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DEPARTMENT OF COMMERCE  
S. Patent and Trademark Office

RECORD  
102794771

FINANCE SECTION

To the Honorable Commissioner for Patents: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

**DYNAMIC COOKING SYSTEMS, INC.**

7/15/04

Additional name(s) of conveying party(ies) attached?  Yes  No

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

**CALYON, as Agent for the Lenders**

**ATTN: KATHLEEN M. SWEENEY,  
VICE PRESIDENT**

**1301 AVENUE OF THE AMERICAS**

**NEW YORK, NY 10019**

Additional name(s) & address(es) attached?  Yes  No

3. Nature of conveyance:

- Assignment  Merger
- Security Agreement  Change of Name

Other

Execution Date **JULY 2, 2004**

4. Application number(s) or patent number(s):

If this document is being filed together with a new application, the execution date of the application is: \_\_\_\_\_

A. Patent Application No.(s) **10-060,906 / 09-843,434**

B. Patent No.(s) **6,718,965 / 6,712,065 / D491,415 /  
D491,414 / D489,933 / 5,536,518 /  
D486,350 / D486,349 / D486,034 /  
D479,948 / D475,569 / D461,090**

Additional numbers attached?  Yes  No

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

**REX D. FRAZIER, ESQ.  
  
PILLSBURY WINTHROP LLP  
725 SOUTH FIGUEROA STREET, SUITE 2800  
LOS ANGELES, CA 90017-5406**

6. Total number of applications and patents involved: [ **14** ]

7. Total fee (37 CFR 3.41).....\$ **560.00**

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number: **16-1805**

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

**DO NOT USE THIS SPACE**

9. Signature.

*To the best of my knowledge and belief, the foregoing is true and correct and the attached is the original document.*

**REX D. FRAZIER**

Name of Person Signing  
**00000141 10060906**

*[Handwritten Signature]*  
Signature

*7/14/04*  
Date

07/20/2004 BY: [unclear] 00000141 10060906  
01 FC:8021

560 Total number of pages including cover sheet, attachments, and document.

Mail documents to be recorded with required cover sheet information to:  
Commissioner of Patents & Trademarks, Box Assignments  
Washington, D.C. 20231

**PATENT  
REEL: 015562 FRAME: 0409**

## DYNAMIC COOKING SYSTEMS, INC. PLEDGE AND SECURITY AGREEMENT

This Agreement, dated as of July 2, 2004 is among Dynamic Cooking Systems, Inc., a California corporation (the "Company"), and Calyon, acting as Agent (as defined below) for itself and the other Lenders (as defined below). The Company and the Agent, acting on behalf of the Lenders and the holders from time to time of the Obligations (as defined by reference below), hereby agree as follows:

### 1. Credit Agreement; Definitions.

1.1 Reference to Credit Agreement. Reference is made to that certain Credit Agreement dated as of July 2, 2004 (as amended and in effect from time to time, the "Credit Agreement"), among the Company, the lending institutions party thereto from time to time (each a "Lender" and collectively, the "Lenders") and the Agent.

1.2 Definitions. Capitalized terms defined in the Credit Agreement and not otherwise defined herein are used herein with the meanings so defined. Certain capitalized terms are used in this Agreement with the specific meanings defined below in this Section 1.2.

1.2.1 "Accounts" is defined in Section 2.1.3.

1.2.2 "Agent" is defined in the Credit Agreement.

1.2.3 "Agreement" means this Pledge and Security Agreement as from time to time in effect.

1.2.4 "Collateral" is defined in Section 2.1.

1.2.5 "Company" is defined in the preamble to this Agreement.

1.2.6 "Credit Agreement" is defined in Section 1.1.

1.2.7 "Government Receivables" means any Accounts as to which the United States of America or any agency or department thereof is the obligor.

1.2.8 "Indebtedness" means all liabilities, contingent or otherwise, which in accordance with GAAP are required to be classified upon the balance sheet of the Person obligated in respect of such liabilities and evidenced by notes, debentures or similar instruments.

1.2.9 "Margin Stock" means "margin stock" within the meaning of Regulations T, U or X of the Board of Governors of the Federal Reserve System.

1.2.10 "Obligor" means Holdings, the Borrower and any other Person guaranteeing or providing collateral for the Obligations (including the Company).

1.2.11 "Pledged Indebtedness" is defined in Section 2.1.7.

1.2.12 "Pledged Rights" is defined in Section 2.1.6.

1.2.13 "Pledged Securities" means, collectively, the Pledged Stock, the Pledged Rights and the Pledged Indebtedness.

1.2.14 "Pledged Stock" is defined in Section 2.1.5.

1.2.15 "UCC" means the Uniform Commercial Code as in effect in New York on the date hereof; provided, however, that with respect to the perfection of the Agent's Lien on the Collateral and the effect of nonperfection thereof, the term "UCC" means the Uniform Commercial Code as in effect in any jurisdiction the laws of which are made applicable by section 9-103 of the Uniform Commercial Code as in effect in New York.

1.3 Certain Rules of Construction. Except as otherwise explicitly specified to the contrary or unless the context clearly requires otherwise, (a) the capitalized term "Section" refers to sections in this Agreement, (b) the capitalized term "Exhibit" refers to exhibits to this Agreement, (c) references to any Section include all subsections thereof, (d) the word "including" shall be construed as "including without limitation," (e) terms defined in the UCC and not otherwise defined herein have the meaning provided under the UCC, (f) references to a particular statute or regulation include all rules and regulations thereunder and any successor statute, regulation or rules, in each case as from time to time in effect, and (g) references to a particular person include such Person's successors and assigns to the extent not prohibited by this Agreement and the other Loan Documents.

## 2. Security.

2.1 Collateral. As security for the payment and performance of the Obligations, the Company mortgages, pledges and collaterally grants and assigns to the Agent for the benefit of the Lenders and the holders from time to time of any of the Obligations, and creates a security interest in favor of the Agent for the benefit of the Lenders and such holders in, all of its right, title and interest in and to (but none of its obligations or liabilities with respect to) the items and types of present and future property described in Sections 2.1.1 through 2.1.15 (subject to Section 2.1.16), whether now owned or hereafter acquired, all of which shall be included in the term "Collateral."

2.1.1 Tangible Personal Property. All goods, furniture, furnishings, machinery, equipment, inventory and all other tangible personal property of any nature whatsoever, wherever located, including raw materials, work in process, finished parts and products, supplies, spare parts, replacement parts, merchandise for resale, computers, tapes, disks and computer equipment and any other property or equipment used for the manufacture, marketing, distribution and sale of the Company's products.

2.1.2 [Omitted]

2.1.3 Accounts: Rights to Payment of Money. All rights to receive payment of money, including accounts and receivables, indemnification rights, rights to receive the payment of money under contracts, franchises, licenses, permits, subscriptions or other agreements (whether or not earned by performance), any agreements entered into by, or

assumed by the Company relating to the acquisition of property, and any leases of rent or personal property, and rights to receive payments from any other source. All such rights are collectively referred to as "Accounts."

2.1.4 Intangibles. All of the following (to the extent not included in Section 2.1.3): (a) contracts, franchises, licenses, permits, subscriptions and other agreements and all rights thereunder; (b) rights granted by others which permit the Company to sell or market items of personal property; (c) United States and foreign common law and statutory copyrights and rights in literary property and rights and licenses thereunder; (d) trade names, United States and foreign trademarks, service marks, internet domain names, registrations of any of the foregoing and related good will; (e) United States and foreign patents and patent applications; (f) computer software, designs, models, know-how, trade secrets, rights in proprietary information, formulas, customer lists, backlog, orders, subscriptions, royalties, catalogues, sales material, documents, good will, inventions and processes; (g) judgments, causes in action and claims, whether or not inchoate, and (h) all other general intangibles and intangible property and all rights thereunder.

2.1.5 Pledged Stock. (a) All shares of capital stock or other evidence of beneficial interest in any corporation, business trust or limited liability company, (b) all limited partnership interests in any limited partnership, (c) all general partnership interests in any general or limited partnership, (d) all joint venture interests in any joint venture and (e) all options, warrants and similar rights to acquire such capital stock or such interests. All such capital stock, interests, options, warrants and other rights are collectively referred to as the "Pledged Stock." At the date of this Agreement, the Pledged Stock consists of the shares of capital stock described on Exhibit 2.1.5.

2.1.6 Pledged Rights. All rights to receive profits or surplus of, or other distributions (including income, return of capital and liquidating distributions) from, any corporation, business trust, limited liability company, partnership, joint venture or other source, including any dividends and distributions by any such Person to partners, joint venturers or members. All such rights are collectively referred to as the "Pledged Rights."

2.1.7 Pledged Indebtedness. All Indebtedness from time to time owing to the Company from any Person (collectively referred to as the "Pledged Indebtedness").

2.1.8 Chattel Paper, Instruments and Documents. All chattel paper, nonnegotiable instruments, negotiable instruments, documents and investment property.

2.1.9 Leases. All leases of personal property, whether the Company is the lessor or the lessee thereunder.

2.1.10 Deposit Accounts. All general or special deposit accounts, including any demand, time, savings, passbook or similar account maintained by the Company with any bank, trust company, savings and loan association, credit union or similar organization, and all money, cash and cash equivalents of the Company, whether or not deposited in any such deposit account.

2.1.11 Collateral. All collateral granted by third parties to, or held by, the Company with respect to the Accounts, Pledged Securities, chattel paper, instruments, leases and other items of Collateral.

2.1.12 Books and Records. All books and records, including books of account and ledgers of every kind and nature, all electronically recorded data (including all computer programs, disks, tapes, electronic data processing media and software used in connection with maintaining the Company's books and records), all files and correspondence and all containers for the foregoing.

2.1.13 Insurance. All insurance policies which insure against any loss or damage to any other Collateral or which are otherwise owned by the Company.

2.1.14 All Other Property. All other property, assets and items of value of every kind and nature, tangible or intangible, absolute or contingent, legal or equitable.

2.1.15 Proceeds and Products. All proceeds, including insurance proceeds, and products of the items of Collateral described or referred to in Sections 2.1.1 through 2.1.14 and, to the extent not included in the foregoing, all dividends and distributions with respect to the Pledged Securities.

2.1.16 Excluded Property. Notwithstanding Sections 2.1.1 through 2.1.15, the payment and performance of the Obligations shall not be secured by:

(a) any contract, license, permit or franchise that, or any rights or property acquired pursuant to any contract, license, permit or franchise that, validly prohibits the creation by the Company of a security interest in such contract, license, permit or franchise, or in such rights or property; provided, however, that the provisions of this Section 2.1.16 shall not prohibit the security interests created by this Agreement from extending to the proceeds of such contract, license, permit or franchise (or such rights or property) other than a purchase money security interest or capital lease or to the monetary value of the good will and other general intangibles of the Company relating thereto;

(b) any rights or property to the extent that any valid and enforceable law or regulation applicable to such rights or property prohibits the creation of a security interest therein; provided, however, that the provisions of this Section 2.1.16 shall not prohibit the security interests created by this Agreement from extending to the proceeds of such rights or property or to the monetary value of the good will and other general intangibles of the Company relating thereto; or

(c) any motor vehicles, subject to Section 2.1.17(b).

2.1.17 Additional Collateral. As additional Collateral, the Company covenants that it will mortgage, pledge and collaterally grant and assign to the Agent for the benefit of the Lenders and the holders from time to time of any Obligation, and will create a security interest in favor of the Agent for the benefit of the Lenders and such holders in, all of its right, title and interest in and to (but none of its obligations with respect to) such of the following present or future items as the Agent may from time to time specify by

notice to the Company, whether now owned or hereafter acquired, and the proceeds and products thereof, except to the extent consisting of rights or property of the types referred to in Section 2.1.16(a) through (b), subject only to Liens permitted by Section 2.3.4, all of which shall thereupon be included in the term "Collateral":

(a) **Real Property.** All real property (with a fair market value of \$250,000 or more) and immovable property and fixtures, rights of way or use, servitudes, licenses, tenements, hereditaments, appurtenances, profits, crops, mineral rights and other rights now or hereafter existing, and easements wherever located, together with any and all estates and interests of the Company therein, including lands, buildings, stores, manufacturing facilities, improvements and other structures, now existing or hereafter erected on such property, fixed plant, fixed equipment, including any boilers, pumps, tanks, electric panels, switchboards, lighting equipment, wiring, heating, plumbing and ventilating apparatus, sprinklers, elevators, escalators, refrigerating, air conditioning and other building service equipment and all permits, rights, licenses, benefits and other interests of any kind or nature whatsoever in respect of such real and immovable property.

(b) All motor vehicles, but only if an Event of Default has occurred and is continuing.

2.2 [intentionally omitted]

2.3 **Representations, Warranties and Covenants with Respect to Collateral.** The Company represents, warrants and covenants that:

2.3.1 **Pledged Stock.** All shares of capital stock, limited partnership interests, membership interests and similar securities included in the Pledged Stock are and shall be at all times duly authorized, validly issued, fully paid and (in the case of capital stock) nonassessable. The Company has delivered to the Agent certificates evidencing the Pledged Stock set forth on Exhibit 2.1.5, together with a stock transfer power duly executed in blank on behalf of the Company, and will deliver to the Agent certificates representing Pledged Stock hereafter acquired by the Company, registered, if the Agent so requests, in the name of the Agent or its nominee, or accompanied by a stock transfer power executed in blank and, if the Agent reasonably requests, with the signature guaranteed, all in form and manner reasonably satisfactory to the Agent. Pledged Stock that is not evidenced by a certificate will be described in appropriate control statements and UCC financing statements provided to the Agent, all in form and substance reasonably satisfactory to the Agent. Upon the occurrence and during the continuance of an Event of Default, the Agent may transfer into its name or the name of its nominee any Pledged Securities. In the event the Pledged Stock includes any Margin Stock, the Company will furnish to the Lenders Federal Reserve Form U-1 and take such other action as the Agent may reasonably request to ensure compliance with applicable laws.

2.3.2 **Accounts and Pledged Indebtedness.** The Company will, promptly upon the receipt thereof, deliver to the Agent any promissory note or similar instrument representing any Account or Pledged Indebtedness, after having endorsed such

promissory note or instrument in blank other than checks received in the ordinary course of business.

### 2.3.3 Government Contracts Receivables.

(a) The Company's right, title and interest in any Government Receivables shall constitute Accounts for all purposes hereunder; provided, however, that nothing in this Agreement shall obligate the Company to comply with FACA except if requested by the Agent if an Event of Default shall have occurred and be continuing, or as set forth below. If at any time all Government Receivables constitute more than 4% of total Accounts, the Company shall give prompt notice thereof to the Agent and, if requested by the Agent, use commercially reasonable efforts to comply with FACA with respect to all Government Receivables to ensure that not more than 4 % of total Accounts consist of Government Receivables as to which there has been no compliance with FACA.

(b) No contracts of the Company and its Subsidiaries with government contractors provide that payments to the Company or its Subsidiaries, as the case may be, are contingent or dependent upon the government contractor receiving payment from the federal government.

2.3.4 No Liens or Restrictions on Transfer or Change of Control. All Collateral shall be free and clear of any Liens and restrictions on the transfer thereof, except as permitted by Section 6.2 of the Credit Agreement. Without limiting the generality of the foregoing, the Company will use its commercially reasonable efforts to exclude from agreements, instruments, deeds or leases to which it becomes a party after the date hereof provisions that would prevent the Company from creating a security interest in such agreement, instrument, deed or lease or any property acquired thereunder as contemplated hereby. None of the Pledged Stock shall be subject to any option to purchase or similar rights of any Person. Except with the written consent of the Agent, the Company will use its commercially reasonable efforts to exclude from any material agreement, instrument, deed or lease provisions that restrict the change of control or ownership of the Company or any of its Subsidiaries, or the creation of a security interest in the ownership of the Company or any of its Subsidiaries.

2.3.5 Location of Collateral. The Company shall at all times keep its records concerning the Accounts at its chief executive office and principal place of business located at 5800 Skylab Road, Huntington Beach, CA 92647 or, so long as the Company shall have first taken all steps necessary to perfect the Agent's security interest in the Collateral with respect to such new address, at such other address as the Company may specify by notice actually received by the Agent not less than 10 Business Days prior to such change of address. The Company shall not at any time keep tangible personal property of the type referred to in Section 2.1.1 (other than motor vehicles, inventory in transit, property out for repair or refurbishment or for display, in each case in the ordinary course of business) at any location other than those listed on Exhibit 2.3.5 or, so long as the Company shall have first taken all steps necessary to perfect the Agent's security interest in the Collateral with respect to such other jurisdiction, such other jurisdiction as the Company may specify by notice actually received by the Agent not less than 10

Business Days prior to moving such tangible personal property into such other jurisdiction.

2.3.6 Trade Names. The Company will not adopt or do business under any name other than its name or names designated in Exhibit 2.3.6 or, so long as the Company shall have first taken all steps necessary to perfect the Agent's security interest in the Collateral with respect to such other name, such other name specified by notice actually received by the Agent not less than 10 Business Days prior to the conduct of business under such other name. Since its inception, as of the date hereof the Company has not changed its name or adopted or conducted business under any trade name other than a name specified on Exhibit 2.3.6.

2.3.7 Insurance. Each insurance policy included in, or insuring against loss or damage to, the Collateral shall name the Agent as additional insured party or as loss payee. No such insurance policy shall be cancelable or subject to termination or reduction in amount or scope of coverage until after at least 30 days' prior written notice from the insurer to the Agent. At least 10 days prior to the expiration of any such insurance policy for any reason, the Company shall furnish the Agent with a renewal or replacement policy and evidence of payment of the premiums therefor when due. The Company grants to the Agent full power and authority as its attorney-in-fact, effective upon notice to the Company after the occurrence and during the continuance of an Event of Default to obtain, cancel, transfer, adjust and settle any such insurance policy and to endorse any drafts thereon. Subject to Section 2.3(c) and Section 5.5(c) of the Credit Agreement, any amounts that the Agent receives under any such policy (including return of unearned premiums) insuring against loss or damage to the Collateral prior to the occurrence of an Event of Default shall be delivered to the Company for the replacement, restoration and maintenance of the Collateral. Any such amounts that the Agent receives after the occurrence and during the continuance of an Event of Default shall, at the Agent's option, be applied to payment of the Obligations or to the replacement, restoration and maintenance of the Collateral. If the Company fails to provide insurance as required by this Agreement, the Agent may, at its option, purchase such insurance, and the Company will on demand pay to the Agent the amount of any payments made by the Agent or the Lenders for such purpose, together with interest on the amounts so disbursed from five Business Days after the date demanded until payment in full thereof at a rate per annum equal to the sum of (a) the Base Rate in effect from time to time plus (b) 2 %.

2.3.8 Intellectual Property. Exhibit 2.3.8 (as supplemented from time to time by the Company) shall set forth the following items (collectively, the "Intellectual Property"):

(a) all copyrights owned by the Company that are registered with the United States Copyright Office (or any office maintaining registration of copyrights in any foreign jurisdiction) and all applications for such registration and

(b) all trademarks, tradenames, service marks, service names and patents owned by the Company that are registered with the United States Patent and Trademark



Office (or any office maintaining registration of such items in any state of the United States of America or any foreign jurisdiction) and all applications for such registration.

(c) all internet domain names owned by the Company and the registry office on which such domain names are registered.

The Company shall duly authorize, execute and deliver to the Agent separate memoranda of security interests provided by the Agent with respect to the foregoing Intellectual Property referred to in clauses (a) and (b) for filing in the offices described above. Upon the registration of any additional Intellectual Property (or the filing of applications therefor) in the offices described above, the Company shall (at least quarterly) notify the Agent and duly authorize, execute and deliver to the Agent separate memoranda of security interests covering such additional Intellectual Property for filing in such offices.

2.3.9 Deposit Accounts. The Company shall keep all its bank and deposit accounts only with the Agent or the financial institutions listed on Exhibit 2.3.9, as supplemented by the Company from time to time. The Company shall cause Union Bank of California, N.A. and any other financial institution, except US Bank National Association, listed on Exhibit 2.3.9 from time to time, to enter into Control Agreements, on terms and conditions reasonably satisfactory to the Agent.

2.3.10 Modifications to Collateral. Except with the prior written consent of the Agent, the Company shall not, other than consistent with past practice in the ordinary course of business and on an arm's-length basis, amend or modify, or waive any of its rights under or with respect to, any material Accounts, general intangibles, Pledged Securities or leases if the effect of such amendment, modification or waiver would be to reduce the amount of any such items or to extend the time of payment thereof, to waive any default by any other party thereto, or to waive or impair any remedies of the Company, the Lenders or the Agent under or with respect to any such Accounts, general intangibles, Pledged Securities or leases. The Company will promptly give the Agent written notice of any request by any Person for any credit or adjustment which is in an amount materially greater than that customarily granted by the Company in the ordinary course of business with respect to any Account, general intangible, Pledged Security or lease.

2.3.11 Delivery of Documents. At the Agent's request, the Company shall deliver to the Agent, promptly upon its receipt thereof, copies of any agreements, instruments, documents or invoices comprising or relating to the Collateral. Pending such request, the Company shall keep such items at its chief executive office and principal place of business referred to in Section 2.3.5.

2.3.12 Perfection of Collateral. This Agreement shall create in favor of the Agent, for the benefit of the Lenders, a legal, valid and enforceable first priority security interest in the Collateral described herein, subject only (in the case of Collateral other than Pledged Stock) to Liens permitted by Section 6.2 of the Credit Agreement. In the case of the Pledged Stock, when stock certificates representing such Pledged Stock and stock powers related thereto duly executed in blank by the relevant Guarantor are

delivered to the Agent, and in the case of the other Collateral described in this Agreement, when financing statements in appropriate form are filed in the jurisdictions specified on Exhibit 2.3.12, this Agreement shall provide a fully perfected (to the extent perfection can be achieved by filing financing statements), first priority Lien on, and security interest in, all right, title and interest of the Company in such Collateral, as security for the Obligations, in each case prior and superior in right to any other Person (except Liens permitted to be prior and superior to the Agent's Lien by Section 6.2 of the Credit Agreement). Upon the Agent's request from time to time, the Company will execute and deliver, or authorize, as applicable, and file and record in the proper filing and recording places, all such instruments, including financing statements, collateral assignments of copyrights, trademarks and patents, mortgages or deeds of trust (in the case of owned real property with a fair market value in excess of \$250,000), and notations on certificates of title and will take all such other action, as the Agent deems advisable for confirming to it the Collateral or to carry out any other purpose of this Agreement or any other Loan Document.

2.4 Administration of Collateral. The Collateral shall be administered as follows, and if an Event of Default shall have occurred and be continuing, Section 2.5 shall also apply.

2.4.1 Use of Collateral. Until the Agent provides written notice to the contrary, the Company may use, commingle and dispose of any part of the Collateral in the ordinary course of its business, all subject to the limitations imposed by the Credit Agreement.

2.4.2 Deposits: Accounts. After the occurrence and continuance of an Event of Default, to the extent specified by prior written notice from the Agent, all sums collected or received and all property recovered or possessed by the Company in connection with any Collateral shall be received and held by the Company in trust for and on the Lenders' behalf, shall be segregated from the assets and funds of the Company, and shall be delivered to the Agent for the benefit of the Lenders. Without limiting the foregoing, after the occurrence and continuance of an Event of Default, upon the Agent's request, the Company shall institute depository collateral accounts, lock-box receipts and similar credit procedures providing for the direct receipt of payment on Accounts at a separate address, the segregation of such proceeds for direct payment to the Agent and appropriate notices to Account debtors.

2.4.3 Pledged Securities.

(a) Until an Event of Default shall occur and be continuing:

(i) the Company shall be entitled, to the extent permitted by the Credit Agreement and the other Loan Documents, to receive all distributions on or with respect to the Pledged Securities (other than distributions constituting additional Pledged Securities or liquidating distributions). All distributions constituting additional Pledged Securities or liquidating distributions will be retained by the Agent (or if received by the Company shall be held by the Company in trust and shall be immediately delivered by the

Company to the Agent in the original form received, endorsed in blank) and held by the Agent as part of the Collateral; and

(ii) the Company shall be entitled to vote or consent with respect to the Pledged Securities in any manner not inconsistent with the terms of the Credit Agreement and the other Loan Documents, and the Agent will, if so requested, execute appropriate revocable proxies therefor.

(b) If an Event of Default shall have occurred and be continuing:

(i) all distributions on or with respect to the Pledged Securities shall be retained by the Agent (or if received by the Company shall be held by the Company in trust and shall be immediately delivered by the Company to the Agent in the original form received, endorsed in blank) and held by the Agent as part of the Collateral or applied by the Agent to the payment of the Obligations in accordance with the Loan Documents; and

(ii) if and to the extent that the Agent shall so notify in writing the Company, only the Agent shall be entitled to vote or consent or take any other action with respect to the Pledged Securities (and the Company will, if so requested, execute or cause to be executed appropriate proxies therefor).

**2.5 Right to Realize upon Collateral.** Except to the extent prohibited by applicable law that cannot be waived, this Section 2.5 shall govern the Lenders' and the Agent's rights to realize upon the Collateral if any Event of Default shall have occurred and be continuing. The provisions of this Section 2.5 are in addition to any rights and remedies available at law or in equity and in addition to the provisions of any other Loan Document. In the case of a conflict between this Section 2.5 and any other Loan Document, this Section 2.5 shall govern.

**2.5.1 Assembly of Collateral: Receiver.** The Company shall, upon the Agent's request, assemble the Collateral and otherwise make it available to the Agent. The Agent may have a receiver appointed for all or any portion of the Company's assets or business which constitutes the Collateral in order to manage, protect, preserve, sell and otherwise dispose of all or any portion of the Collateral in accordance with the terms of the Loan Documents, to continue the operations of the Company and to collect all revenues and profits therefrom to be applied to the payment of the Obligations, including the compensation and expenses of such receiver.

**2.5.2 General Authority.** To the extent specified in written notice from the Agent to the Company, the Company grants the Agent full and exclusive power and authority, subject to the other terms hereof and applicable law, to take any of the following actions (for the sole benefit of the Agent on behalf of the Lenders and the holders from time to time of any Obligations, but at the Company's expense):

(a) to ask for, demand, take, collect, sue for and receive all payments in respect of any Accounts, general intangibles, Pledged Securities or leases which the Company could otherwise ask for, demand, take, collect, sue for and receive for its own use;

(b) to extend the time of payment of any Accounts, general intangibles, Pledged Securities or leases and to make any allowance or other adjustment with respect thereto;

(c) to settle, compromise, prosecute or defend any action or proceeding with respect to any Accounts, general intangibles, Pledged Securities or leases and to enforce all rights and remedies thereunder which the Company could otherwise enforce;

(d) to enforce the payment of any Accounts, general intangibles, Pledged Securities or leases, either in the name of the Company or in its own name, and to endorse the name of the Company on all checks, drafts, money orders and other instruments tendered to or received in payment of any Collateral;

(e) to notify any or all of the third party payors with respect to any Accounts, general intangibles, Pledged Securities or leases of the existence of the security interest created hereby and to cause all payments in respect thereof thereafter to be made directly to the Agent; provided, however, that whether or not the Agent shall have so notified any such payors, the Company will at its expense render all reasonable assistance to the Agent in collecting such items and in enforcing claims thereon; and

(f) to sell, transfer, assign or otherwise deal in or with any Collateral or the proceeds thereof, as fully as the Company otherwise could do.

2.5.3 Marshaling, etc. Neither the Agent nor the Lenders shall be required to make any demand upon, or pursue or exhaust any of their rights or remedies against, the Company, any other Obligor, Guarantor, guarantor, pledgor or any other Person with respect to the payment of the Obligations or to pursue or exhaust any of their rights or remedies with respect to any collateral therefor or any direct or indirect guarantee thereof. Neither the Agent nor the Lenders shall be required to marshal the Collateral or any guarantee of the Obligations or to resort to the Collateral or any such guarantee in any particular order, and all of its and their rights hereunder or under any other Loan Document shall be cumulative. To the extent it may lawfully do so, the Company absolutely and irrevocably waives and relinquishes the benefit and advantage of, and covenants not to assert against the Agent or the Lenders, any valuation, stay, appraisal, extension, redemption or similar laws now or hereafter existing which, but for this provision, might be applicable to the sale of any Collateral made under the judgment, order or decree of any court, or privately under the power of sale conferred by this Agreement, or otherwise. Without limiting the generality of the foregoing, the Company (a) agrees that it will not invoke or utilize any law which might prevent, cause a delay in or otherwise impede the enforcement of the rights of the Agent or any Lender in the Collateral, (b) waives its rights under all such laws and (c) agrees that it will not invoke or raise as a defense to any enforcement by the Agent or any Lender of any rights and remedies relating to the Collateral or the Obligations any legal or contractual requirement with which the Agent or any Lender may have in good faith failed to comply. In addition, the Company waives any right to prior notice (except to the extent expressly required by this Agreement) or judicial hearing in connection with foreclosure on or disposition of any Collateral, including any such right which the Company would

otherwise have under the Constitution of the United States of America, any state or territory thereof or any other jurisdiction.

**2.5.4 Sales of Collateral.** All or any part of the Collateral may be sold for cash or other value in any number of lots at public or private sale, without demand, advertisement or notice; provided, however, that unless the Collateral to be sold threatens to decline speedily in value or is of a type customarily sold on a recognized market, the Agent shall give the Company 10 days' prior written notice of the time and place of any public sale, or the time after which a private sale may be made, which notice each of the Company, the Agent and the Lenders hereby agrees to be reasonable. At any sale or sales of Collateral, any Lender or any of its respective officers acting on its behalf, or such Lender's assigns, may bid for and purchase all or any part of the property and rights so sold, may use all or any portion of the Obligations owed to such Lender as payment for the property or rights so purchased, and upon compliance with the terms of such sale may hold and dispose of such property and rights without further accountability to the Company, except for the proceeds of such sale or sales pursuant to Section 2.5.6. The Company acknowledges that any such sale will be made by the Agent on an "as is" basis with disclaimers of all warranties, whether express or implied. The Company will execute and deliver or cause to be executed and delivered such instruments, documents, assignments, waivers, certificates and affidavits, will supply or cause to be supplied such further information and will take such further action as the Agent shall request in connection with any such sale.

**2.5.5 Sale without Registration.** If, at any time when the Agent shall determine to exercise its rights hereunder to sell all or part of the securities included in the Collateral, the securities in question shall not be effectively registered under the Securities Act (or other applicable law), the Agent may, in its sole discretion, sell such securities by private or other sale not requiring such registration in such manner and in such circumstances as the Agent may deem necessary or advisable in order that such sale may be effected in accordance with applicable securities laws without such registration and the related delays, uncertainty and expense. Without limiting the generality of the foregoing, in any event the Agent may, in its sole discretion, (a) approach and negotiate with a single purchaser or one or more possible purchasers to effect such sale, (b) restrict such sale to one or more purchasers each of whom will represent and agree that such purchaser is purchasing for its own account, for investment and not with a view to the distribution or sale of such securities and (c) cause to be placed on certificates representing the securities in question a legend to the effect that such securities have not been registered under the Securities Act (or other applicable law) and may not be disposed of in violation of the provisions thereof. The Company agrees that such manner of disposition is commercially reasonable, that it will upon the Agent's request give any such purchaser access to such information regarding the issuer of the securities in question as the Agent may reasonably request and that the Agent and the Lenders shall not incur any responsibility for selling all or part of the securities included in the Collateral at any private or other sale not requiring such registration, notwithstanding the possibility that a substantially higher price might be realized if the sale were deferred until after registration under the Securities Act (or other applicable law) or until made in compliance with certain other rules or exemptions from the registration provisions under

the Securities Act (or other applicable law). The Company acknowledges that no adequate remedy at law exists for breach by it of this Section 2.5.5 and that such breach would not be adequately compensable in damages and therefore agrees that this Section 2.5.5 may be specifically enforced.

**2.5.6 Application of Proceeds.** The proceeds of all sales and collections in respect of any Collateral or other assets of the Company, all funds collected from the Company and any cash contained in the Collateral, the application of which is not otherwise specifically provided for in the Credit Agreement or herein, shall be applied as follows:

(a) first, to the payment of the costs and expenses of such sales and collections, the reasonable out-of-pocket expenses of the Agent and the reasonable fees and expenses of its special counsel;

(b) second, any surplus then remaining to the payment of the Obligations in such order and manner as the Agent may in its reasonable discretion determine; provided, however, that any such payment of Obligations shall be distributed to the Agent and the Lenders in accordance with the Credit Agreement and the other Loan Documents; and

(c) third, any surplus then remaining shall be paid to the Company, subject, however, to the rights of the holders of any then existing Lien of which the Agent has actual notice.

**2.6 Custody of Collateral.** Except as provided by applicable law that cannot be waived, the Agent will have no duty as to the custody and protection of the Collateral, the collection of any part thereof or of any income thereon or the preservation or exercise of any rights pertaining thereto, including rights against prior parties, except for the use of reasonable care in the custody and physical preservation of any Collateral in its possession and accounting for monies actually received by the Agent. The Lenders will not be liable or responsible for any loss or damage to any Collateral, or for any diminution in the value thereof, by reason of the act or omission of any agent selected by the Agent acting in good faith.

**3. Certain Waivers.** To the extent that such waiver is not prohibited by the provisions of applicable law that cannot be waived, the Company waives:

(a) all presentments, demands for performance, notices of nonperformance (except to the extent required by this Agreement or any other Loan Document), protests, notices of protest and notices of dishonor;

(b) any requirement of diligence or promptness on the part of the Agent or the Lenders in the enforcement of their rights under this Agreement or any other Loan Document;

(c) any and all notices of every kind and description which may be required to be given by any statute or rule of law; and

(d) any defense (other than indefeasible payment in full) which it may now or hereafter have with respect to its liability under this Agreement or any other Loan Document or with respect to the Obligations.

4. Further Assurances. The Company will, promptly upon the request of the Agent from time to time, execute, acknowledge and deliver, and file and record, all such instruments, and take all such action, as the Agent reasonably deems necessary or advisable to carry out the intent and purposes of this Agreement and, in the event that (a) the Agent registers the Pledged Stock in its name or the name of its nominee pursuant to the provisions of Section 2.3.1, or (b) the Agent exercises its rights to realize upon the Collateral pursuant to the provisions of Section 2.5, the Company hereby agrees to use commercially reasonable efforts, and hereby agrees to cause each of its Subsidiaries to use commercially reasonable efforts, to obtain all necessary consents and approvals from any and all third parties, including without limitation (i) all Governmental Authorities and (ii) all landlords under the Company's and any such other Subsidiary's leases of real property. The Agent's rights hereunder, including without limitation the Agent's rights in the Collateral pursuant to Section 2.1 and its rights to realize upon the Collateral pursuant to Section 2.5, shall not in any way be limited as against the Company, any Guarantor or any other Obligor by any actual or potential adverse consequence in respect of any lease of real property, any third party consent or any other agreement included in the Collateral, including without limitation any defaults thereunder, any impairment of rights of the Company and/or its Subsidiaries to exercise and obtain the benefits of any options contained therein, any rights of acceleration, repossession or termination thereunder, or any other circumstances adversely affecting any such leases, consents or other agreements; and the Agent may take any action permitted under this Agreement notwithstanding any such consequences. The Company hereby irrevocably authorizes the Agent at any time and from time to time to file in any filing office in any UCC jurisdiction any initial financing statements and amendments thereto that (a) indicate the Collateral (i) as all assets of the Company or words of similar effect, regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the UCC or such jurisdiction, or (ii) as being of an equal or lesser scope or with greater detail, and (b) contain any other information required by part 5 of Article 9 of the Code for the sufficiency or filing office acceptance of any financing statement or amendment. The Company agrees to furnish any such information to the Agent promptly upon request. The Company also ratifies its authorization for the Agent to have filed in any UCC jurisdiction any initial financing statements or amendments thereto if filed prior to the date hereof.

5. Successors and Assigns. The provisions of this Agreement shall inure to the benefit of the Agent and its successors and assigns and shall be binding upon the Company and its successors and assigns; provided, however, that the Company shall not assign its rights and Obligations under this Agreement without the prior written consent of the Lenders; and provided, further, that the Agent shall not assign its rights and obligations under this Agreement to any Person other than to a successor Agent appointed in accordance with Section 8.9 of the Credit Agreement.

6. Notices. Any notices and other communications provided for hereunder shall be sent in accordance with the terms and provisions of Section 9.2 of the Credit Agreement.

7. Course of Dealing; Amendments and Waivers. No course of dealing between the Agent, on one hand, and the Company, the Guarantors or any other Obligor on the other hand, shall operate as a waiver of any rights of the Agent or the Lenders under this Agreement or any other Loan Document or with respect to the Obligations. The Company acknowledges that if the Agent or any Lender, without being required to do so by this Agreement or any other Loan Document, gives any notice or information to, or obtains any consent from, the Company or any other Guarantor or Obligor, the Agent or the Lenders shall not by implication have amended, waived or modified any provision of this Agreement or any other Loan Document, or created any duty to give any such notice or information or to obtain any such consent on any future occasion. No delay or omission on the part of the Agent or any Lender in exercising any right under this Agreement or any other Loan Document or with respect to the Obligations shall operate as a waiver of such right or any other right hereunder or thereunder. A waiver on any one occasion shall not be construed as a bar to or waiver of any right or remedy on any future occasion. No waiver, consent or amendment with respect to this Agreement shall be binding unless it is in writing and signed by the Company and the Agent.

8. Governing Law; Submission to Jurisdiction; Venue; Service of Process. This Agreement and the rights and obligations of the parties hereunder shall be construed and enforced in accordance with and be governed by the laws of the State of New York applicable to contracts made and to be performed wholly therein, except as may be required by the UCC of other jurisdictions with respect to matters involving the perfection of the Agent's Lien on the Collateral located in such other jurisdictions. Any legal action or proceeding with respect to this Agreement may be brought in the courts of the State of New York or the United States for the Southern District of New York, and, by execution and delivery of this Agreement, the Company hereby irrevocably accepts for itself and in respect of its property, generally and unconditionally, the non-exclusive jurisdiction of the aforesaid courts. The Company:

(a) Irrevocably submits to the nonexclusive jurisdiction of the state courts of the State of New York and to the nonexclusive jurisdiction of the United States District Court for the Southern District of New York for the purpose of any suit, action or other proceeding arising out of or based upon this Agreement or any other Loan Document or the subject matter hereof or thereof;

(b) Waives to the extent not prohibited by applicable law that cannot be waived, and agrees not to assert, by way of motion, as a defense or otherwise, in any such proceeding brought in any of the above-named courts, any claim that it is not subject personally to the jurisdiction of such court, that its property is exempt or immune from attachment or execution, that such proceeding is brought in an inconvenient forum, that the venue of such proceeding is improper, or that this Agreement or any other Loan Document, or the subject matter hereof or thereof, may not be enforced in or by such court;

(c) Consents to service of process in any such proceeding in any manner at the time permitted by the applicable laws and rules of civil procedure of the State of New York and agrees that service of process by registered or certified mail, return receipt requested, at its address specified in or pursuant to Section 9.2 of the Credit Agreement is reasonably calculated to give actual notice; and



(d) Waives to the extent not prohibited by applicable law that cannot be waived any right it may have to claim or recover in any such proceeding any special, exemplary, punitive or consequential damages.


9. WAIVER OF JURY TRIAL. EACH OF THE PARTIES TO THIS AGREEMENT HEREBY IRREVOCABLY WAIVES ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY.

10. Discharge. If the Obligations (other than indemnification obligations for which no claim has been made) have been paid in full in cash and discharged at the time the Lenders are no longer under an obligation to make further Loans to the Company under the Credit Agreement (or such obligation is waived in writing by the Company), then this Agreement and the rights hereby granted shall cease, determine and be void, and at the request of the Company, and at its expense, the Agent shall release and discharge its rights hereunder and release and discharge all of the Collateral without recourse against it and to that end shall execute and deliver to the Company at the Company's expense, such releases, reassignments and other documents (or cause the same to be done) as the Company shall reasonably request, and the Agent shall pay over to the Company any money and deliver to it any other property then held by it as Collateral. The receipt of the Company for the Collateral or in the case of any Collateral which has been sold pursuant to Section 2.5.4 hereof, the proceeds of such sale so delivered, shall be a complete and full acquittance therefor, and the Agent and/or any such agent shall thereafter be discharged from any liability or responsibility therefor. Upon the sale of any Collateral permitted by Section 6.4 of the Credit Agreement, the security interest created hereunder in such Collateral but not the proceeds thereof shall automatically terminate and the Agent shall execute and deliver to the Company at the Company's expense, such releases, reassignments and other documents (or cause the same to be done) as the Company shall reasonably request.

11. General. All covenants, agreements, representations and warranties made in this Agreement or any other Loan Document or in certificates delivered pursuant hereto or thereto, and all other information furnished or to be furnished to the Agent or the Lenders by the Company with respect to the transactions contemplated by this Agreement or any other Loan Document, shall be deemed to have been relied on by the Agent and the Lenders, notwithstanding any investigation made by the Agent or the Lenders on its or their behalf, and shall survive the execution and delivery to the Agent of this Agreement and each other Loan Document. The invalidity or unenforceability of any term or provision hereof shall not affect the validity or enforceability of any other term or provision hereof, and any invalid or unenforceable provision shall be modified so as to be enforceable to the maximum extent of its validity or enforceability. The headings in this Agreement are for convenience of reference only and shall not limit, alter or otherwise affect the meaning hereof. This Agreement and the other Loan Documents constitute the entire understanding of the parties with respect to the subject matter hereof and thereof and supersede all prior and current understandings and agreements, whether written or oral. This Agreement is a Loan Document and may be executed in any number of counterparts, which together shall constitute one instrument.

Each of the undersigned has caused this Agreement to be executed and delivered by its duly authorized officer as an agreement as of the date above written.

DYNAMIC COOKING SYSTEMS, INC.

By:   
Name: JEFFREY ELDER  
Title: EXEC VP / COO / CFO

CALYON,  
as Agent as aforesaid

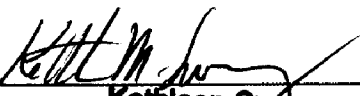
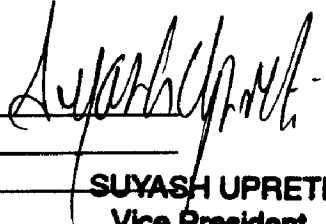
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Each of the undersigned has caused this Agreement to be executed and delivered by its duly authorized officer as an agreement as of the date above written.

DYNAMIC COOKING SYSTEMS, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

CALYON,  
as Agent as aforesaid

By:    
Name: Kathleen Swaney  
Title: Director **SUYASH UPRETI**  
**Vice President**

**PLEDGED STOCK**

None.

**LOCATIONS OF COLLATERAL**

1. 5800 Skylab Road  
Huntington Beach, California 92647
2. 5900 Skylab Road  
Huntington Beach, California 92647
3. TRG/IL  
26 Spiral Drive  
Florence, Kentucky 41042
4. Tech Rep Sales/CI  
591 North Edgewood Avenue  
Wood Dale, Illinois 60191
5. 1 Stop Logistics/NC  
11520 Granite Street  
Charlotte, North Carolina 28273
6. Hugo Messenger Service/NY  
304 Airport Executive Drive  
Nanuet, New York 19054
7. Paragon/TX  
13921 Senlac Drive  
Farmers Branch, Texas 75234

**TRADENAMES**

1. Dynamic Cooking Systems, Inc.

**INTELLECTUAL PROPERTY**

1. See Attachment 2.3.8 to Exhibit 2.3.8.

2. Trademark Application:

Title: Grease Management System

Application Number: 78/243,438

Filing Date: April 29, 2003

Attachment 2.3.8 to  
Exhibit 2.3.8

Patent No./ Registration No.	Issue Date	Type	Description	Duration
78/338,276		T/M	DCS	Filed 12/9/03
78/338,279		T/M	DCS logo	Filed 12/9/03
78/243,440		T/M	Smart Beam	Filed 4/29/03
651,951	4/28/99	T/M	DCS (Mexico)	10 yrs
1,284,173	8/20/99	T/M	DCS (European Community)	10 yrs
804,573	10/6/00	T/M	DCS (Australia)	10 yrs
2,470,241	7/17/01	T/M	DCS (US)	10 yrs
D481,090	8/8/02	Design	CT-365 cooktop	14 yrs
2,609,842	8/20/02	T/M	sc305 logo	10 yrs
D475,569	6/10/03	Design	485 top (range w/o grates)	14 yrs
D479,948	9/30/03	Design	Rotisserie forks	14 yrs
D486,034	2/3/04	Design	485 top (cooktop w/o grates)	14 yrs
D486,349	2/10/04	Design	485 top (range w/grates)	14 yrs
D486,350	2/10/04	Design	485 top (cooktop w/grates)	14 yrs
6,712,065	3/30/04	Utility	5-burner top (305 range)	18 yrs
6,718,965 B2	4/13/04	Utility	Gas true convection (RGSC-305)	18 yrs
D489,933 S	5/18/04	Design	5-burner top (range)	14 yrs
D491,414	6/15/04	Design	Outdoor grill (BGA/BGB)	14 yrs
DES491,415	6/15/04	Design	Integrated grill rotis/flight	14 yrs



**DEPOSITORY INSTITUTIONS**

**[TO BE PROVIDED BY THE COMPANY]**

**FILING JURISDICTIONS**

1. California Secretary of State UCC 1