

## TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1  
Stylesheet Version v1.2

ETAS ID: TM318893

<b>SUBMISSION TYPE:</b>	NEW ASSIGNMENT		
<b>NATURE OF CONVEYANCE:</b>	SECURITY INTEREST		
<b>CONVEYING PARTY DATA</b>			
<b>Name</b>	<b>Formerly</b>	<b>Execution Date</b>	<b>Entity Type</b>
CACIQUE, INC.		09/30/2014	CORPORATION: CALIFORNIA
<b>RECEIVING PARTY DATA</b>			
<b>Name:</b>	BANK OF AMERICA, N.A.		
<b>Street Address:</b>	70 BATTERSON PARK ROAD		
<b>Internal Address:</b>	MAIL CODE: CT2-515-BB-11		
<b>City:</b>	FARMINGTON		
<b>State/Country:</b>	CONNECTICUT		
<b>Postal Code:</b>	06032		
<b>Entity Type:</b>	NATIONAL BANK: NORTH CAROLINA		
<b>PROPERTY NUMBERS Total: 83</b>			
<b>Property Type</b>	<b>Number</b>	<b>Word Mark</b>	
Registration Number:	1215057		
Registration Number:	2915613	CACIQUE	
Registration Number:	3662558	CACIQUE	
Registration Number:	3859152	CACIQUE	
Registration Number:	4457466	CACIQUE	
Registration Number:	3798698	CACIQUE ALL NATURAL PURE CHEESE	
Registration Number:	3777202	CACIQUE QUESO FRESCO	
Registration Number:	2963684	CACIQUE FAMILY RESERVE	
Registration Number:	3840211		
Registration Number:	3813356		
Registration Number:	3809755		
Registration Number:	3789879		
Registration Number:	3813357		
Registration Number:	3813358		
Registration Number:	3809756		
Registration Number:	3813359		
Registration Number:	1951689	CALIDAD ES NUESTRA TRADICION!	
Registration Number:	3013736	CHAPALA	
Registration Number:	2909900	CHAPALA	
<b>TRADEMARK</b>			

CH \$2090.00 1215057

Property Type	Number	Word Mark
Registration Number:	2773464	
Registration Number:	2257752	CREMA POBLANA
Registration Number:	3574825	CACIQUE; CREMA SALVADORENA; GRADE A SALV
Registration Number:	3493864	D'COJUTE
Registration Number:	3493870	D'COJUTE
Registration Number:	1970361	DE LA CASA
Registration Number:	2127422	DE LA CASA
Registration Number:	2905580	DE LA CASA
Registration Number:	4237977	DISFRUTA LO MAS FRESCO
Registration Number:	2049542	DONA ROSA
Registration Number:	4190935	DRINKING IS BELIEVING
Registration Number:	2072108	DRINK UP
Registration Number:	3045823	DRINK UP!
Registration Number:	1152572	EL CACIQUE
Registration Number:	1215056	EL CACIQUE
Registration Number:	2539792	EL MAS FRESCO . . . EL MERO MERO
Registration Number:	4429407	EL MERO MERO
Registration Number:	2963685	FAMILY RESERVE
Registration Number:	4231361	FINCA SAN VICENTE
Registration Number:	3905577	GO AUTÉNTICO
Registration Number:	4198904	GO AUTHENTICO
Registration Number:	3909161	GO REAL GO AUTÉNTICO
Registration Number:	4226064	GO REAL GO AUTÉNTICO
Registration Number:	4083269	CACIQUE GO AUTHENTICO
Registration Number:	4058377	LA SELECCION AUTENTICA
Registration Number:	4344971	INSPIRACIÓN AUTÉNTICA
Registration Number:	3113924	LA GOTA DE LECHE
Registration Number:	2805647	LA NICA
Registration Number:	2490507	LE FALTA? LE FALTABA!
Registration Number:	3325785	LEND A HELPING HAND
Registration Number:	3386187	LOLA'S CREAMERY
Registration Number:	3310043	MARIA'S COCINA
Registration Number:	4210479	MARIA'S COCINA
Registration Number:	3600246	MEGADEMO
Registration Number:	2093442	MEX-TEX CLASSIC
Registration Number:	2093424	IVORY MEX-TEX CLASSIC
Registration Number:	2093425	JALAPENO MEX-TEX CLASSIC
Registration Number:	2538524	
Registration Number:	1498825	NOCHEBUENA

**TRADEMARK**

Property Type	Number	Word Mark
Registration Number:	3534067	NOCHEBUENA
Registration Number:	3554026	
Registration Number:	3366565	NORTENO
Registration Number:	1729623	NORTENO
Registration Number:	3500616	POBLANO
Registration Number:	4227756	PONELE SABOR TIPICO
Registration Number:	3809624	QUALITY AUTHENTICITY INTEGRITY FAMILY
Registration Number:	2040842	QUALITY IS OUR TRADITION!
Registration Number:	1152571	QUESO RANCHERO
Registration Number:	2169698	RANCHERO
Registration Number:	3294606	RANCHERO
Registration Number:	3745734	CACIQUE RANCHERO QUESO FRESCO PART SKIM
Registration Number:	3920804	RIKITOS
Registration Number:	3981825	SHAKE, TWIST AND DRINK YOUR WAY TO THE W
Registration Number:	3783792	SINCE 1973 QUALITY AUTHENTICITY INTEGRIT
Registration Number:	3840136	SINCE 1973 QUALITY AUTHENTICITY INTEGRIT
Registration Number:	4210294	SUNNY STATE FARMS
Registration Number:	2469839	UNA MANO AMIGA
Registration Number:	1970485	YONIQUE
Registration Number:	2315171	
Registration Number:	3522420	BELLA GIANA
Serial Number:	86368483	DOS QUESOS
Serial Number:	86368493	FOUR QUESOS
Serial Number:	85760561	AUTENTICO CHEESE SOCIETY
Serial Number:	85759335	AUTENTICO CHEESE SOCIETY

**CORRESPONDENCE DATA**

**Fax Number:** 2134432926  
*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.*  
**Phone:** 213-617-5493  
**Email:** jcravitz@sheppardmullin.com  
**Correspondent Name:** Sheppard, Mullin, Richter & Hampton LLP  
**Address Line 1:** 333 S. Hope St., 43rd Floor  
**Address Line 2:** Attn: J. Cravitz  
**Address Line 4:** Los Angeles, CALIFORNIA 90071

<b>ATTORNEY DOCKET NUMBER:</b>	0BN3-201577
<b>NAME OF SUBMITTER:</b>	JULIE CRAVITZ
<b>SIGNATURE:</b>	/JULIE CRAVITZ/
<b>DATE SIGNED:</b>	10/02/2014

**Total Attachments: 35**

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## SECURITY AGREEMENT

This SECURITY AGREEMENT dated as of September 30, 2014, is made by CACIQUE, INC., a California corporation ("Borrower"), in favor of BANK OF AMERICA, N.A., its subsidiaries and affiliates (collectively, "Secured Party"), with reference to the following facts:

### RECITALS

A. Borrower has entered into that certain Loan Agreement of even date herewith (as amended, restated, extended, supplemented or otherwise modified, the "Loan Agreement"), between the Borrower and Secured Party, pursuant to which Secured Party has agreed to extend certain credit facilities to Borrower.

B. The Loan Agreement provides that, as a condition to the availability of the aforementioned credit facilities to the Borrower, Borrower shall enter into this Agreement and grant a security interest in the Collateral (as defined below) to Secured Party.

C. Borrower expects to realize direct and indirect benefits as a result of the availability of the aforementioned credit facilities.

### AGREEMENT

NOW, THEREFORE, in order to induce Secured Party to extend the aforementioned credit facilities, and for other good and valuable consideration, the receipt and adequacy of which hereby are acknowledged, Borrower hereby represents, warrants, covenants, agrees, assigns and grants as follows:

1. Definitions. This Agreement is the Security Agreement referred to in the Loan Agreement. This Agreement is one of the Loan Documents referred to in the Loan Agreement. Terms defined in the Loan Agreement and not otherwise defined in this Agreement shall have the meanings set forth for those terms in the Loan Agreement. Terms defined in the California Uniform Commercial Code ("California UCC") and not otherwise defined in this Agreement or in the Loan Agreement shall have the meanings set forth for those terms in the California UCC (and, if defined in more than one Division of the California UCC, shall have the meanings given in Division 9 thereof). As used in this Agreement, the following terms shall have the meanings respectively set forth after each:

"Agreement" means this Security Agreement, and any extensions, modifications, renewals, restatements, supplements or amendments hereof.

"Collateral" means and includes all present and future right, title and interest of Borrower in and to all of its personal property, whether now or hereafter acquired and wherever the same may from time to time be located, and all rights and powers of Borrower to transfer any interest in or to any of its personal property, including, without limitation, any and all of the following property:

(a) All present and future accounts, accounts receivable, agreements, contracts, leases, contract rights, payment intangibles, rights to payment, instruments, documents, chattel paper (whether tangible or electronic), promissory notes, security agreements, guaranties, letters of credit, letter-of-credit rights, undertakings, surety bonds, insurance policies (whether or not required by the terms of the Loan Documents), notes and

drafts, and all forms of obligations owing to Borrower or in which Borrower may have any interest, however created or arising and whether or not earned by performance;

(b) All present and future general intangibles, all tax refunds of every kind and nature to which Borrower now or hereafter may become entitled, however arising, all other refunds, and all deposits, credits, reserves, loans, royalties, cost savings, deferred payments, goodwill, choses in action, liquidated damages, rights to indemnification, Trade Secrets, computer programs, software, computer printouts, tapes, disks and related data processing software and similar items, customer and supplier lists, blueprints, technical specifications, manuals and other documents, licenses, permits, copyrights, technology, processes, proprietary information, and insurance proceeds of which Borrower is a beneficiary;

(c) Whether characterized as accounts, general intangibles or otherwise, all rents (including, without limitation, prepaid rents, fixed, additional and contingent rents), issues, profits, receipts, earnings, revenue, income, security deposits, merchandise sales revenues, parking, maintenance, common area, tax, insurance, utility and service charges and contributions, instruction fees, membership charges, and restaurant and snack bar revenues;

(d) All present and future: (i) trademarks, service marks, trade names, corporate names, company names, business names, fictitious business names, trade styles, trade dress, logos, other source or business identifiers, uniform resource locations (URL's), domain names, designs and general intangibles of like nature, now existing or hereafter adopted or acquired, all prints and labels on which said trademarks, service marks, trade names, corporate names, company names, business names, fictitious business names, trade styles, trade dress, logos, other source or business identifiers, uniform resource locations (URL's), domain names, designs and general intangibles of like nature, now existing or hereafter adopted or acquired, appear, have appeared, or will appear, and all designs and general intangibles of a like nature, all applications, registrations, and recordings relating to the foregoing in the United States Patent and Trademark Office ("USPTO") or in any similar office or agency of the United States of America, any state thereof, or any political subdivision thereof, or in any other countries, and all reissues, extensions, and renewals thereof, including, without limitation, those registered and applied-for trademarks, terms, designs and applications described in Schedule 1 attached hereto and made a part hereof (the Collateral described in this clause (d)(i) is referred to herein as the "Trademarks"); and (ii) the goodwill of the business symbolized by each of the Trademarks, including, without limitation, all customer lists and other records relating to the distribution of products or services bearing the Trademarks (the Collateral described in the foregoing clauses (d)(i) and (d)(ii) is referred to herein as the "Trademark Collateral");

(e) All present and future: patents, letters patent, all inventions and improvements described and claimed therein, including, without limitation, the right to make, use and/or sell the inventions disclosed or claimed therein, in each case whether foreign or domestic, applications, registrations, and recordings relating to such patents in the USPTO or in any similar office or agency of the United States of America, any state thereof, or any political subdivision thereof, or in any other countries, and all reissues, extensions, and renewals thereof, including, without limitation, those patents and applications, registrations and recordings described in Schedule 2 attached hereto and made a part hereof (the Collateral described in this clause (e) is referred to herein as the "Patents");

(f) (i) All present and future: copyrights, rights and interests in copyrights, works protectable by copyright, all copyright rights in any work subject to the copyright laws of the United States of America or any other country, whether as author, assignee, transferee or otherwise, copyright registrations and copyright applications, including, without limitation, registrations, recordings, supplemental registrations and pending applications for registration, in each case whether foreign or domestic, and United States, state and international registrations of the foregoing, and all reissues, extensions and renewals of the foregoing, including, without limitation, those listed on Schedule 4 hereto (the Collateral described in this clause (f)(i) is referred to herein as the "Copyrights"), and (ii) the right to sue for past, present and future infringements of rights in Copyrights, all goodwill of Borrower related to Copyrights, and any and all proceeds of any of the foregoing Collateral described in this clause (f), including, but not limited to, any and all proceeds of licensing thereof (the Collateral described in the foregoing clauses (f)(i) and (f)(ii) is referred to herein as the "Copyright Collateral");

(g) All Licenses (the Licenses, together with the Trademark Collateral, the Patents, the Copyright Collateral and the Trade Secrets, are collectively referred to herein as the "IP Collateral") and all income, fees, royalties, damages, claims and payments now and hereafter due and/or payable with respect to the IP Collateral;

(h) All present and future deposit accounts of Borrower, including, without limitation, any demand, time, savings, passbook or like account maintained by Borrower with any bank, savings and loan association, credit union or like organization and all deposit accounts listed on Schedule 8 hereto, and all money, cash and cash equivalents of Borrower, whether or not deposited in any such deposit account;

(i) All present and future books and records, including, without limitation, all books of account and ledgers of every kind and nature, all electronically recorded data, all proprietary technical and business information, all know-how, show-how or other data or information, all software and databases and all embodiments or fixations thereof and related documentation, all registrations and franchises, in each case relating to Borrower or the business of Borrower, all receptacles and containers for such records, and all files and correspondence;

(j) All present and future goods, including, without limitation, all consumer goods, farm products, inventory, equipment, catalogs, machinery, tools, molds, dies, furniture, furnishings, fixtures, trade fixtures, motor vehicles, aircraft, documented and undocumented vessels, ships and other watercraft, and all other goods used in connection with or in the conduct of Borrower's business including but not limited to all goods as defined in Section 9102(a)(44) of the California UCC;

(k) All present and future inventory and merchandise, including, without limitation, all present and future goods held for sale or lease or to be furnished under a contract of service, all raw materials, work in process and finished goods, all packing materials, supplies and containers relating to or used in connection with any of the foregoing, and all bills of lading, warehouse receipts or documents of title relating to any of the foregoing;

(l) All present and future stocks, investment property, bonds, debentures, securities (whether certificated or uncertificated), security entitlements, securities accounts, commodity contracts, commodity accounts, subscription rights, options, warrants, puts, calls,

certificates, partnership interests, limited liability company membership or other interests, joint venture interests, certificates of deposit, Investments and/or brokerage accounts and all rights, preferences, privileges, dividends, distributions, redemption payments, or liquidation payments with respect thereto, including, without limitation, the securities accounts listed on Schedule 8 hereto;

(m) All present and future accessions, appurtenances, components, repairs, repair parts, spare parts, replacements, substitutions, additions, issue and/or improvements to or of or with respect to any of the foregoing;

(n) All other present and future tangible and intangible personal property of Borrower;

(o) (i) All of the Pledged Collateral, including but not limited to the Pledged Debt listed on Schedule 3 hereto, and (ii) all Commercial Tort Claims, including but not limited to those listed on Schedule 5 hereto;

(p) All present and future rights, remedies, powers and/or privileges of Borrower with respect to any of the foregoing, including the right to make claims thereunder or with respect thereto; and

(q) Any and all proceeds and products of any of the foregoing, including, without limitation, all money, accounts, payment intangibles, general intangibles, deposit accounts, promissory notes, documents, instruments, certificates of deposit, chattel paper, investment property, letter-of-credit-rights, goods, insurance proceeds, claims by Borrower against third parties for past, present and future infringement of the IP Collateral or any license with respect thereto, and any other tangible or intangible property received upon the sale or disposition of any of the foregoing;

*provided* that the term "Collateral", as used in this Agreement, shall *not* include (i) any lease, license, contract, property rights or agreement in respect of personal property to which Borrower is a party or any of Borrower's rights or interests thereunder if and for so long as the grant of such security interest shall constitute or result in (A) the abandonment, invalidation or unenforceability of any right, title or interest of Borrower therein or (B) a breach or termination pursuant to the terms of, or a default under, any such lease, license, contract, property rights or agreement (other than to the extent that any such term would be rendered ineffective pursuant to Section 9-406, 9-407, 9-408 or 9-409 (or any successor provisions thereof) of the Uniform Commercial Code of any relevant jurisdiction or any other applicable law or principles of equity), *provided, however*, that, in the case of either (A) or (B) above, such security interest shall (x) attach immediately at such time as the condition causing such abandonment, invalidation, unenforceability, breach, termination or default shall be remedied or waived and (y) to the extent such portion is severable, shall attach immediately to any portion of such lease, license, contract, property rights or agreement that does not result in any of the consequences specified in (A) or (B) above; or (ii) any real property.

"Commercial Tort Claims" means all commercial tort claims asserted by Borrower, or on its behalf, in writing to which it has any right, title or interest and of which it is aware.

"Equity Interest" means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital



stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

"License" means all of Borrower's right, title, and interest in and to (a) any and all licensing agreements or similar arrangements in and to its Patents, Copyrights, Trade Secrets, or Trademarks, and (b) all rights to sue for past, present, and future breaches thereof.

"Pledged Collateral" means any and all property of Borrower now or hereafter pledged and delivered to Secured Party pursuant to this Agreement, and includes without limitation (a) the Pledged Debt, (b) all proceeds and products of any of the foregoing, (c) any and all collections, distributions, cash, instruments, interest or premiums with respect to any of the foregoing and (d) any and all rights, titles, interests, privileges, benefits and preferences appertaining or incidental to any of the foregoing.

"Pledged Debt" means all debt owed or owing to Borrower and not held in a securities account or otherwise through a securities intermediary, including all such debt described on Schedule 3, all instruments, chattel paper or other documents, if any, representing or evidencing such debt, and all interest, cash, instruments and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such debt.

"Secured Obligations" means any and all present and future Obligations of any type or nature of Borrower at any time or from time to time owed to Secured Party or any affiliate of Secured Party under the Loan Agreement, the other Loan Documents or any Swap Contract, and any one or more of them, whether due or to become due, matured or unmatured, liquidated or unliquidated, absolute or contingent, direct or indirect, or voluntary or involuntary, whether obligations of performance or obligations of payment, whether for principal, interest, premiums, fees, indemnities, damages, costs, expenses or otherwise (including all renewals, extensions, amendments, refinancings and other modifications of such obligations and all costs, attorneys' fees, costs and expenses incurred by Secured Party in connection with the collection or enforcement of such obligations), and whether recovery upon such obligations may be or hereafter becomes unenforceable or shall be an allowed or disallowed claim under any proceeding or case commenced by or against Borrower under any Debtor Relief Laws.

"Swap Contract" means any document, instrument or agreement between Borrower and Secured Party or any affiliate of Secured Party, now existing or entered into in the future, relating to an interest rate swap transaction, forward rate transaction, interest rate cap, floor or collar transaction, any similar transaction, any option to enter into any of the foregoing, and any combination of the foregoing, which agreement may be oral or in writing, including, without limitation, any master agreement relating to or governing any or all of the foregoing and any related schedule or confirmation, in each case as originally executed or as the same may from time to time be supplemented, modified, amended, restated, extended or supplanted.

"Trade Secrets" means all trade secrets and all other confidential or proprietary information and know-how now or hereafter owned or used in, or contemplated at any time for use in, the business of Borrower, whether or not such trade secret, other confidential or proprietary information or know-how has been reduced to a writing or other tangible form, including all documents and things embodying, incorporating or referring in any way to such trade secret, other confidential or proprietary information or know-how, the right to sue for any past, present and future

infringement of any trade secret, other confidential or proprietary information or know-how, and all proceeds of the foregoing, including licenses, royalties, income, payments, claims, damages and proceeds of suit.

2. Further Assurances. At any time and from time to time at the request of Secured Party, Borrower shall execute and/or deliver all financing statements, instruments and documents, and shall do all such further acts and things, as may be deemed necessary or desirable by Secured Party to create and perfect, and to continue and preserve, an indefeasible security interest in the Collateral in favor of Secured Party, or the priority thereof. At any time and from time to time, Secured Party shall be entitled to file and/or record any or all such financing statements, instruments and documents held by it, and any or all such further financing statements, documents and instruments, and to take all such other actions, as Secured Party may deem necessary or desirable to perfect and to maintain perfected the security interest granted in Section 3 of this Agreement. Borrower further authorizes Secured Party to have this or any other similar agreement recorded or filed with the USCO (as defined below), USPTO or other appropriate federal, state or foreign government office. If any Pledged Collateral of Borrower is at any time not evidenced by an instrument or other document, then (A) Borrower shall cause the issuer thereof to execute and deliver to Secured Party an acknowledgment of the pledge made by Borrower under this Agreement, and (B) if necessary to perfect a security interest in such Pledged Collateral, Borrower shall execute any customary pledge forms or other documents necessary or appropriate to complete the pledge and give Secured Party the right to transfer such Pledged Collateral pursuant to the terms of this Agreement. With respect to any Collateral consisting of certificated securities, instruments, documents, certificates of title or other Collateral as to which Secured Party's security interest need be perfected by, or the priority thereof need be assured by, possession of such Collateral, Borrower will upon demand of Secured Party deliver possession of same in pledge to Secured Party. With respect to any Collateral described in the previous sentence, Borrower hereby consents and agrees (a) to notify any securities intermediary, depository institution or other bailee therefor, and any issuer thereof, obligor thereon or registrar, transfer agent or trustee thereof, of the security interest of Secured Party therein, (b) to require any such party to execute and deliver to Secured Party such acknowledgments, instruments, control agreements or other agreements as may be necessary for Secured Party to maintain the perfection of such security interest, and (c) that any such party shall be entitled to accept the provisions of this Agreement as conclusive evidence of the right of Secured Party to effect any transfer or exercise any right hereunder or with respect to any such Collateral, notwithstanding any other notice or direction to the contrary heretofore or hereafter given by Borrower or any other Person to such issuers or such obligors or to any such registrar or transfer agent or trustee.

3. Security Agreement. For valuable consideration, Borrower hereby assigns and pledges to Secured Party, and grants to Secured Party a security interest in, all presently existing and hereafter acquired Collateral, as security for the timely payment and performance of its Secured Obligations, and each of them. This Agreement is a continuing and irrevocable agreement and all the rights, powers, privileges and remedies hereunder shall apply to any and all Secured Obligations, including those arising under successive transactions which shall either continue the Secured Obligations, increase or decrease them, or from time to time create new Secured Obligations (whether or not all or any prior Secured Obligations have been satisfied), and notwithstanding the bankruptcy of Borrower or any other Person or any other event or proceeding affecting any Person.

4. Delivery of Pledged Collateral. On or before the Closing Date, Borrower shall cause to be pledged and delivered to Secured Party any existing instrument or other document evidencing or constituting Pledged Collateral. All of the Pledged Collateral existing on the Closing Date is listed on Schedule 3 hereto. Following the Closing Date, Borrower will promptly notify Secured Party of the creation of any instrument or other document evidencing or constituting Pledged Collateral, and

Borrower will deliver such Pledged Collateral (including, without limitation, any instruments or other documents evidencing or constituting the same) to Secured Party within 10 business days of Borrower's receipt of such instrument or other document evidencing or constituting Pledged Collateral. All Pledged Collateral (including, without limitation, any instruments or other documents evidencing or constituting the same) at any time delivered to Secured Party shall be in suitable form for transfer by delivery, or shall be accompanied by duly executed instruments of transfer or assignment in blank, all in form and substance satisfactory to Secured Party.

5. Borrower's Representations, Warranties and Agreements. Borrower represents, warrants and agrees that:

(a) Borrower owns the Collateral free and clear of any Lien except as expressly permitted by the Loan Agreement;

(b) Borrower owns the sole, full and clear title to all of the existing Collateral (subject to Liens expressly permitted by the Loan Agreement) and Borrower has the right and power to grant the security interest granted hereunder in the Collateral;

(c) Borrower has the right and power to pledge the Collateral and grant a security interest in the Collateral to Secured Party without the consent, approval or authorization of, or notice to, any Person (other than such consents, approvals, authorization or notices which have been obtained or given prior to the date hereof) and such pledge and security interest constitutes the valid, binding and enforceable obligation of Borrower, enforceable against Borrower in accordance with the terms hereof and the other Loan Documents, except as enforcement may be limited by Debtor Relief Laws or equitable principles relating to the granting of specific performance and other equitable remedies as a matter of judicial discretion;

(d) Borrower shall not (i) sell, assign, exchange, transfer, or otherwise dispose of, or contract to sell, assign, exchange, transfer, or otherwise dispose of, or grant any option with respect to, any of the Collateral, except as specifically permitted under the Loan Documents, (ii) create or permit to exist any Lien upon or with respect to any of the Collateral, except for Liens permitted pursuant to the Loan Agreement, or (iii) take any action with respect to the Collateral which is inconsistent with the provisions or purposes of this Agreement or any other Loan Document;

(e) Borrower will pay, prior to delinquency, all taxes, charges, Liens and assessments against the Collateral, except as specifically permitted under the Loan Agreement;

(f) the Collateral will not be used for any unlawful purpose or in material violation of any law, regulation or ordinance, nor used in any way that will void or impair any insurance required to be carried in accordance with the Loan Agreement;

(g) Borrower will, to the extent consistent with good business practice, keep the Collateral in reasonably good repair, working order and condition, ordinary wear and tear excepted, and from time to time make all needful and proper repairs, renewals, replacements, additions and improvements thereto and, as appropriate and applicable, will otherwise deal with the Collateral in all such ways as are considered good practice by owners of like property;

(h) Borrower will, consistent with good business practice, take all reasonable steps to preserve and protect the Collateral, including, with respect to the IP Collateral, the filing of any renewal affidavits and applications;

(i) as of the date hereof, Borrower has no Trademarks registered, or subject to pending applications, in the USPTO, any similar office or agency in the United States of America or in any foreign jurisdiction, other than those described in Schedule 1 attached hereto;

(j) as of the date hereof, Borrower has no Patents registered, or subject to pending applications, in the USPTO, or any similar office or agency in the United States of America or in any foreign jurisdiction, other than those described in Schedule 2 attached hereto;

(k) there are no actions, suits, proceedings or investigations pending or threatened in writing, against Borrower before any governmental authority which could reasonably be expected to cause any portion of the IP Collateral to be adjudged invalid or unenforceable, in whole or in part, as of the date hereof, and Borrower has received no written notice of any of the foregoing;

(l) Borrower shall not file any application for the registration of a Patent, Trademark or Copyright with the USPTO, USCO or any similar office or agency in the United States of America, any State therein or any foreign jurisdiction, unless Borrower promptly thereafter notifies Secured Party of such action;

(m) Borrower has not abandoned any Patent, Trademark or Copyright that is material to the use and operation of the Collateral, and Borrower will not do any act, or omit to do any act, whereby any Patent, Trademark or Copyright that is material to the use and operation of the Collateral may become abandoned, canceled, invalidated, unenforceable, avoided, or avoidable unless permitted by the Loan Agreement or unless Borrower has obtained the written consent of Secured Party;

(n) Borrower shall promptly notify Secured Party if it knows or has reason to know of any reason why any applicable registration or recording of any Patent, Trademark or Copyright of any material value may become abandoned, canceled, invalidated, or unenforceable;

(o) Borrower will render any assistance, as Secured Party may determine is necessary or desirable, to Secured Party in any proceeding before the USPTO, the USCO, any federal or state court, or any similar office or agency in the United States of America, any State therein or in any foreign jurisdiction, to maintain any Patent, Trademark or Copyright and to protect Secured Party's security interest therein, including, without limitation, filing of renewals, affidavits of use, affidavits of incontestability and opposition, interference, and cancellation proceedings;

(p) Borrower will promptly notify Secured Party if Borrower learns of any use by any Person of any term or design likely to cause confusion with any of the Trademarks that are material to Borrower's business, or of any use by any Person of any other process or product which infringes upon any of the Trademarks that are material to Borrower's business, and if requested by Secured Party, Borrower, at its expense, shall join with Secured Party in such action as Secured Party in Secured Party's reasonable discretion may deem advisable for the protection of Secured Party's interest in and to the Trademarks;

(q) Borrower assumes all responsibility and liability arising from the use of the IP Collateral, and Borrower hereby indemnifies and holds Secured Party harmless from and against any claim, suit, loss, damage or expense (including reasonable attorneys' fees and costs) arising out of any alleged defect in any product manufactured, promoted, or sold by Borrower (or any Affiliate or Subsidiary of Borrower) in connection with any IP Collateral or out of the manufacture, promotion, labeling, sale, or advertisement of any such product by Borrower or any Affiliate or Subsidiary of Borrower;

(r) Borrower shall promptly notify Secured Party in writing of any adverse determination in any proceeding in the USPTO, USCO, or any other foreign or domestic governmental authority, court or body, Borrower becomes aware of regarding Borrower's claim of ownership in any of the Trademarks, Patents or Copyrights, and in the event of any infringement by any third party of any Trademarks, Patents or Copyrights that are material to Borrower's business, Borrower shall promptly notify Secured Party of such infringement and sue for and diligently pursue damages for such infringement, and if Borrower shall fail to take such action within one (1) month after such notice is given to Secured Party, Secured Party may, but shall not be required to, itself take such action in the name of Borrower, and Borrower hereby appoints Secured Party the true and lawful attorney of Borrower, for it and in its name, place and stead, on behalf of Borrower, to commence judicial proceedings in any court or before any other tribunal to enjoin and recover damages for such infringement, any such damages due to Borrower, net of costs and reasonable attorneys' fees and costs, to be applied to the Secured Obligations;

(s) Borrower will maintain, with responsible insurance companies, insurance covering the Collateral against such insurable losses as is required by the Loan Agreement and will cause Secured Party to be designated as an additional insured and lender loss payee with respect to all insurance (whether or not required by the Loan Agreement);

(t) Borrower will promptly notify Secured Party in writing in the event of any damage to the Collateral from any source whatsoever, and, *except* for the disposition of collections and other proceeds of the Collateral permitted by Section 8 hereof or by the Loan Agreement, Borrower will not remove or permit to be removed any part of the Collateral from its places of business without the prior written consent of Secured Party, *except* for such items of the Collateral as are removed in the ordinary course of business or in connection with any transaction or disposition otherwise permitted by the Loan Documents;

(u) in the event Borrower changes its name or its address as either are set forth herein or in the Loan Agreement, Borrower will notify Secured Party of such name and/or address change promptly, but in any event, within five (5) business days after such change;

(v) as of the date hereof, Borrower does not have any Copyrights registered, or subject to pending applications, with the United States Copyright Office ("USCO"), or any similar office or agency in the United States of America, any foreign jurisdiction, or elsewhere other than those described in Schedule 4 attached hereto;

(w) as of the date hereof, Borrower has no Commercial Tort Claims other than those described in Schedule 5 attached hereto and Borrower hereby covenants and agrees that it shall provide Secured Party with prompt written notice of each Commercial Tort Claim, and any judgment, settlement or other disposition thereof and will take such action as Secured Party may request to grant and perfect a security interest therein in favor of Secured Party;

(x) as of the date hereof, Schedule 6 attached hereto sets forth each of the Licenses owned or held by or on behalf of Borrower, and all other intellectual property of Borrower other than the intellectual property otherwise set forth in the other Schedules hereto;

(y) as of the date hereof, Schedule 7 attached hereto sets forth each letter of credit giving rise to a letter of credit right included in the Collateral owned or held by or on behalf of Borrower; and

(z) as of the date hereof, Schedule 8 attached hereto sets forth each deposit account and each securities account owned or held by or on behalf of Borrower.

6. Deposit and Securities Accounts. For each deposit account and securities account that Borrower at any time opens or maintains, Borrower shall, at Secured Party's request and option, cause the depository bank or applicable financial institution to agree to comply at any time with instructions from Secured Party to such depository bank or applicable financial institution directing the disposition of funds or other Collateral from time to time credited to such deposit account or securities account, as applicable, without further consent of Borrower, pursuant to an agreement in form and substance acceptable to Secured Party. Without limiting the foregoing, Secured Party shall also have the right at any time, whether or not an Event of Default shall have occurred or be continuing, to make inquiry of each applicable depository institution or applicable financial institution at which a deposit account or securities account is maintained to verify the account balance of such account.

7. Secured Party's Rights Regarding Collateral. At any time and from time to time when any Event of Default has occurred and remains continuing, at the expense of Borrower, Secured Party may, to the extent it may be necessary or desirable to protect the Collateral, but Secured Party shall not be obligated to, (i) notify obligors on the Collateral that the Collateral has been assigned to Secured Party and (ii) request from obligors on the Collateral, in the name of Borrower or in the name of Secured Party, information concerning the Collateral and the amounts owing thereon. The foregoing power of attorney is coupled with an interest and is irrevocable. Borrower shall maintain books and records pertaining to the Collateral in such detail, form and scope as Secured Party shall reasonably require consistent with Secured Party's interests hereunder. Borrower shall at any time at Secured Party's request mark the Collateral and/or Borrower's ledger cards, books of account and other records relating to the Collateral with appropriate notations satisfactory to Secured Party disclosing that they are subject to Secured Party's security interest. Secured Party shall be under no duty or obligation whatsoever to take any action to preserve any rights of or against any prior or other parties in connection with the Collateral, to exercise any voting rights or managerial rights with respect to any Collateral, whether or not an Event of Default shall have occurred, or to make or give any presentments, demands for performance, notices of non-performance, protests, notices of protests, notices of dishonor or notices of any other nature whatsoever in connection with the Collateral or the Secured Obligations. Secured Party shall be under no duty or obligation whatsoever to take any action to protect or preserve the Collateral or any rights of Borrower therein, or to make collections or enforce payment thereon, or to participate in any foreclosure or other proceeding in connection therewith.

8. Collections on the Collateral. Except as otherwise provided in any Loan Document, Borrower shall have the right to use and to continue to make collections on and receive distributions and other proceeds of all of the Collateral in the ordinary course of business so long as no Event of Default shall have occurred and be continuing. Upon the occurrence and during the continuance of an Event of Default, at the option of Secured Party, Borrower's right to make collections on and receive distributions and other proceeds of the Collateral and to use or dispose of such collections and proceeds shall terminate, and any and all distributions, proceeds and collections, including all partial or total prepayments, then held or thereafter received on or on account of the Collateral will be held or received by Borrower in trust for Secured Party and immediately delivered in kind to Secured Party. Any remittance received by Borrower from any Person shall be presumed to relate to the Collateral and to be subject to Secured Party's security interest. Upon the occurrence and during the continuance of an Event of Default, at Secured Party's election, Secured Party shall have the sole right at all times to receive, receipt for, endorse, assign, deposit and deliver, in the name of Secured Party or in the name of Borrower, any and all checks, notes, drafts and other instruments for the payment of money constituting proceeds of or otherwise relating to the Collateral; and Borrower hereby authorizes

Secured Party to affix, by facsimile signature or otherwise, the general or special endorsement of it, in such manner as Secured Party shall deem advisable, to any such instrument in the event the same has been delivered to or obtained by Secured Party without appropriate endorsement, and Secured Party and any collecting bank are hereby authorized to consider such endorsement to be a sufficient, valid and effective endorsement by Borrower, to the same extent as though it were manually executed by the duly authorized officer of Borrower, regardless of by whom or under what circumstances or by what authority such facsimile signature or other endorsement actually is affixed, without duty of inquiry or responsibility as to such matters, and Borrower hereby expressly waives demand, presentment, protest and notice of protest or dishonor and all other notices of every kind and nature with respect to any such instrument.

9. Possession of Collateral by Secured Party. All of the Collateral now, heretofore or hereafter delivered to Secured Party shall be held by Secured Party in its possession, custody and control. Any or all of the Collateral delivered to Secured Party may be held in an interest-bearing or non-interest-bearing account, in Secured Party's sole and absolute discretion, and, if an Event of Default has occurred and is continuing, Secured Party may, in its discretion, apply any such interest to payment of the Secured Obligations. Nothing herein shall obligate Secured Party to invest any Collateral or obtain any particular return thereon. Upon the occurrence and during the continuance of an Event of Default, whenever any of the Collateral is in Secured Party's possession, custody or control, Secured Party may use, operate and consume the Collateral, whether for the purpose of preserving and/or protecting the Collateral, or for the purpose of performing any of Borrower's obligations with respect thereto, or otherwise. Secured Party may at any time deliver or redeliver the Collateral or any part thereof to Borrower, and the receipt of any of the same by Borrower shall be complete and full acquittance for the Collateral so delivered, and Secured Party thereafter shall be discharged from any liability or responsibility therefor. So long as Secured Party exercises reasonable care with respect to any Collateral in its possession, custody or control, Secured Party shall have no liability for any loss of or damage to such Collateral, and in no event shall Secured Party have liability for any diminution in value of Collateral occasioned by economic or market conditions or events. Secured Party shall be deemed to have exercised reasonable care within the meaning of the preceding sentence if the Collateral in the possession, custody or control of Secured Party is accorded treatment similar to that which Secured Party accords its own property, it being understood that Secured Party shall not have any responsibility for (a) ascertaining or taking action with respect to calls, conversions, exchanges, maturities, tenders or other matters relating to any Collateral, whether or not Secured Party has or is deemed to have knowledge of such matters, or (b) taking any necessary steps to preserve rights against any Person with respect to any Collateral.

10. Rights Upon Event of Default. Upon the occurrence and during the continuance of an Event of Default, Secured Party shall have, in any jurisdiction where enforcement hereof is sought, in addition to all other rights and remedies that Secured Party may have under applicable law or in equity or under this Agreement (including, without limitation, all rights set forth in Section 8 hereof) or under any other Loan Document, all rights and remedies of a secured party under the Uniform Commercial Code as enacted in any applicable jurisdiction, and, in addition, the following rights and remedies, all of which may be exercised with or without notice to Borrower and without affecting the obligations of Borrower hereunder or under any other Loan Document, or the enforceability of the Lien and security interest created hereby: (a) to foreclose the Lien and security interest created hereunder or under any other agreement relating to any Collateral by any available judicial procedure or without judicial process; (b) to enter any premises where any Collateral may be located for the purpose of securing, protecting, inventorying, appraising, inspecting, repairing, preserving, storing, preparing, processing, taking possession of or removing the same; (c) to sell, assign, lease or otherwise dispose of any Collateral or any part thereof, either at public or private sale or at any broker's board, in lot or in bulk, for cash, on credit or otherwise, with or without representations or warranties and upon such terms as

shall be acceptable to Secured Party; (d) to notify obligors on the Collateral that the Collateral has been assigned to Secured Party and that all payments thereon are to be made directly and exclusively to Secured Party; (e) to collect by legal proceedings or otherwise all distributions, interest, principal or other sums now or hereafter payable upon or on account of the Collateral; (f) to cause the Collateral to be registered in the name of Secured Party, as legal owner; (g) to enter into any extension, reorganization, deposit, merger or consolidation agreement, or any other agreement relating to or affecting the Collateral, and in connection therewith Secured Party may deposit or surrender control of the Collateral and/or accept other property in exchange for the Collateral; (h) to settle, compromise or release, on terms acceptable to Secured Party, in whole or in part, any amounts owing on the Collateral and/or any disputes with respect thereto; (i) to extend the time of payment, make allowances and adjustments and issue credits in connection with the Collateral in the name of Secured Party or in the name of Borrower; (j) to enforce payment and prosecute any action or proceeding with respect to any or all of the Collateral and take or bring, in the name of Secured Party or in the name of Borrower, any and all steps, actions, suits or proceedings deemed by Secured Party necessary or desirable to effect collection of or to realize upon the Collateral, including any judicial or nonjudicial foreclosure thereof or thereon, and Borrower specifically consents to any nonjudicial foreclosure of any or all of the Collateral or any other action taken by Secured Party which may release any obligor from personal liability on any of the Collateral, and Borrower waives any right not expressly provided for in this Agreement to receive notice of any public or private judicial or nonjudicial sale or foreclosure of any security or any of the Collateral; (k) to insure, process and preserve the Collateral; (l) to exercise all rights (including voting rights), remedies, powers or privileges provided under any of the Loan Documents; (m) to remove, from any premises where the same may be located, the Collateral and any and all documents, instruments, files and records relating to the Collateral, and any receptacles and cabinets containing the same, and Secured Party may, at the cost and expense of Borrower, use such of their supplies, equipment, facilities and space at their places of business as may be necessary or appropriate to properly administer, process, store, control, prepare for sale or disposition and/or sell or dispose of the Collateral or to properly administer and control the handling of collections and realizations thereon, and Secured Party shall be deemed to have a rent-free tenancy of any premises of Borrower for such purposes and for such periods of time as required by Secured Party; (n) to receive, open and dispose of all mail addressed to Borrower and notify postal authorities to change the address for delivery thereof to such address as Secured Party may designate; and (o) to exercise all other rights, powers, privileges and remedies of an owner of the Collateral and to perform any obligation of Borrower under this Agreement or any other Loan Document; all at Secured Party's sole option and as Secured Party in its sole discretion may deem advisable. Upon the occurrence and during the continuance of an Event of Default, any money or other property received by Secured Party in exchange for or on account of the Collateral, whether representing collections or proceeds of Collateral, and whether resulting from voluntary payments or foreclosure proceedings or other legal action taken by Secured Party or Borrower may be applied by Secured Party without notice to Borrower to the Secured Obligations in such order and manner provided for herein or as otherwise determined by the Secured Party in its sole discretion.

Upon the occurrence and during the continuance of an Event of Default, Borrower will, at Secured Party's request, assemble the Collateral (or any part thereof, as requested) and make it available to Secured Party at places which Secured Party may designate, whether at the premises of Borrower or elsewhere, and will make available to Secured Party, free of cost, all premises, equipment and facilities of Borrower for the purpose of Secured Party's taking possession of such Collateral or storing the same or removing or putting such Collateral in salable form or selling or disposing of same.

Upon the occurrence and during the continuance of an Event of Default, Secured Party also shall have the right, without notice or demand, either in person, by agent or by a receiver to be appointed by a court (and Borrower hereby expressly consents upon the occurrence and during the



continuance of an Event of Default to the appointment of such a receiver), and without regard to the adequacy of any security for the Secured Obligations, to take possession of the Collateral or any part thereof and to collect and receive the rents, issues, profits, income and proceeds thereof. Taking possession of the Collateral shall not cure or waive any Event of Default or notice thereof or invalidate any act done pursuant to such notice. The rights, remedies and powers of any receiver appointed by a court shall be as ordered by said court.

Any public or private sale or other disposition of the Collateral may be held at any office of Secured Party, or Borrower's places of business, or at any other place permitted by applicable law, and without the necessity of the Collateral being within the view of prospective purchasers. Subject to the requirements of the applicable Uniform Commercial Code, Secured Party may direct the order and manner of sale of the Collateral, or portions thereof, as it in its sole and absolute discretion may determine, and Borrower expressly waives any right to direct the order and manner of sale of any Collateral. Subject to applicable laws, Secured Party or any Person on Secured Party's behalf may bid and purchase at any such sale or other disposition. The net cash proceeds resulting from the collection, liquidation, sale, lease or other disposition of the Collateral shall be applied, *first*, to the expenses (including reasonable attorneys' fees and costs) of retaking, holding, storing, processing and preparing for sale or lease, selling, leasing, collecting, and liquidating the Collateral, and *then* to the satisfaction of the Secured Obligations with application as to any particular Secured Obligations to be in the order determined by Secured Party in its sole and absolute discretion. Borrower and any other Person then obligated therefor shall pay to Secured Party on demand any deficiency with regard thereto which may remain after such sale, disposition, collection or liquidation of the Collateral. After all the Secured Obligations have been indefeasibly paid in full and no commitment of the Secured Party or facility provided by the Secured Party under the Loan Agreement remains outstanding, the balance after such sale, disposition, collection or liquidation of the Collateral shall be reassigned and redelivered to Borrower or to the Person or Persons otherwise legally entitled thereto.

Unless the Collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Secured Party will send or otherwise make available to Borrower, such notice as may be required by the applicable Uniform Commercial Code of the time and place of any public sale thereof or of the time on or after which any private sale thereof is to be made. The requirement of sending reasonable notice to Borrower conclusively shall be met if such notice is given to Borrower in accordance with the Loan Agreement at least ten (10) days before the date of the sale. Borrower expressly waives any right to receive notice of any public or private sale of any Collateral or other security for the Secured Obligations except as expressly provided for in this paragraph.

With respect to any Collateral, including the Pledged Collateral, consisting of securities, partnership interests, joint venture interests, investments or the like, and whether or not any of such Collateral has been effectively registered under the Securities Act of 1933, as amended, or other applicable laws, Secured Party may, in its sole and absolute discretion, sell all or any part of such Collateral at private sale in such manner and under such circumstances as Secured Party may deem necessary or advisable in order that the sale may be lawfully conducted. Without limiting the foregoing, Secured Party may (i) approach and negotiate with a limited number of potential purchasers, and (ii) restrict the prospective bidders or purchasers to persons who will represent and agree that they are purchasing such Collateral for their own account for investment and not with a view to the distribution or resale thereof. In the event that any such Collateral is sold at private sale, Borrower agrees that if such Collateral is sold for a price which Secured Party in good faith believes to be reasonable under the circumstances then existing, then (a) the sale shall be deemed to be commercially reasonable in all respects, (b) Borrower shall not be entitled to a credit against the Secured Obligations in an amount in excess of the purchase price, and (c) Secured Party shall not incur

any liability or responsibility to Borrower in connection therewith, notwithstanding the possibility that a substantially higher price might have been realized at a public sale. Borrower recognizes that a ready market may not exist for such Collateral if it is not regularly traded on a recognized securities exchange, and that a sale by Secured Party of any such Collateral for an amount substantially less than a pro rata share of the fair market value of the issuer's assets minus liabilities may be commercially reasonable in view of the difficulties that may be encountered in attempting to sell a large amount of such Collateral or Collateral that is privately traded.

Upon the occurrence and during the continuance of an Event of Default, Secured Party may use any of the IP Collateral for the sale of goods, completion of work in process, or rendering of services in connection with enforcing any security interest granted to Secured Party by Borrower. Secured Party may grant such license or licenses relating to the IP Collateral for such term or terms, on such conditions and in such manner, as Secured Party, in its sole discretion, deems appropriate. Such license or licenses may be general, special, or otherwise, and may be granted on an exclusive or nonexclusive basis throughout all or part of the United States of America, its territories and possessions, and all foreign countries. In connection with any such license or any sale or other disposition of the IP Collateral (or any part thereof), Borrower shall supply to Secured Party, or Secured Party's designee, Borrower's knowledge and expertise relating to the manufacture and sale of the products and services bearing the IP Collateral and Borrower's customer lists and other records relating to the IP Collateral and the distribution thereof.

Upon consummation of any sale of Collateral hereunder, Secured Party shall have the right to assign, transfer and deliver to the purchaser or purchasers thereof the Collateral so sold. Each such purchaser at any such sale shall hold the Collateral so sold absolutely free from any claim or right upon the part of Borrower or any other Person, and Borrower hereby waives (to the extent permitted by applicable laws) all rights of redemption, stay and appraisal which it now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted. If the sale of all or any part of the Collateral is made on credit or for future delivery, Secured Party shall not be required to apply any portion of the sale price to the Secured Obligations until such amount actually is received by Secured Party, and any Collateral so sold may be retained by Secured Party until the sale price is paid in full by the purchaser or purchasers thereof. Secured Party shall not incur any liability in case any such purchaser or purchasers shall fail to pay for the Collateral so sold, and, in case of any such failure, the Collateral may be sold again.

11. Attorney-in-Fact. Borrower hereby irrevocably nominates and appoints Secured Party as its attorney-in-fact for the following purposes: (a) to do all acts and things which Secured Party may deem necessary or advisable to perfect and continue perfected the security interest created by this Agreement and, upon the occurrence and during the continuance of an Event of Default, to preserve, process, develop, maintain and protect the Collateral and the security interest of the Secured Party therein; (b) upon the occurrence and during the continuance of an Event of Default, to do any and every act which Borrower is obligated to do under this Agreement, at the expense of Borrower and without any obligation to do so; (c) to prepare, sign, file and/or record, for Borrower, in the name of Borrower, any financing statement, application for registration, or like paper, and to take any other action deemed by Secured Party necessary or desirable in order to perfect or maintain perfected the security interest granted hereby; (d) upon the occurrence and during the continuance of an Event of Default, to execute any and all papers and instruments and do all other things necessary or desirable to preserve and protect the Collateral and to protect Secured Party's security interest therein; and (e) upon the occurrence and during the continuance of an Event of Default, to endorse and transfer the Pledged Collateral to any transferee or designee; *provided, however*, that Secured Party shall be under no obligation whatsoever to take any of the foregoing actions, and Secured Party shall have no liability or responsibility for any act taken or omission with respect thereto, except to the extent that such liability

is determined by a court of competent jurisdiction by a final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of Secured Party. The foregoing power of attorney is coupled with an interest and is irrevocable until such time as when all Secured Obligations have been indefeasibly paid and performed in full and when no commitment of the Secured Party or facility provided by the Secured Party under the Loan Agreement remains outstanding.

12. Voting Rights; Dividends; etc. With respect to any Collateral consisting of securities, partnership interests, joint venture interests, investments or the like, including any Pledged Collateral (referred to collectively and individually in this Section 12 and in Section 13 as the "Investment Collateral"), so long as no Default or Event of Default occurs and remains continuing:

(a) Voting Rights. Borrower shall be entitled to exercise any and all voting and other consensual rights pertaining to the Investment Collateral, or any part thereof, for any purpose not inconsistent with the terms of this Agreement, the Loan Agreement, or the other Loan Documents; provided, however, that Borrower shall not exercise, or shall refrain from exercising, any such right if it would result in a Default or an Event of Default.

(b) Interest, Dividend and Distribution Rights. Except as otherwise provided in any Loan Document, Borrower shall be entitled to receive and to retain and use any and all interest and distributions paid in respect of the Investment Collateral; provided, however, that, any and all such interest and distributions received in the form of capital stock, or other equity interests, certificated securities, warrants, options or rights to acquire any Equity Interests forthwith shall be, and the certificates representing such Equity Interests, if any, forthwith shall be delivered to Secured Party to hold as Pledged Collateral and shall, if received by Borrower, be received in trust for the benefit of Secured Party, be segregated from the other property of Borrower, and forthwith be delivered to Secured Party as Pledged Collateral in the same form as so received (with any necessary endorsements in suitable form for transfer by delivery or accompanied by executed and undated instruments of transfer or assignment in blank, all in form and substance satisfactory to Secured Party).

13. Voting and Distribution Rights During Event of Default. With respect to any Investment Collateral, so long as a Default or Event of Default has occurred and is continuing:

(a) Voting, Dividend and Distribution Rights. At the option of Secured Party, all rights of Borrower to exercise the voting and other consensual rights which it would otherwise be entitled to exercise pursuant to Section 12(a) above, and to receive the interest and distributions which it would otherwise be authorized to receive and retain pursuant to Section 12(b) above, shall cease, and all such rights thereupon shall become vested in Secured Party which thereupon shall have the sole right to exercise such voting and other consensual rights and to receive and to hold as Pledged Collateral such interest and such distributions.

(b) Dividends and Distributions Held in Trust. All distributions which are received by Borrower contrary to the provisions of this Agreement shall be received in trust for the benefit of Secured Party, shall be segregated from other funds of Borrower, and forthwith shall be paid over to Secured Party as Pledged Collateral in the same form as so received (with any necessary endorsements).

(c) Irrevocable Proxy. Borrower does hereby revoke all previous proxies with regard to the Investment Collateral and appoints Secured Party as its proxy holder to attend and vote at any and all meetings of the shareholders or other equity holders of the Persons that issued the Investment Collateral and any adjournments thereof, held on or after the date of the

giving of this proxy and prior to the termination of this proxy, and to execute any and all written consents of shareholders or other equity holders of such Persons executed on or after the date of the giving of this proxy and prior to the termination of this proxy, with the same effect as if Borrower had personally attended the meetings or had personally voted its shares or other interests or had personally signed the written consents; provided, however, that the proxy holder shall have rights hereunder only upon the occurrence and during the continuance of a Default or Event of Default. Borrower hereby authorizes Secured Party to substitute another Person as the proxy holder and, upon the occurrence and during the continuance of any Default or Event of Default, hereby authorizes the proxy holder to file this proxy and any substitution instrument with the secretary or other appropriate official of the appropriate Person. This proxy is coupled with an interest and is irrevocable until such time as no commitment to extend credit to Borrower remains outstanding from Secured Party and until such time as all Secured Obligations have been indefeasibly paid and performed in full.

14. Statute of Limitations and Other Laws. All rights, privileges, powers and remedies granted to Secured Party hereunder shall continue to exist and may be exercised by Secured Party at any time and from time to time irrespective of the fact that any of the Secured Obligations may have become barred by any statute of limitations. Borrower expressly waives the benefit of any and all statutes of limitation, and any and all laws providing for exemption of property from execution or for valuation and appraisal upon foreclosure, to the maximum extent permitted by applicable law.

15. Other Agreements. Nothing herein shall in any way modify or limit the effect of terms or conditions set forth in any other security or other agreement executed by Borrower or in connection with the Secured Obligations, but each and every term and condition hereof shall be in addition thereto. All provisions contained in the Loan Agreement or any other Loan Document that apply to Loan Documents generally are fully applicable to this Agreement and are incorporated herein by this reference.

16. Continuing Effect. This Agreement shall remain in full force and effect and continue to be effective should any petition be filed by or against Borrower for liquidation or reorganization, should Borrower become insolvent or make an assignment for the benefit of creditors or should a receiver or trustee be appointed for all or any significant part of Borrower's assets, and shall continue to be effective or be reinstated, as the case may be, if at any time payment and performance of the Secured Obligations, or any part thereof, is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by Secured Party, whether as a "voidable preference," "fraudulent conveyance," or otherwise (and whether by litigation, settlement, demand or otherwise), all as though such payment or performance had not been made. In the event that any payment or any part thereof is rescinded, reduced, restored or returned, the Secured Obligations shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

17. Waivers and Consents. Borrower expressly waives any right to require Secured Party to marshal assets in favor of Borrower or any other Person or to proceed against any Borrower or any Collateral provided by Borrower, and agrees that Secured Party may proceed against Borrower and/or the Collateral in such order as it shall determine in its sole and absolute discretion. Secured Party may file a separate action or actions against Borrower, whether or not action is brought or prosecuted with respect to any other security or any other Person, or whether or not any other Person is joined in any such action or actions. Borrower agrees that the Liens created or granted herein and the enforceability of this Agreement at all times shall remain effective to secure the full amount of all the Secured Obligations. Borrower expressly waives any and all defenses now or hereafter arising or asserted by reason of (a) any disability or other defense of Borrower with respect to the Secured Obligations,

(b) the unenforceability or invalidity of any security or guaranty for the Secured Obligations or the lack of perfection or continuing perfection or failure or subordination of priority of any security for the Secured Obligations, (c) the cessation for any cause whatsoever of the liability of Borrower (other than by reason of the full payment and performance of all Secured Obligations), (d) except as otherwise provided in this Agreement, any failure of Secured Party to give notice of sale or other disposition of Collateral to Borrower or any other Person or any defect in any notice that may be given in connection with any sale or disposition of Collateral, (e) except as otherwise provided in this Agreement, any failure of Secured Party to comply with applicable laws in connection with the sale or other disposition of any Collateral or other security for any Secured Obligation, including, without limitation, any failure of Secured Party to conduct a commercially reasonable sale or other disposition of any Collateral or other security for any Secured Obligation, (f) any act or omission of Secured Party or others that directly or indirectly results in or aids the discharge or release of Borrower or the Secured Obligations or any other security or guaranty therefor by operation of law or otherwise, (g) any failure of Secured Party to file or enforce a claim in any bankruptcy or other proceeding with respect to any Person, (h) the election by Secured Party, in any bankruptcy proceeding of any Person, of the application or non-application of Section 1111(b)(2) of the United States Bankruptcy Code, (i) any extension of credit or the grant of any Lien under Section 364 of the United States Bankruptcy Code, (j) any use of cash collateral under Section 363 of the United States Bankruptcy Code, (k) any agreement or stipulation with respect to the provision of adequate protection in any bankruptcy proceeding of any Person, (l) the avoidance of any Lien in favor of Secured Party for any reason, (m) any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, liquidation or dissolution proceeding commenced by or against any Person, including any discharge of, or bar or stay against collecting, all or any of the Secured Obligations (or any interest thereon) in or as a result of any such proceeding, (n) any action taken by Secured Party that is authorized by this Section 17 or any other provision of any Loan Document or (o) any rights and defenses that are or may become available to Borrower by reason of Sections 2787 to 2855, inclusive, 2899 and 3433 of the California Civil Code. Borrower expressly waives all setoffs and counterclaims and all presentments, demands for payment or performance, notices of nonpayment or nonperformance, protests, notices of protest, notices of dishonor and all other notices or demands of any kind or nature whatsoever with respect to the Secured Obligations, and all notices of acceptance of this Agreement or of the existence, creation or incurring of new or additional Secured Obligations.

18. Additional Powers and Authorization. Secured Party shall be entitled to the benefits accruing to it as the Secured Party under the Loan Agreement and the other Loan Documents. Notwithstanding anything contained herein to the contrary, Secured Party may employ agents, trustees, or attorneys-in-fact and may vest any of them with any property (including, without limitation, any Collateral pledged hereunder), title, right or power deemed necessary for the purposes of such appointment. By accepting the benefits of this Agreement, each subsidiary of Bank of America, N.A. and each affiliate of Bank of America, N.A., acknowledges and agrees that any right, remedy, privilege or power of Secured Party under this Agreement shall be exercised solely by Bank of America, N.A. (unless Bank of America, N.A. otherwise consents in writing), and any notices, documents or items to be delivered to Secured Party under this Agreement shall be delivered to Bank of America, N.A., for the benefit of Secured Party. Each subsidiary of Bank of America, N.A. and each affiliate of Bank of America, N.A. hereby irrevocably appoints Bank of America, N.A. to act on its behalf hereunder and authorizes Bank of America, N.A. to take such actions on its behalf and to exercise such powers as are delegated to Secured Party by the terms hereof, together with such actions and powers as are reasonably incidental thereto. Furthermore, each subsidiary of Bank of America, N.A. and each affiliate of Bank of America, N.A. hereby irrevocably appoints and authorizes Bank of America, N.A. to act as its agent for purposes of acquiring, holding, perfecting and enforcing any and all liens on Collateral granted by Borrower to Secured Party to secure any of the Secured Obligations, together with such powers and discretion as are reasonably incidental thereto, and Bank of America,

N.A. accepts such appointment and authority. The provisions of this Section are solely for the benefit of Secured Party, and Borrower shall not be considered, and shall not have any rights as, third party beneficiaries of any such provisions.

19. Amendment, Waiver, Etc. This Agreement shall not be amended, modified, supplemented, terminated or waived (explicitly or by implication) *except* in a writing signed by Borrower and Secured Party.

20. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one and the same agreement. Delivery of an executed counterpart of this Agreement (or of any other agreement or document required by this Agreement and any amendment to this Agreement) by telecopy or other electronic imaging means shall be as effective as delivery of a manually executed counterpart of this Agreement; *provided, however*, that the telecopy or other electronic image shall be promptly followed by an original if required by Secured Party.

21. Financing Statement Property Description. To perfect the security interest granted under this Agreement, Borrower expressly authorizes Secured Party to file financing statements naming Borrower as debtor with the Collateral description "all assets of the debtor", "all personal property of the debtor" or other words to that effect. Such financing statements shall not be deemed to grant any security interest in any items of property otherwise excluded as Collateral pursuant to provisions hereof.

22. Governing Law. This Agreement is governed by and shall be interpreted according to federal law and the laws of California without regard to any choice of law, rules or principles to the contrary. If state or local law and federal law are inconsistent, or if state or local law is preempted by federal law, federal law governs. If Secured Party has greater rights or remedies under federal law, whether as a national bank or otherwise, this paragraph shall not be deemed to deprive Secured Party of such rights and remedies as may be available under federal law.

23. Dispute Resolution Provision. This Section 23, including the subsections below, is referred to as the "Dispute Resolution Provision." Borrower acknowledges and agrees that this Dispute Resolution Provision is a material inducement for Secured Party in entering into the Loan Agreement and the other Loan Documents to which Secured Party is a party. By accepting this Agreement, Secured Party shall be deemed to have agreed to this Dispute Resolution Provision.

(a) Scope. This Dispute Resolution Provision concerns the resolution of any disputes, controversies, claims, counterclaims, allegations of liability, theories of damage, or defenses (collectively, a "Claim" or "Claims") between Secured Party, on the one hand, and Borrower, on the other hand (each side being, for the purposes of this Dispute Resolution Provision, a "Party" and the two sides together being the "Parties"), regardless of whether based on federal, state, or local law, statute, ordinance, regulation, contract, common law, or any other source, and regardless of whether foreseen or unforeseen, suspected or unsuspected, or fixed or contingent at the time of this Agreement, including but not limited to Claims that arise out of or relate to: (i) this Agreement (including any renewals, extensions or modifications); or (ii) any document related to this Agreement. For the purposes of this Dispute Resolution Provision only, the terms "Secured Party" or Party or Parties (to the extent referring to or including Secured Party) shall include any parent corporation, subsidiary or affiliate of Secured Party.

(b) Judicial Reference. Any Claim brought by any Party in a California state court shall be resolved by a general reference to a referee (or a panel of referees) as provided in California Code of Civil Procedure Section 638. The referee (or presiding referee of the panel) shall be a retired Judge or Justice of the California state court system. The referee(s) shall be selected by mutual written agreement of the parties. If the parties do not agree, the referee(s) shall be selected by the Presiding Judge of the Court (or his or her representative) as provided in California Code of Civil Procedure Section 640. The referee(s) shall hear and determine all issues relating to the Claim, whether of fact or of law, and shall do so in accordance with the laws of the State of California and the California rules of evidence and civil procedure, and shall report a statement of decision. The referee(s) shall be empowered to enter equitable as well as legal relief, provide all temporary or provisional remedies, enter equitable and legal orders that will be binding on the parties, and rule on any motion which would be authorized in court litigation, including without limitation motions to dismiss, for summary judgment, or for summary adjudication. The referee(s) shall award legal fees and costs (including the fees of the referee(s)) relating to the judicial reference proceeding, and to any related litigation or arbitration, in accordance with the terms of this Agreement. The award that results from the decision of the referee(s) shall be entered as a judgment in the court that appointed the referee(s), in accordance with the provisions of California Code of Civil Procedure Sections 644(a). Pursuant to California Code of Civil Procedure Sections 645, the parties reserve the right to seek appellate review of any judgment or order, including but not limited to, orders pertaining to class certification, to the same extent permitted in a court of law.

(c) Arbitration Provisions. The Parties agree that judicial reference pursuant to Section 23(b) above is the preferred method of dispute resolution of all Claims, when available. The Parties therefore agree that injunctive relief, including a temporary restraining order, without the posting of any bond or security, shall be appropriate to enjoin the prosecution of any arbitration proceeding where the Claims at issue become subject to (and as long as they remain subject to) judicial reference pursuant to Section 23(b) above, provided that a Party moves for such relief within thirty (30) days of its receipt of a demand for arbitration of a Claim. However, with respect to any Claim brought in a forum other than a California state court, or brought in a California state court but judicial reference pursuant to Section 23(b) above is not available or enforced by the court, the arbitration provisions in this Section 23(c) (collectively, the "Arbitration Provisions") shall apply to the Claim. In addition, if either of the Parties serves demand for arbitration of a Claim in accordance with these Arbitration Provisions, and the other Party does not move to enjoin the arbitration proceeding within thirty (30) days of receipt of the demand, the right to judicial reference shall be waived and the Claim shall remain subject to these Arbitration Provisions thereafter. The inclusion of these Arbitration Provisions in this Agreement shall not otherwise be deemed as any limitation or waiver of the judicial reference provisions. The Arbitration Provisions are as follows:

(i) For any Claim for which these Arbitration Provisions apply (as defined in the immediately preceding paragraph), the Parties agree that at the request of any Party to this Agreement, such Claim shall be resolved by binding arbitration. The Claims shall be governed by the laws of the State of California without regard to its conflicts of law principles. The Federal Arbitration Act, 9 U.S.C. §§ 1 et seq. (the "Act"), shall apply to the construction, interpretation, and enforcement of these Arbitration Provisions, as well as to the confirmation of or appeal from any arbitration award.

(ii) Arbitration proceedings will be determined in accordance with the Act, the then-current Commercial Finance rules and procedures of the American Arbitration Association or any successor thereof ("AAA") (or any successor rules for arbitration of financial services disputes), and the terms of these Arbitration Provisions. In the event of any inconsistency, the terms of these Arbitration Provisions shall control. The arbitration shall be administered by the Parties and not the AAA and shall be conducted, unless otherwise required by law, at a location in the State of California.

(iii) If aggregate Claims are One Million Dollars (\$1,000,000) or less:

(A) All issues shall be heard and determined by one neutral arbitrator. The arbitrator shall have experience with commercial financial services disputes and, if possible, prior judicial experience, and shall be selected pursuant to the AAA "Arbitrator Select: List and Appointment" process, to be initiated by Secured Party. If the AAA "Arbitrator Select: List and Appointment" process is unavailable, Secured Party shall initiate any successor process offered by the AAA or a similar process offered by any other nationally recognized alternative dispute resolution organization.

(B) Unless the arbitrator has a dispositive motion under advisement or unforeseeable and unavoidable conflicts arise (as determined by the arbitrator) and subject to the availability of the arbitrator, all arbitration hearings shall commence within one hundred eighty (180) days of the appointment of the arbitrator, and the award of the arbitrator shall be issued within two hundred forty (240) days of the appointment of the arbitrator.

(C) A Party shall be entitled to take no more than five (5) fact depositions, one or more of which may be taken in accordance with Fed. R. Civ. P. 30(b)(6), plus depositions of any experts designated by the other Party, each of seven (7) hours or less, during pre-hearing discovery.

(D) There shall be no written discovery requests except a Party may (1) serve document requests on the other Party not to exceed thirty (30) in number, including subparts, in the aggregate, and (2) serve one set of interrogatories on the other Party not to exceed thirty-five (35) in number, including subparts, in the aggregate. The requests shall be served within forty-five (45) days of the appointment of the arbitrator and shall be responded to within twenty-one (21) days of service.

(iv) If aggregate Claims exceed One Million Dollars (\$1,000,000):

(A) The issues shall be heard and determined by one neutral arbitrator selected as above unless either Party requests that all issues be heard and determined by three (3) neutral arbitrators. In that event, each Party shall select an arbitrator with experience with commercial financial services disputes, and the two arbitrators shall select a third arbitrator, who shall have prior judicial experience. If the arbitrators cannot agree, the third



arbitrator shall be selected pursuant to the AAA "Arbitrator Select: List and Appointment" process, to be initiated by Secured Party.

(B) Unless the arbitrator(s) have a dispositive motion under advisement or other good cause is shown (as determined by the arbitrator(s)) and subject to the availability of the arbitrator(s), all arbitration hearings shall commence within one hundred eighty (180) days of the appointment of the arbitrator(s), and the award of the arbitrator(s) shall be issued within two hundred forty (240) days of the appointment of the arbitrator(s).

(C) A Party shall be entitled to take no more than five (5) fact depositions, one or more of which may be taken in accordance with Fed. R. Civ. P. 30(b)(6), plus depositions of any experts designated by the other Party, each of seven (7) hours or less, during pre-hearing discovery.

(D) There shall be no written discovery requests except a Party may (1) serve document requests on the other Party not to exceed thirty (30) in number, including subparts, in the aggregate, and (2) serve one set of interrogatories on the other Party not to exceed thirty-five (35) in number, including subparts, in the aggregate. The requests shall be served within forty-five (45) days of the appointment of the arbitrator(s) and shall be responded to within twenty-one (21) days of service.

(v) [Reserved.]

(vi) The arbitrator(s) shall consider and rule on motions by the Parties to dismiss for failure to state a claim; to compel; and for summary judgment, in a manner substantively consistent with the corresponding Federal Rules of Civil Procedure. The arbitrator(s) shall enforce the "Apex" doctrine with regard to requested depositions of high-ranking executives of both Parties. The arbitrator(s) shall exclude any Claim not asserted within thirty (30) days following the demand for arbitration. This shall not prevent a Party from revising the calculation of damages on any existing theory. All discovery shall close at least one (1) week before any scheduled hearing date, and all hearing exhibits shall have been exchanged by the same deadline or they shall not be given weight by the arbitrator(s).

(vii) The arbitrator(s) will give effect to applicable statutes of limitation in determining any Claim and shall dismiss the Claim if it is barred by the statutes of limitation. For purposes of the application of any statutes of limitation, the service of a written demand for arbitration or counterclaim pursuant to the notice provision set forth in Section 10.10 of the Loan Agreement is the equivalent of the filing of a lawsuit. At the request of any Party made at any time, including at confirmation of an award, the resolution of a statutes of limitation defense to any Claim shall be decided de novo by a court of competent jurisdiction rather than by the arbitrator(s). Otherwise, any dispute concerning these Arbitration Provisions or whether a Claim is arbitrable shall be determined by the arbitrator(s), except as otherwise set forth in this Dispute Resolution Provision.

(viii) The arbitrator(s) shall have the power to award legal fees and costs relating to the arbitration proceeding and any related litigation or arbitration,

pursuant to the terms of this Agreement. The arbitrator(s) shall provide a written statement of reasons for the award. The arbitration award may be submitted to any court having jurisdiction to be confirmed and have judgment entered and enforced.

(ix) The filing of a court action is not intended to constitute a waiver of the right of any Party, including the suing Party, thereafter to require submittal of the Claims to arbitration, unless the Party fails to make such demand for arbitration within ninety (90) days following the filing of the court action.

(x) The arbitration proceedings shall be private. All documents, transcripts, and filings received by any Party shall not be disclosed by the recipient to any third parties other than attorneys, accountants, auditors, and financial advisors acting in the course of their representation, or as otherwise ordered by a court of competent jurisdiction. Any award also shall be kept confidential, although this specific requirement shall be void once the award must be submitted to a court for enforcement. The Parties agree that injunctive relief, including a temporary restraining order, from a trial court is the appropriate relief for breach of this Dispute Resolution Provision, and they waive any security or the posting of a bond as a requirement for obtaining such relief.

(d) Self-Help. This Dispute Resolution Provision does not limit the right of any Party to: (i) exercise self-help remedies, such as but not limited to, setoff; (ii) initiate judicial or non-judicial foreclosure against any real or personal property collateral; (iii) exercise any judicial or power of sale rights; or (iv) act in a court of law to obtain an interim remedy, such as but not limited to, injunctive relief, writ of possession or appointment of a receiver, or additional or supplementary remedies.

(e) Class Action Waiver. Any arbitration or court trial (whether before a judge or jury or pursuant to judicial reference) of any Claim will take place on an individual basis without resort to any form of class or representative action (the "Class Action Waiver"). THE CLASS ACTION WAIVER PRECLUDES ANY PARTY FROM PARTICIPATING IN OR BEING REPRESENTED IN ANY CLASS OR REPRESENTATIVE ACTION REGARDING A CLAIM. Regardless of anything else in this Dispute Resolution Provision, the validity and effect of the Class Action Waiver may be determined only by a court or referee and not by an arbitrator. Borrower acknowledges that the Class Action Waiver is material and essential to the arbitration of any disputes between the Parties and is nonseverable from the agreement to arbitrate Claims. If the Class Action Waiver is limited, voided or found unenforceable, then the Parties' agreement to arbitrate shall be null and void with respect to such proceeding, subject to the right to appeal the limitation or invalidation of the Class Action Waiver. THE PARTIES ACKNOWLEDGE AND AGREE THAT UNDER NO CIRCUMSTANCES WILL A CLASS ACTION BE ARBITRATED.

(f) Jury Waiver. By agreeing to judicial reference or binding arbitration, the parties irrevocably and voluntarily waive any right they may have to a trial by jury as permitted by law in respect of any Claim. Furthermore, without intending in any way to limit the provisions hereof, to the extent any Claim is not submitted to judicial reference or arbitration, the parties irrevocably and voluntarily waive any right they may have to a trial by jury to the extent permitted by law in respect of such Claim. This waiver of jury trial shall remain in effect even if the Class Action Waiver is limited, voided or found unenforceable. WHETHER THE CLAIM IS DECIDED BY JUDICIAL REFERENCE, BY ARBITRATION, OR BY TRIAL BY A JUDGE, THE PARTIES AGREE AND UNDERSTAND THAT THE

EFFECT OF THIS DISPUTE RESOLUTION PROVISION IS THAT THEY ARE GIVING UP THE RIGHT TO TRIAL BY JURY TO THE EXTENT PERMITTED BY LAW. EACH PARTY HERETO (i) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (ii) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER DOCUMENTS CONTEMPLATED HEREBY BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION AND (iii) CERTIFIES THAT THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE.

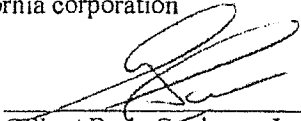
24. Jurisdiction, Venue, Miscellaneous. This Agreement shall (a) bind Borrower and its successors and assigns, provided that Borrower may not assign its rights or obligations under this Agreement without the prior written consent of Secured Party (and any attempted assignment without such consent shall be void), and (b) inure to the benefit of Secured Party and its successors and assigns. Borrower hereby irrevocably (i) submits to the jurisdiction of any State or U.S. Federal Court in California, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement, (ii) waives any objection it may have to the laying of venue of any such action or proceeding in any of the said courts and (iii) waives to the fullest extent permitted by law any defense asserting an inconvenient forum in connection therewith. Service of process by Secured Party in connection with such action or proceeding shall be binding on Borrower if sent to Borrower by registered or certified mail at its address specified in the Loan Agreement. Borrower acknowledges and agrees that nothing in this Agreement shall affect the right to serve process in any other manner permitted by law or preclude the right to bring legal proceedings in any other court or courts of competent jurisdiction as Secured Party may elect and that legal proceedings in any one or more jurisdictions shall not preclude legal proceedings in any other jurisdiction.


25. Notices. Unless otherwise provided in this Agreement, all notices required under this Agreement shall be personally delivered or sent pursuant to, and subject to the terms and provisions of, the notice provisions provided in the Loan Agreement, or to such other addresses as the Secured Party and Borrower may specify from time to time in writing.

*[SIGNATURE PAGE FOLLOWS]*

IN WITNESS WHEREOF, Borrower has executed this Agreement by its duly authorized officer as of the date first written above.

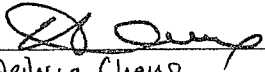
CACIQUE, INC.,  
a California corporation

By:   
Name: Gilbert B. de Cardenas, Jr.  
Title: Chief Operating Officer and Vice President

By:   
Name: Ana de Cardenas-Raptis  
Title: Secretary

ACCEPTED AND AGREED:

BANK OF AMERICA, N.A.

By:   
Name: Weihua Cheng  
Title: Vice President

SCHEDULE 1

Existing and Pending Trademarks

Jurisdiction	Trademark	Registration Number / (Serial Number)	Registration Date / (Filing Date)
Federal	Burro Logo	1,215,057	11/2/82
Federal	Cacique	2,915,613	1/4/05
Federal	Cacique	3,662,558	8/4/09
Federal	Cacique	3,859,152	10/12/10
Federal	Cacique plus label design	4,457,466	12/31/13
Federal	Cacique All Natural Pure Cheese	3,798,698	6/8/10
Federal	Cacique queso fresco label	3,777,202	4/20/10
Federal	Cacique Family Reserve	2,963,684	6/28/05
Federal	Cacique label design	3,840,211	8/31/10
Federal	Cacique label design	3,813,356	7/6/10
Federal	Cacique label design	3,809,755	6/29/10
Federal	Cacique label design	3,789,879	5/18/10
Federal	Cacique label design	3,813,357	7/6/10
Federal	Cacique label design	3,813,358	7/6/10
Federal	Cacique label design	3,809,756	6/29/10
Federal	Cacique label design	3,813,359	7/6/10
Federal	!Calidad Es Nuestra Tradicion!	1,951,689	1/23/96
Federal	Chapala	3,013,736	11/8/05
Federal	Chapala with boat design	2,909,900	12/14/04
Federal	Chapala boat design only	2,773,464	10/14/03
Federal	Crema Poblano	2,257,752	6/29/99
Federal	Crema Salvadorena label	3,574,825	2/17/09
Federal	D'Cojute	3,493,864	8/26/08
Federal	D'Cojute plus design	3,493,870	8/26/08
Federal	De La Casa	1,970,361	4/23/96
Federal	De La Casa	2,127,422	1/6/98
Federal	De La Casa	2,905,580	11/30/04
Federal	Disfruta Lo Mas Fresco	4,237,977	11/6/12
Federal	Dona Rosa	2,049,542	4/1/97
Federal	Dos Quesos	(86/368,483)	Pending
Federal	Four Quesos	(86/368,493)	Pending
Federal	Drinking Is Believing	4,190,935	8/14/12
Federal	Drink Up	2,072,108	6/17/97
Federal	Drink Up!	3,045,823	1/17/06
Federal	El Cacique	1,152,572	4/28/81
Federal	El Cacique plus burro logo	1,215,056	11/2/82
Federal	El Mas Fresco . . . El Mero Mero	2,539,792	2/19/02
Federal	El Mero Mero	4,429,407	11/5/13
Federal	Family Reserve	2,963,685	6/28/05
Federal	Finca San Vicente	4,231,361	10/23/12
Federal	Go Autentico	3,905,577	1/11/11

Federal	Go Authentico	4,198,904	8/28/12
Federal	Go Real Go Autentico	3,909,161	1/18/11
Federal	Go Real Go Autentico	4,226,064	10/16/12
Federal	Cacique Go Autentico	4,083,269	1/10/12
Federal	La Seleccion Autentica	4,058,377	11/22/11
Federal	Inspiracion Autentica	4,344,971	6/4/13
Federal	Autentico Cheese Society	(85/760,561)	(10/22/12)
Federal	Autentico Cheese Society	(85/759,335)	(10/20/12)
Federal	La Gota de Leche	3,113,924	7/11/06
Federal	La Nica	2,805,647	1/13/04
Federal	Le Falta? Le Faltaba!	2,490,507	9/18/01
Federal	Lend A Helping Hand	3,325,785	10/30/07
Federal	Lola's Creamery	3,386,187	2/19/08
Federal	Maria's Cocina	3,310,043	10/9/07
Federal	Maria's Cocina	4,210,479	9/18/12
Federal	Megademo	3,600,246	3/31/09
Federal	Mex-Tex Classic	2,093,442	9/2/97
Federal	Ivory Mex -Tex Classic	2,093,424	9/2/97
Federal	Jalapeno Mex-Tex Classic	2,093,425	9/2/97
Federal	Milk Drop Character design	2,538,524	2/12/02
Federal	Nochebuena	1,498,825	8/2/88
Federal	Nochebuena	3,534,067	11/18/08
Federal	Nochebuena poinsettia design	3,554,026	12/30/08
Federal	Norteno	3,366,565	1/8/08
Federal	Norteno stylized	1,729,623	11/3/92
Federal	Poblano	3,500,616	9/16/08
Federal	Ponele Sabor Tipico	4,227,756	10/16/12
Federal	Quality Authenticity Integrity Family	3,809,624	6/29/10
Federal	Quality Is Our Tradition!	2,040,842	2/25/97
Federal	Queso Ranchero plus burro logo	1,152,571	4/28/81
Federal	Ranchero	2,169,698	6/30/98
Federal	Ranchero	3,294,606	9/18/07
Federal	Ranchero label	3,745,734	2/9/10
Federal	Rikitos	3,920,804	2/15/11
Federal	Shake, Twist And Drink Your Way To The Wonderful Experience Of Yonique	3,981,825	6/21/11
Federal	Since 1973 Quality Authenticity Integrity Family	3,783,792	5/4/10
Federal	Since 1973 Quality Authenticity Integrity Family and design	3,840,136	8/31/10
Federal	Sunny State Farms	4,210,294	9/18/12
Federal	Una Mano Amiga	2,469,839	7/17/01
Federal	Yonique	1,970,485	4/23/96
Federal	Yonique bottle shape design	2,315,171	2/8/2000

<b>Federal</b>	<b>Bella Giana</b>	<b>3,522,420</b>	<b>10/21/08</b>
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**California Trademarks**

<b>California</b>	<b>Ranchero (for cheese)</b>	<b>93136</b>	<b>Expires 10/8/15</b>
<b>California</b>	<b>Burro Logo (for cheese, cream and meat)</b>	<b>93376</b>	<b>Expires 12/14/15</b>
<b>California</b>	<b>Nochebuena (for cream)</b>	<b>93467</b>	<b>Expires 1/14/16</b>
<b>California</b>	<b>El Cacique (for cheese, cream and meat)</b>	<b>93419</b>	<b>Expires 1/4/16</b>
<b>California</b>	<b>Nochebuena (for cheese)</b>	<b>87251</b>	<b>Expires 3/22/18</b>

**Mexican Trademarks**

<b>Mexico</b>	<b>Cacique</b>	<b>880608</b>	<b>5/10/05</b>
<b>Mexico</b>	<b><i>Cacique stylized in cursive</i></b>	<b>852275</b>	<b>9/22/04</b>
<b>Mexico</b>	<b><i>Cacique plus burro logo</i></b>	<b>852276</b>	<b>9/22/04</b>
<b>Mexico</b>	<b><i>Man on burro logo</i></b>	<b>470014</b>	<b>8/17/94</b>
<b>Mexico</b>	<b>Cacique</b>	<b>407418</b>	<b>3/9/92</b>



SCHEDULE 2

Existing and Pending Patents

<b>Jurisdiction</b>	<b>Title of Patent</b>	<b>Patent Number / (Application Number)</b>	<b>Issue Date / (Filing Date)</b>
Federal	PERMEATE TUBE AND RELATED METHODS	8,070,088	12/6/11
Federal	MIXING APPARATUS FOR FORMING AND FINISHING VICIOUS LIQUIDS WITH A REACTANT, CATALYST OR COAGULANT	6,655,827	12/2/03
Federal	RAPID FLUID MIXER	6,082,889	7/4/00
Federal	PERFORATED DISPLAY RACK	D599,582	9/8/09
Federal	PERMEATE TUBE AND RELATED METHODS	U.S. App. S.N. 13/373,706	PENDING

SCHEDULE 3

Pledged Securities

<b>Name of Issuer</b>	<b>Name of Grantor</b>	<b>Certificate Number</b>	<b>Number of Shares</b>	<b>Percentage of Total Equity Interests</b>
<b>None</b>	<b>None</b>	<b>None</b>	<b>None</b>	<b>None</b>

Pledged Debt

<b>Grantor</b>	<b>Issuer</b>	<b>Original Principal Amount</b>	<b>Outstanding Principal Balance</b>	<b>Issue Date</b>	<b>Maturity Date</b>
<b>None</b>	<b>None</b>	<b>None</b>	<b>None</b>	<b>None</b>	<b>None</b>

SCHEDULE 4

Existing and Pending Copyrights

<b>Grantor</b>	<b>Jurisdiction</b>	<b>Title of Work</b>	<b>Registration Number (if any)</b>	<b>Registration Date (if any)</b>
<b>None</b>	<b>None</b>	<b>None</b>	<b>None</b>	<b>None</b>

SCHEDULE 5

Commercial Tort Claims

**REDACTED**

SCHEDULE 6

Licenses and Other Intellectual Property

Intellectual Property Licenses: None

Trade Secrets:

**REDACTED**

SCHEDULE 7

Letters of Credit

None.

SCHEDULE 8

Deposit Accounts and Securities Accounts

**REDACTED**