

PATENT ASSIGNMENT COVER SHEET

Electronic Version v1.1
Stylesheet Version v1.2

EPAS ID: PAT5220865

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	LICENSE
CONVEYING PARTY DATA	
Name	Execution Date
MICHAEL A DIMONTE	10/09/2018
RECEIVING PARTY DATA	
Name:	TUUBER CORPORATION
Street Address:	16 DINA LANE
City:	SOMERSET
State/Country:	NEW JERSEY
Postal Code:	08873
PROPERTY NUMBERS Total: 9	
Property Type	Number
Patent Number:	9797120
Patent Number:	9926691
Patent Number:	10030372
Patent Number:	9657468
Application Number:	15427042
Application Number:	15374099
Application Number:	15299446
Application Number:	15796418
Application Number:	15788829
CORRESPONDENCE DATA	
Fax Number:	
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i>	
Email:	tuubervalve@gmail.com
Correspondent Name:	MELISSA L. WEINSTEIN
Address Line 1:	16 DINA LANE
Address Line 4:	SOMERSET, NEW JERSEY 08873
NAME OF SUBMITTER:	MICHAEL A. DI MONTE
SIGNATURE:	/MICHAEL A. DIMONTE/
DATE SIGNED:	11/04/2018

Total Attachments: 21

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Licensing and Development Agreement

Parties

This Agreement (“**Agreement**”) is made as of the 9th day of October 2018, between TUUBER CORPORATION (“**TUUBER CORPORATION**” or alternatively “**Licensee**”) with a place of business at 16 DINA LANE, SOMERSET, NJ 08873, and MICHAEL DIMONTE (“**DIMONTE**” or alternatively “**Licensor**”) located at 532 OLD MARLTON PIKE W. #512 MARLTON, NJ 08053.

Recitals

- A.** DIMONTE is the sole owner of the Di Monte Patent Rights and Di Monte Trade Secrets (each as defined below), which were assigned by the Inventor Michael Di Monte and relate to certain apparatuses to allow or stop an air or water passage into an enclosed environment (hereinafter “**Di Monte’s Inventions**”).
- B.** DIMONTE is engaged in the producing of prototypes of certain products made by or under the Di Monte Patent Rights and Di Monte Trade Secrets and has accumulated Know-How (as defined below) and formulations relating to the Di Monte Patent Rights and Di Monte Trade Secrets and Di Monte’s Inventions.
- C.** Licensee desires to obtain the rights to manufacture, have made, use, and sell products (as outlined in Section 1.6) utilizing Di Monte’s Inventions and the Di Monte Patent Rights and Di Monte Trade Secrets and related technology and Know-How pertaining to Di Monte’s Inventions, and to grant sublicenses to manufacture, have made, use, and sell products (as outlined in Section 1.6) utilizing Di Monte’s Inventions and the Di Monte Patent Rights and Di Monte Trade Secrets and related technology and Know-

How pertaining to Di Monte's Inventions.

D. DIMONTE has the right to license the Di Monte Patent Rights and Di Monte Trade Secrets to Licensee and transfer the Know-How pertaining to Di Monte's Inventions, and desires to grant to Licensee such a license, and to transfer such Know-How, on the terms and conditions set out in this Agreement.

Terms of Agreement

Article I: Definitions

Section 1.1. Defined Terms. Terms defined in this Article I and elsewhere, parenthetically, in this Agreement, shall have the same meaning throughout the Agreement. Defined terms may be used in the singular or plural.

Section 1.2. "Licensee Affiliates" shall mean all persons and business entities, whether corporations, partnerships, joint ventures or otherwise, which now or hereafter control, or are owned or controlled, directly or indirectly by Licensee, or are under common control with Licensee.

Section 1.3. "Di Monte Patent Rights" shall mean (a) all pending patents, patent applications, continuation applications, continuation-in-part applications, appeals to Patent Trial and Appeal Board, related to Di Monte's Inventions described or claimed in the patent application, US 9,797,120 and/or any Improvement and all patents issuing therefrom and all continuations, continuations-in-part, divisions, extensions, substitutions, reissues, reexaminations and renewals of any of the foregoing; (b) any patents anywhere in the Territory issuing from any applications that claim priority from any of the patents or patent applications identified in subsection (a) or from which any of the patents or patent applications identified in subsection (a) claim priority.

Section 1.4. "Di Monte Trade Secrets" shall mean all trade secrets pertaining to Di Monte's Inventions.

Section 1.5. “Know-How” shall mean DIMONTE information, not constituting Di Monte Patent Rights, Di Monte Trade Secrets or Confidential Information of DIMONTE, relating to the formulation and/or manufacture of Products within the scope of Di Monte’s Inventions.

Section 1.6. “DIMONTE Products” or “Products” shall mean products which are covered by or made under Di Monte Patent Rights for the field of air admittance into gravity flow sewer systems referred to by the parties as 1050 and 1051 valves (“1050/1051 Valves”). The 1050/1051 Valves is sometimes referred to in this Agreement as a “Product Category”.

Section 1.7. “Confidential Information” shall mean any information disclosed by either party to this Agreement (the “Disclosing Party”) to the other party or (in the case of Licensee) any of Licensee Affiliates (a “Receiving Party”), either directly or indirectly, in writing, orally or by inspection of tangible objects, whether or not of a technical or scientific nature, which is confidential or trade secret to, and proprietary to, the Disclosing Party or any third party that has furnished it to the Disclosing Party. Confidential Information shall specifically include: (i) the Disclosing Party’s information, in whatever form, including without limitation ideas, concepts, creations, technology, inventions, discoveries, developments, techniques, processes, know-how, drawings, designs, specifications, data, graphs, charts, prints, mats, films, negatives, recordings, magnetic media, software, disks, diskettes, charts, manuals, materials or any other medium), including copies or other reproductions of any of the foregoing, whether prepared by or for the Disclosing Party, devices, hardware, laboratory, formulas, algorithms, or engineering prototypes, etc.; regardless of whether or not it is marked or identified as “Confidential”; (ii) the Disclosing Party’s information, in whatever form, of a business nature, including without limitation, business plans and forecasts, marketing and sales plans and forecasts, methods of operation, products, customers, vendors, budgets and financial statements and forecasts, regardless of whether or not marked or identified as “Confidential”; (iii) unpublished patent or patent appeal applications and information associated with such applications, (iv) information related to the

development and production of the DIMONTE Products, and (v) any other oral or visual disclosure provided that such oral or visual disclosure is identified as Confidential at the time of disclosure. However, Confidential Information does not include information which: (i) is or becomes generally known in the public other than through the fault of the Receiving Party in breach of this Agreement; (ii) was already in the Receiving Party's possession at the time of disclosure and not subject to an existing agreement of confidence between Licensee and DIMONTE; (iii) is received from a third party that was not known by the Receiving Party, after due inquiry, to be bound by an obligation of confidentiality prohibiting disclosure of such information to the Receiving Party; or (iv) is independently developed by the Receiving Party as evidenced by its written records.

Section 1.8. "Net Unit Sales" shall mean, for each Product Category, the units of DIMONTE Products in the aggregate sold during each Contract **Quarter** by Licensee and its Sublicensees to third parties, less all units that have been returned to Licensee.

Section 1.9. "Contract Quarter " shall mean the period beginning on the first day of the calendar year and ending on the last day of the third month and each period of 3 consecutive months thereafter (i.e., January 1st – March 31st, April 1st – June 30th, July 1st – September 30th, and October 1st – December 31st)(except that the final Contract Quarter shall be deemed to expire on the date of expiration of the term of this Agreement).

Section 1.10. "Territory" shall mean the following countries only: Canada, China and United States.

Section 1.11. "Improvements" shall mean (a) any new or modified product that performs a substantially similar function as the DIMONTE Products defined in Section 1.6.

Section 1.12. "Sublicensee" shall mean any sublicensee of rights by Licensee to make, have made, use, sell, and offer to sell DIMONTE Products, as further described in Section 2.2. For purposes of this Agreement: a Distributor of Products shall not be included in the definition of Sublicensee unless such Distributor is granted any right to

make or have made Products in accordance with Section 2.2, in which case such Distributor shall be a Sublicensee for all purposes of this Agreement; and a contract manufacturer that manufactures Products on behalf of Licensee or any Sublicensee shall also not be included in the definition of Sublicensee, unless such contract manufacturer is granted any right to sell such components to parties other than Licensee or such Sublicensee.

Section 1.13. “**Distributor**” shall mean any third party entity to whom Licensee or a Sublicensee has granted, express or implied, the right to distribute any Product.

Article II: License

Section 2.1. Subject to all the terms and conditions of this Agreement, DIMONTE hereby confers upon, and grants to, Licensee an exclusive right and license under the Di Monte Patent Rights and Di Monte Trade Secrets to make, have made, use, sell, and offer to sell DIMONTE Products in the Territory for a term beginning on the date of execution of this Agreement and expiring, with respect to any Product Category in any country in the Territory, on the date the Di Monte Patent Rights with respect to such Product Category in such country expire (as used in this section, “expiration,” when referring to Di Monte Patent Rights with respect to a Product Category, means the final denial of all pending patent applications and/or expiration, revocation, invalidation or other termination of all Di Monte Patent Rights with respect to that Product Category. Consistent with the non-exclusive license granted to Licensee in the Territory, Licensor shall not itself import DIMONTE Products into the Territory or sell or distribute DIMONTE Products in the Territory, and shall promptly notify Licensee within 30 days of knowledge of any importation of DIMONTE Products into the Territory by other licensees, distributors and other third parties whether or not authorized by Licensor. On the date of expiration of all Di Monte Patent Rights in a country in the Territory with respect to any Product Category, Licensee shall have a completely paid-up, royalty-free right and license to subsequently make, have made, use, offer to sell, and sell in that

country any and all products that were previously DIMONTE Products in that Product Category and shall have no further obligations to DIMONTE in that country with respect to such Product Category (provided, however, that if Licensee continues to receive payments from in any country in the Territory with respect to DIMONTE Products in any Product Category after such date of expiration Licensee shall continue to make royalty payments to Licensor in accordance with **Section 2.3** with respect to such Products). The license for the DIMONTE Products shall be royalty-bearing in accordance with **Section 2.3**.

Section 2.2. DIMONTE prohibits sublicenses of any of Licensee's rights under the Di Monte Patent Rights and Di Monte Trade Secrets granted to it to any sublicensee.

Section 2.3. Subject to the terms and conditions of this Agreement, for the license granted to Licensee in **Section 2.1**, Licensee shall remit to DIMONTE royalty payments according to the following formulas for Net Unit Sales of DIMONTE Products sold by Licensee:

- (a) For DIMONTE Products, the greater of \$2.00 per unit or 50% of the net profit per unit sold by Licensee, subject, for each Contract **Quarter**, to a minimum total royalty equal to one hundred thousand (100,000) times the minimum royalty per unit.

Notwithstanding the foregoing, Licensee may apply up to a total of two hundred thousand \$200,000.00 against royalties to be paid by Licensee as described in this **Section 2.3**.

Section 2.4. Licensee shall: (i) make reasonable efforts to procure manufacturing facilities and equipment needed for production of DIMONTE Products in the Territory, and make appropriate expenditures for advertising and marketing; and (ii) use commercially reasonable efforts to actively and aggressively promote the sale of the DIMONTE Products in the Territory through such techniques as prospecting and calling

upon customers and prospective customers, and training its employees in the manufacture and sale of the DIMONTE Products with a view toward achieving a high quality of DIMONTE Products.

Section 2.5. At DIMONTE's own cost, DIMONTE reserves the right to take and examine specimens of the DIMONTE Products produced by or for Licensee or any Sublicensee for quality and compliance with the reasonable standards set up by DIMONTE and communicated to Licensee. DIMONTE and any independent third party designated by DIMONTE, shall have the right, at any time upon at least 30 days' prior notice, to audit the records (including without limitation production records) and inspect all facilities at which the DIMONTE Products are manufactured, handled, stored, tested, packaged or shipped. Upon DIMONTE's written request, an independent third party may be permitted to conduct such inspections subject to the terms and conditions of this **Section 2.5** and agreement to reasonable confidentiality requirements. Upon such notice, Licensee will provide reasonable access during normal business hours to such records and facilities and reasonably assist DIMONTE, and any designated third party, with such inspections and/or audits. In the event that nonconforming DIMONTE Products are identified during such inspections, Licensee shall, at its sole expense, conduct a root cause analysis and improve the DIMONTE Products to comply with the standards within a reasonable time.

Section 2.6. DIMONTE shall not make, have made, sell or offer to sell any DIMONTE Products in the Territory before the termination of this Agreement, except when DIMONTE makes or has made the DIMONTE Products for the purposes set forth in Article III of this Agreement or for the purpose of testing and developing Improvements.

Article III: Development of Prototype Products and Submission for Tests

Section 3.1. DIMONTE shall exercise its best efforts to provide services to Licensee and its Sublicensees with respect to development of commercial versions of each Product Category of the DIMONTE Products. Without limiting the generality of the foregoing,

DIMONTE shall exercise its best efforts to (to the extent not already accomplished prior to the date of this Agreement):

- (a) Make and deliver to Licensee at least twenty (20) prototype units of Products in each Product Category;
- (b) Develop and propose new standards for the DIMONTE Products in each Product Category and interact with the standards setting organizations;
- (c) Submit prototypes of the DIMONTE Products in each Product Category to the standards setting organizations for testing the proposed standards;
- (d) Submit prototypes of the DIMONTE Products in each Product Category to the standards setting organizations for Certification for the proposed standards; and
- (e) Cause the 1050 / 1051 Products to be approved for compliance with the ASSE 1050 and ASSE 1051 standards, and cause the other Products to be approved for compliance with other applicable standards.

Section 3.2. Licensee is responsible for all applicable fees for the first submissions for Lab Testing and Product Certification for purposes of performing the services described in **Section 3.1**, such as fees for submitting applications, fees for prosecuting the applications, continuation of the applications and issuance of approval or certificate under the applications, and all taxes and surcharges associated with the applications.

Section 3.3. DIMONTE reserves the right to modify the standards proposed to IAPMO and ASSE, and other organizations with standard-setting authority, if it becomes necessary to accomplish the testing and approval process with respect to the Products.

Section 3.4. Licensee understands that DIMONTE may need one or more submissions, resubmissions, and/or partial submissions to accomplish the tests described in **Section 3.1**. Therefore, when multiple resubmissions and/or multiple partial resubmissions for the tests are required, Licensee will be responsible for all applicable fees of the multiple

resubmissions and/or multiple partial resubmissions for the tests, such as fees for applying the applications, fees for prosecuting the applications, fees for continuation of the applications, fees for issuance of approval or certificate under the applications, fees for maintenance of the approvals or certificates, taxes, and surcharges associated with the applications.

Article IV: Confidentiality

Section 4.1. This Agreement is not intended to be, nor shall it be construed as, an employment arrangement, teaming arrangement, joint venture, partnership, or any other business formation arrangement.

Section 4.2. The Receiving Party agrees (i) to hold the Confidential Information of the Disclosing Party in trust and strict confidence except as necessary to exercise the Receiving Party's rights and perform the Receiving Party's obligations under this Agreement; (ii) to use the Confidential Information of the Disclosing Party only for the purposes contemplated by this Agreement; (iii) to reproduce the Confidential Information of the Disclosing Party only to the extent reasonably required for purposes contemplated by this Agreement; (iv) to use at least the same degree of care it uses to protect its own confidential information of like kind to protect the Confidential Information of the Disclosing Party; and (v) not to disclose, deliver, provide, disseminate, or otherwise make available, directly or indirectly, any Confidential Information of the Disclosing Party to any third party (other than, in the case of Licensee, Licensee Affiliates) without first obtaining the Disclosing Party's express written consent on a case-by-case basis.

Section 4.3. The Receiving Party shall disclose the Confidential Information of the Disclosing Party only to: (i) such representatives of Receiving Party who have a need to know such Confidential Information for purposes of this Agreement and only to the extent such individuals and entities are bound by confidentiality obligations that are at least as restrictive as those set forth hereinafter; and (ii) (in the case of Licensee) Sublicensees and the representatives of such Sublicensees who have a need to know such

Confidential Information for purposes of their business of making, having made, using, selling and/or offering to sell the DIMONTE Products and only to the extent such individuals and entities are bound by confidentiality obligations that are at least as restrictive as those set forth hereinafter. The Receiving Party's "representatives" shall include Licensee Affiliates and its and their employees, officers, directors, consultants, advisors, and prospective and actual suppliers and/or customers involved in making, distributing, purchasing, and/or selling the DIMONTE Products; a Sublicensee's "representatives" shall include its affiliates and its and their employees, officers, directors, consultants, advisors, and prospective and actual suppliers and/or customers involved in making, distributing, purchasing, and/or selling the DIMONTE Products. Receiving Party shall take at least the same degree of care that it uses to protect its own most highly confidential information of similar nature and importance (but in no event less than reasonable care) to protect the confidentiality and avoid the unauthorized use, disclosure, publication or dissemination of the Confidential Information of the Disclosing Party.

Section 4.4. In the event that the parties cease the purpose of this Agreement, Licensee shall redeliver or destroy all documents and other items furnished by DIMONTE, or acquired in connection with the purpose of this Agreement and any copies made by it or its representatives. Licensee will also, to the extent possible, destroy all written material, memoranda, notes and other writings or recordings whatsoever prepared by it or its representatives to the extent based upon, containing or otherwise reflecting any information relating to DIMONTE's Confidential Information. For DIMONTE's Confidential Information that is contained in electronic, magnetic or similar media of the Licensee such that transfer of possession is impractical, the Licensee shall take all reasonable steps to delete or destroy such Confidential Information. Licensee shall supply DIMONTE with a written confirmation of a responsible executive officer of Licensee that it has fulfilled its obligations under this **Section 4.4**. Notwithstanding the foregoing, Licensee and its representatives may retain a copy of any DIMONTE Confidential Information to the extent required to comply with law, regulation, or internal document retention policies or to show compliance with this Agreement. Any

information relating to DIMONTE Confidential Information that is not returned or destroyed, including, without limitation, any oral information, shall remain subject to the confidentiality obligations set forth in this Agreement.

Section 4.5. If either party becomes legally compelled to disclose any of the other party's Confidential Information, it shall to the extent permitted by law: (i) provide prompt notice to the Disclosing Party so that the Disclosing Party may seek a protective order or other appropriate remedy or waive its rights under this **Section 4**; and (ii) disclose only the portion of Confidential Information that it is legally required to furnish. If a protective order or other remedy is not obtained, the Disclosing Party waives compliance, or the Receiving Party is not permitted by law to provide notice, the Receiving Party shall, at the Disclosing Party's expense, use reasonable efforts to obtain confidential treatment for the Confidential Information.

Article V: Warranties and Representations; DIMONTE Covenants

Section 5.1. DIMONTE warrants, represents and covenants as follows:

(a) DIMONTE is the sole legal and beneficial owner of the Di Monte Patent Rights and Di Monte Trade Secrets, has sole and exclusive control of the entire right, title, and interest in and to the Di Monte Patent Rights and Di Monte Trade Secrets, is the record owner of all patent applications and issued patents that are Di Monte Patent Rights and Di Monte Trade Secrets, and is free to assign or grant the exclusive license granted by this Agreement;

(b) The Di Monte Patent Rights constitute and will constitute all of the patents and patent applications owned by DIMONTE that enable Licensee to make, have made, use, offer to sell, and sell the DIMONTE Products in the Territory;

(c) DIMONTE has, and throughout the term of this Agreement will retain, the unconditional and irrevocable right, power, and authority to grant the exclusive license

granted by this Agreement;

(d) Neither DIMONTE's grant of this exclusive license, nor its performance of any of its obligations, under this Agreement will at any time during the term of this Agreement (i) conflict with or violate any applicable law, (ii) require the consent, approval, or authorization of any governmental or regulatory authority or other third party, or (iii) require the provision of any payment or other consideration to any third party;

(e) DIMONTE is not aware of any prior publication, including foreign patents corresponding to any of the following U.S. patent applications, which would invalidate any of the claims of the Di Monte Patent Rights or any of the Di Monte Trade Secrets;

(f) DIMONTE is the owner of Know-How and is free to disclose and assign same;

(g) There are currently no actions, suits, or proceedings pending or, to the knowledge of DIMONTE, threatened against or affecting Know-How or the Di Monte Patent Rights and Di Monte Trade Secrets;

(h) There are no contracts, licenses, commitments, or other legal obligations affecting Know-How or Di Monte Patent Rights and Di Monte Trade Secrets which are of such nature as to prevent or limit the making of disclosures, producing and selling of the DIMONTE Products, or the grant of rights pursuant to this Agreement; and

(i) DIMONTE has not made any disclosure to any person, partnership, corporation, or other business entity of any Know-How except on a confidential basis and, to the best of DIMONTE's knowledge, any such confidential relationship has been maintained by the recipient of such disclosure.

Section 5.2. Licensee and DIMONTE each warrants to the other that (i) it is duly organized and in good standing under the laws of its jurisdiction of organization; (ii) it has the necessary power and authority to enter into and perform under this Agreement; (iii) its entry into and performance under this Agreement shall contravene no rights or entitlements of, nor constitute the breach of, any obligations that it has to third parties;

and (iv) when executed and delivered by such party, this Agreement shall constitute the legal, valid, and binding obligation of that party, enforceable against that party in accordance with its terms.

Section 5.3. DIMONTE SHALL NOT BE LIABLE IN ANY WAY TO LICENSEE, LICENSEE'S DISTRIBUTORS, RETAILORS, CUSTOMERS, AND END USERS FOR ANY INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES, IN CONNECTION WITH THE PRODUCTS PROVIDED BY DIMONTE, WHICH SHALL INCLUDE BUT NOT BE LIMITED TO COMPENSATION OR DAMAGES FOR PERSONAL PROPERTY, AND REAL PROPERTY DAMAGES IN CONNECTION WITH THE PRODUCTS PROVIDED BY DIMONTE.

Article VI: Licensee' Covenants to Make DIMONTE Products

Section 6.1. Licensee shall faithfully comply with its obligations under this Agreement.

Section 6.2. DIMONTE and Licensee are independent of one another and neither party shall represent to the contrary. Without limiting the foregoing, neither party shall be or hold itself out as the other's agent. Except as otherwise provided in **Article VII**, Licensee shall alone be responsive to third parties relating to the use in the Territory of Di Monte's Inventions, Di Monte Patents, Di Monte Trade Secrets, Know-How, and Improvements and the provisions for manufacture, distribution, sale and use of the DIMONTE Products in the Territory, and shall indemnify and hold DIMONTE harmless from any claims arising from or out of Licensee's and third parties' activities in connection with this Agreement, including, without limitation, employing the DIMONTE Products and distributing the DIMONTE Products in the Territory (provided, however, that nothing in this Agreement shall be understood to require Licensee to indemnify and hold DIMONTE harmless against any third party claim alleging that any of the DIMONTE Products infringe any third party's patent or other intellectual property rights).

Article VII: Patents

Section 7.1. The Di Monte Patent Rights shall be deemed valid and effective for the purpose of licensing, royalties, and other terms in this Agreement; provided that (except as provided in **Section 2.1** with respect to any continuing receipt by Licensee of royalties from a Sublicensee in a jurisdiction), on a jurisdiction by jurisdiction basis and a Product Category by Product Category basis, Licensee shall have a completely paid-up, royalty-free right and license to make, have made, use, offer to sell, and sell in that jurisdiction any and all products that were previously DIMONTE Products and shall have no further obligations to Anti-AirLock in that jurisdiction with respect to such product or products, if there is a final denial of a pending patent application, or the determination of invalidity of a granted patent by the U.S. Patent Trial and Appeal Board (or similar foreign body) or a court of competent jurisdiction in that jurisdiction with respect to such Product such that no further Di Monte Patent Rights can remain in existence in that jurisdiction. Any royalty payments made or that should have been made prior to date of such a determination shall not be refundable and shall not be credited back to Licensee or Sublicensee.

Section 7.2. Nothing in this Agreement shall limit or restrict DIMONTE from seeking patents that are not in the scope of claims in the Di Monte Patents.

Section 7.3. Licensee shall be able to use, make, have made, sell, or offer to sell the Improvements as defined in this Agreement. DIMONTE shall disclose any Improvements to Licensee in a reasonable time.

Section 7.4. Licensee shall have the right, in DIMONTE's name (if required by law, otherwise, in Licensee's name), to sue third parties in the Territory for infringement of the Di Monte Patent Rights and Di Monte Trade Secrets and misappropriation of the Know-How and unpatented Improvements, and DIMONTE shall fully and promptly cooperate and assist Licensee in connection with any such suit, including, without limitation, by joining any such suit as a plaintiff at the request of Licensee and by causing Michael Di

Monte to perform assignments in connection with such suit that are ordinarily performed in patent litigation by the inventor. If Licensee, after notice from DIMONTE of an alleged infringement or misappropriation in the Territory, shall fail to institute suit within 90 days, DIMONTE, in its own name (or, if required by law, in its and Licensee's name), may sue therefor, and Licensee shall fully and promptly cooperate and assist DIMONTE in connection with any such suit. All damages, awards and settlement proceeds in such suit shall be received by Licensee; however, Licensee shall pay DIMONTE the royalty payment according to Section 2.3 for the Net Unit Sales, not to exceed the total damages, awards and settlement proceeds in such suit received by Licensee. The "Net Unit Sales" for purposes of the preceding sentence shall be the number of DIMONTE Products in each Product Category used in the calculation of the damages, awards, and/or settlement proceeds that Licensee receives from such suit. All expenses of any such suit shall be borne evenly by Licensee and DIMONTE. Neither party shall settle or compromise any suit described in this Section without the written consent of the other party (which consent shall not be unreasonably withheld, conditioned or delayed).

Section 7.5. To the extent required by applicable law, DIMONTE shall pay patent maintenance fees on the patents as they come due and provide proof of each such payment to Licensee within 60 days of the payment's due date. In the event such proof is not timely received by Licensee, Licensee shall be entitled to make the payment and to be reimbursed for such payment by DIMONTE.

Article VIII: Signing Payment, Royalty Payments, Records, and Audits

Section 8.1. Subject to all terms and conditions in this Agreement, Licensee shall pay to DIMONTE 50% of any payment in addition to those described in **Section 2.3**, including, but not limited to a Signing Payment, paid to Licensee within 14 days of receiving any such payment.

Section 8.2. Royalty payments shall be made in U.S. dollars by the payment method agreed to the address or bank designated by DIMONTE within 60 days after the end of

each Contract Quarter . This **Section 8.2** shall survive termination of this Agreement so as to cover Net Unit Sales of the DIMONTE Products made during the term of this Agreement; survival of this **Section 8.2** shall not, however, be construed as conferring any license, express or implied, or extension thereof with respect to Di Monte Patent Rights and Di Monte Trade Secrets, nor shall survival of this **Section 8.2** be construed in a manner inconsistent with the provisions of **Section 2.1**.

Section 8.3. Licensee agrees to provide to Licensor, within sixty (60) days after the end of each calendar quarter and within ten (10) days after the expiration or termination of this Agreement, a report of the number of Products made and sold, by country (if applicable) (“Quarterly Patent Royalty Reports”) by Licensee and Sublicensee. Licensee shall commence providing Licensor such Quarterly Patent Royalty Reports within thirty (30) days following the end of the first calendar quarter after execution of this Agreement.

Section 8.4. To the extent that tax withholding is required on Licensee’s remittance of royalty payments or any other payments due under this Agreement, Licensee is permitted to duly make and remit to the proper authority such withholding and proper evidence of the tax payment to the appropriate governmental authority shall be furnished to DIMONTE. Licensee shall use its best practicable efforts to procure any evidence of tax payment as Licensee may require for purposes of securing U.S. credits for such payments.

Section 8.5. Licensee shall maintain books and records in sufficient detail to enable the confirmation of the correctness of Net Unit Sales, royalty payments, and any other payments payable under this Agreement by Licensee and Sublicensee. DIMONTE shall have the right to have Licensee’s books and records examined by an independent certified public accountant of DIMONTE’s choosing (subject to reasonable confidentiality requirements) at any reasonable time during Licensee’s regular business hours, on thirty (30) days’ notice to Licensee, for the purpose of verifying Net Unit Sales and compliance with Licensee’s obligations to make royalty payments in accordance with this Agreement. DIMONTE shall not cause an audit to be accomplished more than twice during any

calendar year.

Section 8.6. Should an audit conducted pursuant to **Section 8.4** reveal that Net Unit Sales and royalty amounts due were underreported by more than five percent (5%) for the period under audit, Licensee shall become responsible for the cost of the audit. Licensee shall have ten (10) business days upon receipt of a report given by the auditor to challenge the report. If Licensee challenges the report, the parties shall agree upon a second independent certified public accountant to conduct the same verification. Such auditor's report and the results of that report shall be final. In all events, any underpayment of royalties shall be rectified within ninety (90) days upon a report given by the auditor together with interest at the rate of ten percent per annum (10%) from the date that the payment or payments were due.

Article IX: Termination

Section 9.1. DIMONTE shall have the right to terminate if Licensee:

Section 9.2. fails to materially comply with its obligations under **Sections 2.3, 2.4, 2.5, 8.1, 8.2, or 9.3** and shall not remedy any such noncompliance within ninety (90) days of when DIMONTE notifies Licensee in writing of such material non-compliance; or

Section 9.3. enters dissolution or liquidation or ceases conducting its operations.

Section 9.4. DIMONTE shall also have the right to terminate, to the extent permitted by law, upon commencement of any proceeding by or against Licensee under the Federal Bankruptcy Code or any state law concerning creditor relief, assignment for benefit of creditors, or appointment of a receiver, then in any such event DIMONTE shall, for a period of ninety (90) days following DIMONTE's receiving notice of any such event, have the right, at its sole election, to declare the license granted pursuant to **Article II** terminated, which termination shall be effective upon such declaration.

Section 9.5. Licensee may terminate this Agreement at any time without cause, and

without incurring additional obligation, liability or penalty, by providing at least thirty (30) days' prior written notice.

Section 9.6. In the event of any termination under **Sections 9.1** or **9.2** Licensee and Sublicensee shall (subject to the provisions of **Sections 2.1** and **7.1** with respect to jurisdictions and Products in which the Di Monte Patent Rights have expired) promptly discontinue making, having made, use, sales, import, and offering to sell of the Products; it being understood that Licensee may continue to sell and offer to sell and permit its Sublicensees to sell and offer to sell Products in jurisdictions and Product Categories in which the Di Monte Patent Rights have not expired that are in their inventories at the date of termination, provided Licensee shall duly remit payment to DIMONTE in accordance with **Article II** and **Article VIII** with respect to any such Products sold after termination as if **Article II** and **Article VIII** remained in effect.

Section 9.7. In the event of termination, Licensee shall not further use or retain Licensor's Confidential Information and shall promptly return to DIMONTE or destroy such Confidential Information in a manner prescribed in **Article IV**.

Article X: General Provisions

Section 10.1. The failure of a Party to insist upon the strict performance of any of the provisions of this Agreement, or the failure of a Party to exercise any right, option or remedy hereby reserved, shall not be construed as a waiver for the future of any such provision, right, option or remedy, or as a waiver of any subsequent breach thereof.

Section 10.2. Neither party to this Agreement shall assign any of its rights or duties to any third party without the other party's consent. Provided, however, that Licensee may assign this Agreement and its rights and duties hereunder without any consent of Licensor to a Licensee Affiliate or to a third party that purchases the Licensee, merges with or into Licensee, or purchases all or substantially all of Licensee's assets.

Section 10.3. All notices required or contemplated by this Agreement shall be provided to the other party in writing and shall be deemed to have been given when received if delivered to the address of the party's principal place of business.

Section 10.4. Subject to all terms and conditions of this Agreement, in the event of any breach or threatened breach of this Agreement, irrespective of any recovery of monetary damages (which may be difficult or impossible to calculate), either party: shall be entitled to enforce this Agreement in accordance with the terms hereof by seeking immediate equitable relief, including specific performance and/or a temporary, preliminary and permanent injunction from any court of competent jurisdiction; and may pursue both monetary damages and equitable relief concurrently or consecutively, in any order, as to any breach or threatened breach of this Agreement, and the pursuit of any one of such remedies at any time will not be deemed an election of remedies or waiver of the right to pursue any other remedies, it being agreed that all remedies provided herein shall be cumulative with, not exclusive of, any other remedies that may be available at law or in equity. In the case of breach of this Agreement, the non-prevailing party, as determined by a court of competent jurisdiction in a final non-appealable order, in any action at law or in equity to enforce the provisions of this Agreement shall pay the prevailing party's reasonable, out-of-pocket costs and expenses (including, without limitation, attorneys' fees) incurred by such party in enforcing this Agreement or defending itself in such action.

Section 10.5. If any provision of this Agreement (including any sentence, clause or word), or the application thereof to any person, place or circumstance, shall be determined by a court of competent jurisdiction in accordance with **Section 9.6** to be invalid or unenforceable for any reason, (i) the remaining provisions of this Agreement shall continue in full force and effect, unaffected by such determination, (ii) the court making such determination shall have the power to, and the parties hereby request the court to, modify such provision (by providing for or adjusting the scope and/or duration of any rights or restrictions or otherwise) to the minimum extent necessary so that such provision becomes legal, valid and enforceable to the maximum extent permitted by law

and (ii) such determination shall apply only in the jurisdiction of such court and shall not alter, modify or affect such provision or any other provision in any other jurisdiction.

Section 10.6. This Agreement shall be construed and governed by and under the exclusive jurisdiction and the laws of the State of New York, without regard to its conflicts of laws principles. Any action, suit, or other legal proceeding which is commenced to resolve any matter arising under or relating to any provision of this Agreement shall be commenced and prosecuted only in a state or federal court in New York, and the parties consent to the exclusive jurisdiction of such a court. Process in any action or proceeding referred to in the preceding sentence may be served on any party anywhere. Prior to the initiation of any action or proceeding, the parties will make all reasonable efforts to settle the dispute including without limitation utilization of a third-party mediator reasonably acceptable to both parties, with the parties bearing equally the costs of the mediation.

Section 10.7. The parties' respective obligations of non-disclosure for Confidential Information under **Article IV** of this Agreement shall survive expiration or termination of this Agreement for a period of two (2) years. Provided, however, nothing herein shall limit the duration of an obligation to protect a trade secret protected by applicable law.

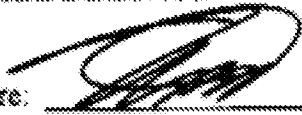
Section 10.8. All headings used in this Agreement to describe the contents of each article, paragraph, or other division are provided for convenience only and shall not be construed to be a part of this Agreement.

Section 10.9. This Agreement constitutes the entire agreement of the parties hereto concerning the subject matter hereof and supersedes any prior oral or written agreements between the parties pertaining to the subject matter of this Agreement. This Agreement may not be modified, changed or discharged in whole or in part, except in an agreement in writing signed by Licensee and DIMONTE.

Section 10.10. Signing a copy of this agreement and delivery of this agreement electronically will have the same effect as signing and delivering an original.

INTENDING TO BE LEGALLY BOUND HEREBY, and upon due authorization,
the parties have caused this Agreement to be executed as of the date first written
above.

MICHAEL DIMONTE


Signature: 

Name: Michael Di Monte

Title: Patent Owner

Date: 10/09/18

TUUBER CORPORATION LLC

Signature: 

Name: Melissa L. Weinstein

Title: CEO

Date: 10/23/2018