent that:

- (a) Assignor has the corporate authority to execute, deliver and perform this agreement; and the execution and performance hereof have been authorized by all necessary corporate action of Assignor;
- (b) Except for Permitted Liens, the Collateral is free and clear of all liens and subject only to such Permitted Liens, Assignor has good and indefeasible title to the Collateral;
- (c) As to after-acquired Collateral which is material to the operation of Assignor's business, Assignor will have when such Collateral becomes subject to this agreement, good and indefeasible fee or leasehold title to, the Collateral, free and clear of all liens except Permitted Liens;

- (d) As of the date of this agreement, the place of business (or chief executive office if Assignor maintains more than one place of business) of Assignor is at 5221 North O'Connor Road, Suite 850, Irving, Texas 75039-3756;
- (e) Except as disclosed in writing to Collateral Agent, no material dispute, right of set-off, counterclaim or defenses have been successfully asserted or are currently being asserted against Assignor with respect to any part of the Collateral;
- (f) The Patents, Trademarks and Copyrights listed on *Exhibit A* constitute all of the current Patents, registered and material unregistered Trademarks, and registered and material unregistered Copyrights owned by Assignor and include all of the current Patents, Trademarks, and Copyrights material to the operation of Assignor. All of the Patents, registered Trademarks and registered Copyrights listed on *Exhibit A* are subsisting and in full force and effect and have not been adjudged invalid, void or unenforceable in the countries indicated. Further, to the best of Assignor's knowledge, Assignor may utilize such Patents, Trademarks, and Copyrights in its business in those countries where Assignor conducts significant business, where patent, trademark or copyright applications still are pending (notwithstanding the outcome of said applications) or where no patents, trademark registrations, or copyrights registrations exist;
- (g) As of the date of this agreement, no claim has been made successfully or is currently being made that the use of any of the Patents, Trademarks, or Copyrights which are material to the operation of Assignor's business does or may violate the rights of any third person (including, without limitation, any demand or request that Assignor license or acquire any rights from a third party), which claim, if successfully prosecuted, would constitute a Material Adverse Event, and Assignor has no knowledge of any third person infringing on or misappropriating any of Assignor's rights in the Patents, Trademarks, and Copyrights which infringement or misappropriation would constitute a Material-Adverse Event;
- (h) All of the representations and warranties made by Assignor in all instruments and documents evidencing and securing the Secured Obligation or any part thereof, including, without limitation, this agreement, were true and correct in all material respects when made;
- (i) There has been no claim made successfully and there is no claim currently being made against Assignor asserting the invalidity, misuse or unenforceability of any of the Patents, Trademarks, or Copyrights which are material to the operation of Assignor's business, which claim, if successfully prosecuted, would constitute a Material Adverse Event, and to the best of Assignor's knowledge, there are no valid grounds for same;
- (j) To the best of Assignor's knowledge, the conduct of Assignor's business has not infringed, misappropriated or conflicted with and does not infringe, misappropriate or conflict with any intellectual property rights of the type listed in *subsections (a) through (c)* of *Section 2* above of other persons or entities, nor would any future conduct as presently contemplated infringe, misappropriate or conflict with any such intellectual property rights of other persons or entities, subject to any such infringement, misappropriation or conflict as, in the aggregate, has previously been settled or has not

given rise to and does not give rise to any liability on the part of Assignor which has caused or may cause a Material Adverse Event; and

- (k) Any errors or inaccuracies contained in applications for registration or issuance and subsequent prosecution of the Patents, Trademarks, and Copyrights were inadvertent and made in good faith.

5. **Assignor's Covenants and Agreements.** Assignor covenants and agrees with Collateral Agent that:

- (a) Assignor shall, at its expense, make, procure, execute and deliver such financing statement or statements, or amendments thereof or supplements thereto, or other instruments, certificates, assignments, passbooks and supplemental writings, and do and deliver all acts, things, writings and assurances as Collateral Agent may from time to time reasonably require in order to comply with the Code, or any other applicable law, and to preserve and protect the security interest hereby granted. In the event, for any reason, that the laws of any jurisdiction other than the State of Texas becomes or is applicable to the creation, perfection or continuation of Collateral Agent's security interest and lien in the Collateral, or any part thereof, Assignor agrees to execute and deliver all such instruments and to do all such other things as may be necessary or appropriate to preserve, protect and enforce the security interest or lien of Collateral Agent, under the law of such other jurisdiction, to at least the same extent as such security interest would be protected under the Code;
- (b) Until the termination of this agreement, Assignor will not execute and there will not be on file in any public office any financing statement or statements creating or evidencing a Lien covering any of the Collateral, except as may have been or may hereafter be granted to Collateral Agent or that may evidence or perfect other Permitted Liens and Assignor further agrees that it will keep the Collateral free from any lien, or any other legal or equitable process, or any encumbrance of any kind or character, except for Permitted Liens;
- (c) Collateral Agent and its agents shall have the right to examine, audit, inspect and copy, as the case may be, the Collateral during all normal business hours after reasonable notice to Assignor, the exercise of such right to be conditioned on the entry by Collateral Agent and its agents into a reasonable nondisclosure agreement or the adoption of other means reasonably needed to protect the confidentiality of material examined, audited, inspected, and copied pursuant to this paragraph.
- (d) Upon the occurrence and during the continuance of an Event of Default, Assignor shall promptly, at its expense, upon the request of Collateral Agent:
  - i. Deliver to Collateral Agent, with appropriate endorsement or assignment, all Instruments, Chattel Paper, monies, checks, notes, drafts and other evidence of indebtedness, or other property in the nature of items of payment representing proceeds of any of the Collateral, or arising from an account, which are then in, or may thereafter come into, Assignor's possession; and

- ii. To the extent permitted by law, direct all parties obligated on any of the Collateral to make all payments due or to become due thereon directly to Collateral Agent or to such other person or officer as may be specified by Collateral Agent;
- (e) Assignor shall perform, at its sole cost and expense, any and all reasonable steps, and shall pay the amount of all reasonable expenses necessary to defend and enforce the security interest in, any of the Collateral and to defend, enforce and collect the Collateral (other than Collateral that Assignor reasonably deems to be no longer necessary for the conduct of its business), to the extent commercially reasonable to do so;
- (f) All risk and liability for safekeeping of the Collateral shall at all times, either before or after possession thereof by Collateral Agent, remain that of Assignor;
- (g) Assignor shall give Collateral Agent thirty-days' prior written notice of any change in its chief executive office;
- (h) Except for Patents, Trademarks, or Copyrights that Assignor reasonably deems not to be or no longer necessary for the conduct of its business, Assignor shall, to the extent commercially reasonable to do so, (i) promptly file applications for all future Patents, Trademarks, or Copyrights in the United States Copyright Office and the United States Patent and Trademark Office, and where deemed appropriate corresponding foreign offices in which Assignor has or expects to have significant business, (ii) diligently prosecute any patent, trademark, service mark, or copyright application of the Patents, Trademarks or Copyrights, now or hereafter pending, for so long as registration is deemed to be reasonably probable and cost effective, (iii) file, prosecute, and defend all infringements, opposition and cancellation proceedings that would have a material adverse impact on any of the Collateral, except those actions which would have no reasonable likelihood of success or would not be cost effective, (iv) preserve, maintain and renew all rights and patents and patent applications, trademark, service mark or copyright applications, trademark, service mark or copyright registrations of the Patents, Trademarks, or Copyrights (any expenses incurred in connection with such application shall be borne by Assignor), for so long as the success of such efforts is reasonably probable and such efforts are cost effective, (v) not abandon any pending patent, trademark, service mark or copyright application, without the consent of Collateral Agent, which consent shall not be unreasonably withheld, and (vi) make reasonable, cost effective, efforts to remedy and correct all errors and inaccuracies that Assignor becomes aware of in any applications for registration and subsequent prosecution of the Trademarks and the Copyrights;
- (i) Except as specifically allowed in the Credit Agreement, Assignor shall not sell or assign its interest in, or grant any license under, the Patents, Trademarks, or Copyrights without the prior consent of Collateral Agent, which consent shall not be unreasonably withheld except for (i) licenses to affiliates of Assignor permitted under the Credit Agreement;
- (j) Assignor shall maintain the quality of any and all products or services in connection with the Patents, Trademarks, or Copyrights, consistent with the quality of such products or services as of the date hereof;

- (k) Except as specifically allowed in the Credit Agreement, Assignor shall not, without Collateral Agent's prior written consent, which consent shall not be unreasonably withheld enter into any agreement, including, but not limited to, any licensing agreement, that is inconsistent with Assignor's obligations under this agreement or the Credit Agreement, will not take any action, or permit any action to be taken, that would affect the validity or enforcement of the rights transferred to Collateral Agent under this agreement or which may result in a material change to or abandonment, invalidation, unenforceability, avoidance or diminution in the value of the Patents, Trademarks, or Copyrights and shall notify Collateral Agent immediately if it knows of any reason or has reason to know that any of the Patents, Trademarks, or Copyrights may become abandoned, invalidated, unenforceable, voided or diminished in value, to the extent such occurrence would constitute a Material Adverse Event;
- (l) If Assignor shall, either itself or through any agent, employee, licensee or designee, (i) file an application for the registration of any patents, trademarks, service marks or copyrights with the United States Patent and Trademark Office or the United States Copyright Office or any similar office or agency in the United Kingdom, Canada, or any other country or any political subdivision thereof or (ii) file any assignment of any patent, copyright, service mark or trademark, which Assignor may acquire from a third party, with the United States Patent and Trademark Office or the United States Copyright Office or any similar office or agency in the United Kingdom, Canada, or any other country or any political subdivision thereof, then Assignor shall, no less often than the last day of each calendar quarter during the term of this agreement notify Collateral Agent thereof, and, upon request of Collateral Agent, execute and deliver any and all assignments, agreements, instruments, documents and papers as Collateral Agent may request to evidence the Collateral Agent's interest in such patent, trademark, service mark or copyright and the goodwill and general intangibles of Assignor relating thereto or represented thereby, and Assignor hereby constitutes the Collateral Agent its attorney-in-fact to execute and file all such writings for the foregoing purposes if Assignor has failed to timely do so; such power being coupled with an interest is irrevocable until the Secured Obligation is paid in full. If Assignor shall obtain rights to any new patents, trademarks, service marks, or copyrights, the provisions of this agreement shall automatically apply thereto and Assignor shall give to Collateral Agent prompt notice thereof in writing; Assignor hereby authorizes the Collateral Agent to modify this agreement by amending *Exhibit A* to include any future patents, trademarks, service marks, or copyrights, or patent applications, trademark applications, service mark applications or copyright applications covered by this agreement; and
- (m) Assignor assumes all responsibility and liability arising from the use by Assignor of the Trademarks, Patents, and Copyrights, and Assignor hereby indemnifies and holds Collateral Agent harmless from and against any claim, suit, loss, damage or expense (including reasonable attorneys' fees) arising out of any alleged defect in product manufactured, promoted or sold by Assignor (or any affiliate or subsidiary thereof) in connection with any Trademark, Patent, or Copyright or out of the manufacture, promotion, labeling, sale or advertisement of any such product by Assignor (or any affiliate or subsidiary thereof). Assignor agrees that Collateral Agent does not assume, and shall have no responsibility for, the payment of any sums due or to become due under



any agreement or contract included in the Collateral or the performance or any obligations to be performed under or with respect to any such agreement or contract by Assignor.

6. **Events of Default.** Assignor shall be in default under this agreement upon the happening of any of the following events or conditions (hereinafter called an "*Event of Default*"):
- (a) An Event of Default under the Credit Agreement shall occur and be continuing; or
  - (b) To the extent a Material Adverse Event, Collateral Agent's liens in any material part of the Collateral should become unenforceable, or with the exception of Permitted Liens, cease to be first priority liens.
7. **Power of Attorney.** Assignor hereby irrevocably constitutes and appoints Collateral Agent, with full power of substitution, as its true and lawful attorney-in-fact, effective upon the occurrence of and during the continuance of an Event of Default, with full irrevocable power and authority in its name or in Collateral Agent's own name, to take after the occurrence and during the continuance of an Event of Default any and all action and to execute thereafter any and all documents and instruments which Collateral Agent deems necessary or desirable to accomplish the purposes of this agreement and, without limiting the generality of the foregoing, Assignor hereby gives Collateral Agent the power and right on its behalf and in its own name to do any of the following, without notice to or the consent of said Assignor, but only after the occurrence and during the continuance of an Event of Default:
- (a) to demand, sue for, collect, or receive in the name of any Assignor or in its own name or in the name of Collateral Agent, any money or property at any time payable or receivable on account of or in exchange for any of the Collateral, and, in connection therewith, endorse checks, notes, drafts, acceptances, money orders, documents of title, or any other instruments for the payment of money under the Collateral;
  - (b) to pay or discharge taxes, liens, security interests, or other encumbrances levied or placed on or threatened against the Collateral;
  - (c) to send requests for verification to parties obligated in respect of the Collateral;
  - (d) to direct any parties liable for any payment under any of the Collateral to make payment of any and all monies due and to become due thereunder directly to Collateral Agent or as Collateral Agent shall direct and to receive payment of and receipt for any and all monies, claims, and other amounts due and to become due at any time in respect of or arising out of any Collateral;
  - (e) to commence and prosecute any suit, action, or proceeding 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 or to settle, compromise, or adjust any suit, action, or proceeding described above and, in connection therewith, to give such discharges or releases as Collateral Agent may deem appropriate;
  - (f) to add or release any guarantor, endorser, surety, or other party to any of the Collateral or the Obligation; and

- (g) to sell, transfer, pledge, make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though Collateral Agent were the absolute owner thereof for all purposes, and to do, at Assignors' expense, at any time, or from time to time, all acts and things which the Collateral Agent deem reasonably necessary to protect, preserve or realize upon the Collateral and Collateral Agent's security interest therein.

This power of attorney is a power coupled with an interest and shall be irrevocable. Collateral Agent shall not be under any duty to exercise or withhold the exercise of any of the rights, powers, privileges, and options expressly or implicitly granted to Collateral Agent in this agreement, and shall not be liable for any failure to do so or any delay in doing so. Collateral Agent shall not be liable for any act or omission or for any error of judgment or any mistake of fact or law in Collateral Agent's capacity or in Collateral Agent's capacity as attorney-in-fact except acts or omissions resulting from their own gross negligence or willful misconduct. This power of attorney is conferred on Collateral Agent solely to protect, preserve, and realize upon Lenders' security interest in the Collateral. Collateral Agent shall not be responsible for any decline in the value of the Collateral and shall not be required to take any steps to preserve rights against prior parties or to protect, preserve, or maintain any security interest or lien given to secure the Collateral.

**8. Collateral Agent's Rights and Remedies.**

- (a) In the event of the occurrence and during the continuance of any Event of Default, in addition to the rights and remedies provided in *Section 7* hereof and in the Code, without demand, presentment, notice of intention to accelerate, notice of acceleration or any other notice (which are fully waived):
  - i. Collateral Agent may, at its option, take possession and dispose of all or any portion of the Collateral, to the extent permitted by law, at public or private sale, as a unit or in parcels, upon any terms and prices and in any order, free from any claim or right of any kind including any equity of redemption of Assignor, ANY SUCH DEMAND, RIGHT OR EQUITY BEING EXPRESSLY WAIVED AND RELEASED. Any disposition of the Collateral may be made by way of one or more contracts and at any such disposition it shall not be necessary to exhibit the Collateral;
  - ii. Collateral Agent may, at its option, to the extent permitted by the Code or other applicable law, sell and deliver any Collateral at public or private sale, for cash, upon credit or otherwise, at such prices and upon such terms as Collateral Agent deems advisable, in its sole discretion, and may, if Collateral Agent deems it reasonable, postpone or adjourn any sale of the Collateral by an announcement at the time and place of sale or of such postponed or adjourned sale without giving a new notice of sale;
  - iii. If any Collateral is sold on terms other than payment in full at the time of sale, no credit shall be given against the Secured Obligation until Collateral Agent receives payment, and if the buyer defaults in payment, then Collateral Agent may resell the Collateral without further notice to Assignor;

- iv. If Collateral Agent seeks to take possession of all or any portion of the Collateral by judicial process, Assignor irrevocably waives (A) the posting of any bond, surety or security with respect thereto that might otherwise be required, (B) any demand for possession prior to the commencement of any suit or action to recover the Collateral, and (C) any requirement that Collateral Agent retain possession and not dispose of any Collateral until after trial or final judgment;
- v. Assignor agrees that Collateral Agent has no obligation to preserve rights to the Collateral or marshal any Collateral for the benefit of any person; and
- vi. Collateral Agent is hereby granted a license or other right (exercisable only during the continuance of an Event of Default) to use, without charge, Assignor's labels, Patents, Copyrights, Trademarks, and advertising matter or any similar property, in completing production of, advertising or selling any Collateral, and Assignor's rights under all licenses and all franchise agreements shall inure to the benefit of Collateral Agent.

(b) In addition:

- i. Collateral Agent shall not be liable for any act or omission on the part of Collateral Agent, its officers, agents, or employees, except for gross negligence or willful misconduct. All rights and remedies of Collateral Agent hereunder are cumulative and may be exercised singly or concurrently. The exercise of any right or remedy will not be a waiver of any other;
- ii. The rights, titles, interests, liens and securities of Collateral Agent hereunder shall be cumulative of all of the securities, rights, titles, interests or liens which Collateral Agent may now or at any time hereafter hold securing the payment of the Secured Obligation, or any part thereof;
- iii. Collateral Agent is hereby expressly authorized after and during the continuance of an Event of Default to apply by appropriate judicial proceedings for appointment of a receiver for the Collateral, or any part thereof; and
- iv. After and during the continuance of an Event of Default, Collateral Agent shall be entitled to apply the proceeds of any sale or other disposition of the Collateral, and the payments received by Collateral Agent with respect to any of the Collateral, first to the payment of all its reasonable expenses, including attorneys' fees and legal expenses, incurred in holding and preparing the Collateral, or any part thereof, for sale or other disposition, in arranging for such sale or other disposition, and in actually selling the same, and next toward payment of the balance of the Secured Obligation in such order and manner as Collateral Agent, as directed by the Required Lenders, may deem advisable. Collateral Agent shall account to the Assignor for any surplus. If the proceeds are not sufficient to pay the Secured Obligation in full, the Assignor shall remain liable for any deficiency.

9. **Miscellaneous.**

- (a) This Agreement and the transactions evidenced hereby shall be governed by, and interpreted and enforced in accordance with, the laws of the State of Texas, except that no doctrine of choice of law shall be used to apply the laws of any other state or jurisdiction.
- (b) This Agreement is binding upon and shall inure to the benefit of Assignor, Lenders, Collateral Agent, their respective representatives, administrators, successors and assigns; provided, however, that Assignor may not, without the prior written consent of Required Lenders, assign any rights, powers, duties or obligations hereunder and each Lender reserves the right to assign any or all of its rights hereunder in connection with any assignment under *Section 13.11* of the Credit Agreement and in accordance with the terms thereof.
- (c) Any notice of sale, disposition or other action by Collateral Agent required by the Code and sent to Assignor at Assignor's address shown below or at such other address of Assignor as may from time to time be shown on the records of Collateral Agent, at least ten (10) calendar days prior to such action, shall constitute reasonable notice to Assignor. Notice shall be deemed given or sent when mailed postage prepaid to Assignor's address.

**Assignor's Notice Address:**

5221 N. O'Connor Road

Suite 850

Irving, Texas 75039-3756

Attn: Alexander C. Rankin, President and Chief Executive Officer

Tel: (972) 506-7200


Fax: (972) 506-7865

- (d) No failure to exercise, and no delay in exercising, on the part of Collateral Agent, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right.
- (e) This Agreement shall not be amended in any way except by a written agreement signed by Collateral Agent, Required Lenders, and Assignor.
- (f) To the extent any provision of this agreement conflicts with the express terms of the Credit Agreement, then the terms of the Credit Agreement shall control.
- (g) Collateral Agent shall, upon the reasonable request of Assignor, and upon satisfactory evidence of compliance with the Credit Agreement, release any portion of the Collateral which is permitted to be sold or otherwise transferred under this agreement or the Credit Agreement.

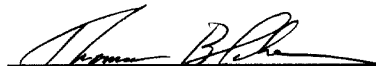
***REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.  
SIGNATURE PAGE FOLLOWS.***

IN WITNESS WHEREOF, the undersigned have duly executed this agreement as of the date first above written.

NEXCYCLE, INC.

By   
Alexander C. Rankin, President and Chief  
Executive Officer

NATIONSBANK OF TEXAS, N.A.

By   
Thomas Blake, Senior Vice President

Signature Page to Collateral Assignment of Intellectual Property

TRADEMARK  
REEL: 1736 FRAME: 0979

**EXHIBIT A**

**PATENTS, TRADEMARKS AND COPYRIGHTS**

**1. Patents**

None

**2. Trademarks**

**United States**

Mark	Reg. No.	Reg. Date	Appl. No.	Appl. Date
NexCycle	n/a	n/a	75/136,121	July 18, 1996
NexCycle	n/a	n/a	75/136,123	July 18, 1996
NexCycle	n/a	n/a	75/136,122	July 18, 1996

**3. Copyrights**

None