

PATENT ASSIGNMENT COVER SHEET

Electronic Version v1.1
 Stylesheet Version v1.2

EPAS ID: PAT7044508

SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	SECURITY INTEREST		
CONVEYING PARTY DATA			
Name			Execution Date
FITFLOP LIMITED			11/10/2021
RECEIVING PARTY DATA			
Name:	AURELIUS FINANCE COMPANY LIMITED		
Street Address:	6TH FLOOR, 33 GLASSHOUSE STREET		
City:	LONDON		
State/Country:	UNITED KINGDOM		
Postal Code:	W1B 5DG		
PROPERTY NUMBERS Total: 2			
Property Type	Number		
Patent Number:	D640450		
Patent Number:	D588343		
CORRESPONDENCE DATA			
Fax Number:	(954)761-8112		
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i>			
Phone:	9547617473		
Email:	IPDocket@GRAY-ROBINSON.COM		
Correspondent Name:	DONALD S. SHOWALTER, ESQ.		
Address Line 1:	GRAYROBINSON, P.A.		
Address Line 2:	P.O. BOX 2328		
Address Line 4:	FORT LAUDERDALE, FLORIDA 33303		
ATTORNEY DOCKET NUMBER:	817570.1		
NAME OF SUBMITTER:	DONALD S. SHOWALTER		
SIGNATURE:	/Donald S. Showalter/		
DATE SIGNED:	11/29/2021		
Total Attachments: 25			
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SECURITY AGREEMENT

This **SECURITY AGREEMENT** (this “Agreement”), dated as of 10th November, 2021, by and among the Persons listed on the signature pages hereof as “Grantor” and those additional entities that hereafter become parties hereto by executing the form of Joinder attached hereto as Annex 1 (each, a “Grantor” and collectively, the “Grantors”), and **AURELIUS FINANCE COMPANY LIMITED**, a company incorporated in England & Wales with number 10773394 (“Aurelius”), in its capacity as lender (in such capacity, together with its successors and assigns in such capacity, the “Lender”).

WITNESSETH:

WHEREAS, pursuant to that certain Facility Agreement, of even date herewith (as amended, restated, supplemented, or otherwise modified from time to time, the “Facility Agreement”), by and among others, FitFlop Limited, a company incorporated in England & Wales with number 06436347 as company, FitFlop USA LLC, a Delaware limited liability company and the other companies named in the Facility Agreement as borrowers, each a “Borrower” and individually and collectively, jointly and severally, the “Borrowers”), Hold Firm LLC, a Delaware limited liability company and the companies named in the Facility Agreement as guarantors, and the Lender, the Lender has agreed to make certain financial accommodations available to the Borrowers from time to time pursuant to the terms and conditions thereof; and

WHEREAS, in order to induce the Lender to enter into the Facility Agreement and the other Finance Documents and to extend the Loan thereunder, the Grantors have agreed to grant to the Lender, a continuing security interest in and to the Collateral in order to secure the prompt and complete payment, observance and performance of, among other things, the Secured Liabilities.

NOW, THEREFORE, for and in consideration of the recitals made above and other good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. Definitions: Construction.

(a) All initially capitalized terms used herein (including in the preamble and recitals hereof) without definition shall have the meanings ascribed thereto in the Facility Agreement. Any terms (whether capitalized or lower case) used in this Agreement that are defined in the Code (including, without limitation, Account, Account Debtor, Chattel Paper, Commercial Tort Claims, Deposit Account, Drafts, Documents, Equipment, Farm Products, Fixtures, General Intangibles, Inventory, Investment Property, Instruments, Letters of Credit, Letter of Credit Rights, Promissory Notes, Proceeds, Securities Account and Supporting Obligations) shall be construed and defined as set forth in the Code unless otherwise defined herein or in the Facility Agreement; provided, that to the extent that the Code is used to define any term used herein and if such term is defined differently in different Articles of the Code, the definition of such term contained in Article 9 of the Code shall govern. In addition to those terms defined elsewhere in this Agreement, as used in this Agreement, the following terms shall have the following meanings:

(i) “Activation Instruction” has the meaning specified therefor in Section 6(k) hereof.

(ii) “Agreement” has the meaning specified therefor in the preamble to this Agreement.

(iii) “Bankruptcy Code” means title 11 of the United States Code, as in effect from time to time.

(iv) “Books” means books and records (including each Grantor’s Records indicating, summarizing, or evidencing such Grantor’s assets (including the Collateral) or liabilities, each Grantor’s Records relating to such Grantor’s business operations or financial condition, and each Grantor’s goods or General Intangibles related to such information).

(v) “Borrower” and “Borrowers” have the respective meanings specified therefor in the recitals to this Agreement.

(vi) “Capital Lease” means a lease that is required to be capitalized for financial reporting purposes in accordance with GAAP.

(vii) “CFC” means a controlled foreign corporation (as that term is defined in the IRC) in which any Grantor is a "United States shareholder" within the meaning of Section 951(b) of the IRC.

(viii) “Closing Date” means the date of this Agreement.

(ix) “Code” means the Uniform Commercial Code, as in effect from time to time in the State of New York; provided, that in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection, priority, or remedies with respect to the Lender’s Lien on any Collateral is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than the State of New York, the term “Code” shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions thereof relating to such attachment, perfection, priority, or remedies.

(x) “Collateral” has the meaning specified therefor in Section 2 hereof.

(xi) “Collection Account” means a Deposit Account of a Grantor which is used exclusively for deposits of collections and proceeds of Collateral and not as a disbursement or operating account upon which checks or other drafts may be drawn.

(xii) “Commercial Tort Claims” means commercial tort claims (as that term is defined in the Code), and includes those commercial tort claims listed on Schedule 1.

(xiii) “Commodity Exchange Act” means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

(xiv) “Controlled Account” has the meaning given to the term “Blocked Account” in the Facility Agreement.

(xv) “Controlled Account Agreements” means those certain cash management agreements, in form and substance reasonably satisfactory to the Lender, each of which is executed and delivered by a Grantor, the Lender, and one of the Controlled Account Banks.

(xvi) “Controlled Account Bank” means a bank at which a Grantor maintains a Controlled Account.

(xvii) “Copyrights” means any and all rights in any works of authorship, including (A) copyrights and moral rights, (B) copyright registrations and recordings thereof and all applications in connection therewith, (C) income, license fees, royalties, damages, and payments now and hereafter due or payable under and with respect thereto, including payments under all licenses entered into in connection therewith and damages and payments for past, present, or future infringements thereof, (D) the right to sue for past, present, and future infringements thereof, and (E) all of each Grantor’s rights corresponding thereto throughout the world.

(xviii) “Copyright Security Agreement” means each Copyright Security Agreement executed and delivered by Grantors, or any of them, and the Lender, in substantially the form of Exhibit A.

(xix) “Equity Interests” means, with respect to a Person, all of the shares, options, warrants, interests, participations, or other equivalents (regardless of how designated) of or in such Person, whether voting or nonvoting, including capital stock (or other ownership or profit interests or units), preferred stock, or any other “equity security” (as such term is defined in Rule 3a11-1 of the General Rules and Regulations promulgated by the SEC under the Exchange Act).

(xx) “Excluded Account” means Deposit Accounts specially and exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for any Grantor’s employees, or such other Deposit Accounts designated as “Excluded Accounts” and consented to in writing by Lender.

(xxi) “Excluded Swap Obligation” means, with respect to any Grantor, any Swap Obligation if, and to the extent that, all or a portion of the guaranty of such Grantor of, or the grant by such Grantor of a security interest to secure, such Swap Obligation (or any guaranty thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Grantor’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act and the regulations thereunder at the time the guaranty of such Grantor or the grant of such security interest becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such guaranty or security interest is or becomes illegal.

(xxii) “Facility Agreement” has the meaning specified therefor in the recitals to this Agreement.

(xxiii) “General Intangibles” means general intangibles (as that term is defined in the Code), and includes payment intangibles, software, contract rights, rights to payment, rights under “swap agreements” (as defined in Section 101(53B)(A) of the Bankruptcy Code) (including the right to receive payment on account of the termination (voluntarily or involuntarily) of such “swap agreements”), rights arising under common law, statutes, or regulations, choses or things in action, goodwill, Intellectual Property, Intellectual Property Licenses, purchase orders, customer lists, route lists, rights to payment and other rights under Acquisition Documents, rights to payment and other rights under any royalty or licensing agreements, including Intellectual Property Licenses, infringement claims, monies due or recoverable from pension funds, pension plan refunds, pension plan refund claims, insurance premium rebates, tax refunds,

and tax refund claims, interests in a partnership or limited liability company which do not constitute a security under Article 8 of the Code, and any other personal property other than Commercial Tort Claims, money, Accounts, Chattel Paper, Deposit Accounts, goods, Investment Property, Negotiable Collateral, and oil, gas, or other minerals before extraction.

(xxiv) “Grantor” and “Grantors” have the respective meanings specified therefor in the preamble to this Agreement.

(xxv) “Insolvency Proceeding” means any proceeding commenced by or against any Person under any provision of the Bankruptcy Code or under any other state or federal bankruptcy or insolvency law, assignments for the benefit of creditors, formal or informal moratoria, compositions, extensions generally with creditors, or proceedings seeking reorganization, arrangement or other similar relief.

(xxvi) “Intellectual Property” means any and all Patents, Copyrights, Trademarks, trade secrets, know-how, inventions (whether or not patentable), algorithms, software programs (including source code and object code), processes, product designs, industrial designs, blueprints, drawings, data, customer lists, URLs and domain names, specifications, documentations, reports, catalogs, literature, and any other forms of technology or proprietary information of any kind, including all rights therein and all applications for registration or registrations thereof.

(xxvii) “Intellectual Property Licenses” means, with respect to any Grantor, (A) any licenses or other similar rights provided to such Grantor in or with respect to Intellectual Property owned or controlled by any other Person, and (B) any licenses or other similar rights provided to any other Person in or with respect to Intellectual Property owned or controlled by such Grantor, in each case, including (x) any software license agreements (other than license agreements for commercially available off-the-shelf software that is generally available to the public which have been licensed to a Grantor pursuant to end-user licenses), (y) the license agreements listed on Schedule 2, and (z) the right to use any of the licenses or other similar rights described in this definition in connection with the enforcement of the Lender’s rights under the Finance Documents.

(xxviii) “Investment Property” means (A) any and all investment property, and (B) any and all of the following (regardless of whether classified as investment property under the Code): all Pledged Interests, Pledged Operating Agreements, and Pledged Partnership Agreements.

(xxix) “IRC” means the Internal Revenue Code of 1986, as in effect from time to time.

(xxx) “Joinder” means each Joinder to this Agreement executed and delivered by the Lender and each of the other parties listed on the signature pages thereto, in substantially the form of Annex 1.

(xxxi) “Lender” has the meaning specified therefor in the recitals to this Agreement.

(xxxii) “Lien” means any mortgage, deed of trust, pledge, hypothecation, assignment, charge, deposit arrangement, encumbrance, easement, lien (statutory or other), security interest, or other security arrangement and any other preference, priority, or preferential arrangement of any kind or nature whatsoever, including any conditional sale contract or other title retention agreement, the

interest of a lessor under a Capital Lease and any synthetic or other financing lease having substantially the same economic effect as any of the foregoing.

(xxxiii) “Negotiable Collateral” means letters of credit, letter-of-credit rights, instruments, promissory notes, drafts and documents (as each such term is defined in the Code).

(xxxiv) “Patents” means patents and patent applications, including (A) the patents and patent applications listed on Schedule 3, (B) all continuations, divisionals, continuations-in-part, re-examinations, reissues, and renewals thereof and improvements thereon, (C) all income, royalties, damages and payments now and hereafter due or payable under and with respect thereto, including payments under all licenses entered into in connection therewith and damages and payments for past, present, or future infringements thereof, (D) the right to sue for past, present, and future infringements thereof, and (E) all of each Grantor’s rights corresponding thereto throughout the world.

(xxxv) “Patent Security Agreement” means each Patent Security Agreement executed and delivered by Grantors, or any of them, and the Lender, in substantially the form of Exhibit B.

(xxxvi) “Permitted Liens” means Permitted Security (as defined in the Facility Agreement).

(xxxvii) “Pledged Companies” means each Person listed on Schedule 4 as a “Pledged Company”, together with each other Person, all or a portion of whose Equity Interests are acquired or otherwise owned by a Grantor after the Closing Date.

(xxxviii) “Pledged Interests” means all of each Grantor’s right, title and interest in and to all of the Equity Interests now owned or hereafter acquired by such Grantor, regardless of class or designation, including in each of the Pledged Companies, and all substitutions therefor and replacements thereof, all proceeds thereof and all rights relating thereto, also including any certificates representing the Equity Interests, the right to receive any certificates representing any of the Equity Interests, all warrants, options, share appreciation rights and other rights, contractual or otherwise, in respect thereof and the right to receive all dividends, distributions of income, profits, surplus, or other compensation by way of income or liquidating distributions, in cash or in kind, and all cash, instruments, and other property from time to time received, receivable, or otherwise distributed in respect of or in addition to, in substitution of, on account of, or in exchange for any or all of the foregoing.

(xxxix) “Pledged Interests Addendum” means a Pledged Interests Addendum substantially in the form of Exhibit C.

(xl) “Pledged Operating Agreements” means all of each Grantor’s rights, powers, and remedies under the limited liability company operating agreements of each of the Pledged Companies that are limited liability companies.

(xli) “Pledged Partnership Agreements” means all of each Grantor’s rights, powers, and remedies under the partnership agreements of each of the Pledged Companies that are partnerships.

(xlii) “Proceeds” has the meaning specified therefor in Section 2 hereof.

(xliii) “PTO” means the United States Patent and Trademark Office.

(xlv) “Qualified ECP Grantor” means, in respect of any Swap Obligation, each Grantor that has total assets exceeding \$10,000,000 at the time the relevant guaranty, keepwell, or grant of the relevant security interest becomes effective with respect to such Swap Obligation or such other person as constitutes an “eligible contract participant” under the Commodity Exchange Act or any regulations promulgated thereunder and can cause another person to qualify as an “eligible contract participant” at such time by entering into a keepwell under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

(xlv) “Real Property” means any estates or interests in real property now owned or hereafter acquired by any Grantor and the improvements thereto.

(xlvi) “Record” means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.

(xlvii) “Secured Liabilities” means all present and future obligations and liabilities, whether actual or contingent and whether owned jointly or severally, as principal or surety, or in any other capacity whatsoever of each Obligor to the Lender.

(xlviii) “Security Interest” has the meaning specified therefor in Section 2 hereof.

(xlix) “Supporting Obligations” means supporting obligations (as such term is defined in the Code), and includes letters of credit and guaranties issued in support of Accounts, Chattel Paper, documents, General Intangibles, instruments or Investment Property.

(l) “Swap Obligation” means, with respect to any Grantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a “swap” within the meaning of section 1a(47) of the Commodity Exchange Act.

(li) “Trademarks” means any and all trademarks, trade names, registered trademarks, trademark applications, service marks, registered service marks and service mark applications

(lii) “Trademark Security Agreement” means each Trademark Security Agreement executed and delivered by Grantors, or any of them, and the Lender, in substantially the form of Exhibit D.

(liii) “URL” means “uniform resource locator,” an internet web address.

(b) This Agreement shall be subject to the rules of construction set forth in Section 1.2 of the Facility Agreement, and such rules of construction are incorporated herein by this reference, *mutatis mutandis*.

(c) All of the schedules and exhibits attached to this Agreement shall be deemed incorporated herein by reference.

2. Grant of Security. Each Grantor hereby unconditionally grants, collaterally assigns, and pledges to the Lender to secure the Secured Liabilities (whether now existing or hereafter arising), a continuing security interest (hereinafter referred to as the “Security Interest”) in all of such Grantor’s right, title, and interest in and to the following, whether now owned or hereafter acquired or arising and wherever located (the “Collateral”):

- (a) all of such Grantor’s Accounts;
- (b) all of such Grantor’s Books;
- (c) all of such Grantor’s Chattel Paper;
- (d) all of such Grantor’s Commercial Tort Claims;
- (e) all of such Grantor’s Deposit Accounts;
- (f) all of such Grantor’s Equipment;
- (g) all of such Grantor’s Farm Products;
- (h) all of such Grantor’s Fixtures;
- (i) all of such Grantor’s General Intangibles;
- (j) all of such Grantor’s Inventory;
- (k) all of such Grantor’s Investment Property;
- (l) all of such Grantor’s Intellectual Property and Intellectual Property Licenses;
- (m) all of such Grantor’s Negotiable Collateral;
- (n) all of such Grantor’s Pledged Interests (including all of such Grantor’s Pledged Operating Agreements and Pledged Partnership Agreements);
- (o) all of such Grantor’s Securities Accounts;
- (p) all of such Grantor’s Supporting Obligations;
- (q) all of such Grantor’s money or other assets of such Grantor that now or hereafter come into the possession, custody, or control of the Lender (or its agent or designee); and
- (r) all of the Proceeds and products, whether tangible or intangible, of any of the foregoing, including proceeds of insurance or Commercial Tort Claims covering or relating to any or all of the foregoing, and any and all Accounts, Books, Chattel Paper, Deposit Accounts, Equipment, Farm Products, Fixtures, General Intangibles, Inventory, Investment Property, Intellectual Property, Negotiable Collateral, Pledged Interests, Securities Accounts, Supporting Obligations, money, or other tangible or intangible property resulting from the sale, lease, license, exchange, collection, or other disposition of any of the foregoing, the proceeds of any award in condemnation with respect to any of the foregoing, any rebates or refunds, whether for taxes or otherwise, and all proceeds of any such proceeds, or any portion thereof or interest therein, and the proceeds thereof, and all proceeds of any loss of, damage to, or

destruction of the above, whether insured or not insured, and, to the extent not otherwise included, any indemnity, warranty, or guaranty payable by reason of loss or damage to, or otherwise with respect to any of the foregoing (the “Proceeds”). Without limiting the generality of the foregoing, the term “Proceeds” includes whatever is receivable or received when Investment Property or proceeds are sold, exchanged, collected, or otherwise disposed of, whether such disposition is voluntary or involuntary, and includes proceeds of any indemnity or guaranty payable to any Grantor or the Lender from time to time with respect to any of the Investment Property.

Notwithstanding anything contained in this Agreement to the contrary, the term “Collateral” shall not include (i) voting Equity Interests of any CFC, solely to the extent that (y) such Equity Interests represent more than 65% of the outstanding voting Equity Interests of such CFC, and (z) pledging or hypothecating more than 65% of the total outstanding voting Equity Interests of such CFC would result in adverse tax consequences or the costs to the Grantors of providing such pledge are unreasonably excessive (as determined by the Lender in consultation with the Borrowers) in relation to the benefits to the Lender of the security afforded thereby (which pledge, if reasonably requested by the Lender, shall be governed by the laws of the jurisdiction of such Subsidiary), (ii) any rights or interest in any contract, lease, permit, license, or license agreement covering real or personal property of any Grantor if under the terms of such contract, lease, permit, license, or license agreement, or applicable law with respect thereto, the grant of a security interest or lien therein is prohibited as a matter of law or under the terms of such contract, lease, permit, license, or license agreement and such prohibition or restriction has not been waived or the consent of the other party to such contract, lease, permit, license, or license agreement has not been obtained (provided, that (A) the foregoing exclusions of this clause (ii) shall in no way be construed (1) to apply to the extent that any described prohibition or restriction is ineffective under Section 9-406, 9-407, 9-408, or 9-409 of the Code or other applicable law, or (2) to apply to the extent that any consent or waiver has been obtained that would permit the Lender’s security interest or lien to attach notwithstanding the prohibition or restriction on the pledge of such contract, lease, permit, license, or license agreement and (B) the foregoing exclusions of clauses (i) and (ii) shall in no way be construed to limit, impair, or otherwise affect any of the Lender’s continuing security interests in and liens upon any rights or interests of any Grantor in or to (1) monies due or to become due under or in connection with any described contract, lease, permit, license or license agreement, or Equity Interests (including any Accounts or Equity Interests), or (2) any proceeds from the sale, license, lease, or other dispositions of any such contract, lease, permit, license, license agreement, or Equity Interests), or (iii) any United States intent-to-use trademark applications to the extent that, and solely during the period in which, the grant of a security interest therein would impair the validity or enforceability of such intent-to-use trademark applications under applicable federal law; provided, that upon submission and acceptance by the PTO of a statement of use or an amendment to allege use pursuant to 15 U.S.C. Section 1060(a) (or any successor provision), such intent-to-use or use-based trademark application shall be considered Collateral.

3. Security for Secured Liabilities. The Security Interest created hereby secures the payment and performance of the Secured Liabilities, whether now existing or arising hereafter. Without limiting the generality of the foregoing, this Agreement secures the payment of all amounts which constitute part of the Secured Liabilities and would be owed by Grantors, or any of them, to the Lender, but for the fact that they are unenforceable or not allowable (in whole or in part) as a claim in an Insolvency Proceeding involving any Grantor due to the existence of such Insolvency Proceeding. Further, the Security Interest created hereby encumbers each Grantor’s right, title, and interest in all Collateral, whether now owned by such Grantor or hereafter acquired, obtained, developed, or created by such Grantor and wherever located.

4. Grantors Remain Liable. Anything herein to the contrary notwithstanding, (a) each of the Grantors shall remain liable under the contracts and agreements included in the Collateral, including the Pledged Operating Agreements and the Pledged Partnership Agreements, to perform all of the duties and

obligations thereunder to the same extent as if this Agreement had not been executed, (b) the exercise by the Lender of any of the rights hereunder shall not release any Grantor from any of its duties or obligations under such contracts and agreements included in the Collateral, and (c) the Lender shall not have any obligation or liability under such contracts and agreements included in the Collateral by reason of this Agreement, nor shall the Lender be obligated to perform any of the obligations or duties of any Grantors thereunder or to take any action to collect or enforce any claim for payment assigned hereunder. Until an Event of Default shall occur and be continuing, except as otherwise provided in this Agreement, the Facility Agreement, or any other Finance Document, Grantors shall have the right to possession and enjoyment of the Collateral subject to and upon the terms hereof and of the Facility Agreement and the other Finance Documents. Without limiting the generality of the foregoing, it is the intention of the parties hereto that record and beneficial ownership of the Pledged Interests, including all voting, consensual, dividend, and distribution rights, shall remain in the applicable Grantor until (i) the occurrence and continuance of an Event of Default, and (ii) the Lender has notified the applicable Grantor in writing of the Lender's election to exercise such rights with respect to the Pledged Interests pursuant to Section 15.

5. Representations and Warranties. In order to induce the Lender to enter into this Agreement for its benefit, each Grantor makes the following representations and warranties to the Lender which shall be true, correct, and complete, in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof), as of the Closing Date, and shall be true, correct, and complete, in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof), as of the date of each Utilisation (or other extension of credit) made thereafter, as though made on and as of the date of such Utilisation (or other extension of credit) (except to the extent that such representations and warranties relate solely to an earlier date, in which case such representations and warranties shall be true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) as of such earlier date) and such representations and warranties shall survive the execution and delivery of this Agreement:

(a) The name (within the meaning of Section 9-503 of the Code) and jurisdiction of organization of each Grantor is set forth on Schedule 5 (as such Schedule may be updated from time to time to reflect changes resulting from transactions permitted under the Finance Documents).

(b) The chief executive office of each Grantor is located at the address indicated on Schedule 5 (as such Schedule may be updated from time to time to reflect changes resulting from transactions permitted under the Finance Documents).

(c) Each Grantor's tax identification numbers and organizational identification numbers, if any, are identified on Schedule 5 (as such Schedule may be updated from time to time to reflect changes resulting from transactions permitted under the Finance Documents).

(d) As of the Closing Date, no Grantor holds any commercial tort claims that exceed \$25,000 in amount, except as set forth on Schedule 1.

(e) Set forth on Schedule 7 (as such Schedule may be updated from time to time subject to Section 6(k)(iii) with respect to Controlled Accounts and provided that Grantors comply with Section 6(c) hereof) is a listing of all of Grantors' Deposit Accounts and Securities Accounts, including, with respect to each bank or securities intermediary (i) the name and address of such Person, and (ii) the account numbers of the Deposit Accounts or Securities Accounts maintained with such Person.

(f) Schedule 6 sets forth all Real Property owned by any of the Grantors as of the Closing Date.

(g) As of the Closing Date:

(i) Schedule 3 provides a complete and correct list of all

appropriate financing statements in the jurisdictions listed on Schedule 9, all action necessary to protect and perfect the Security Interest in and on each Grantor's United States issued and registered Patents, Trademarks, or Copyrights has been taken and such perfected Security Interest is enforceable as such as against any and all creditors of and purchasers from any Grantor. All action by any Grantor necessary to protect and perfect such security interest on each item of Collateral has been duly taken.

(j) (i) Except for the Security Interest created hereby, each Grantor is and will at all times be the sole holder of record and the legal and beneficial owner, free and clear of all Liens other than Permitted Liens, of the Pledged Interests indicated on Schedule 4 as being owned by such Grantor and, when acquired by such Grantor, any Pledged Interests acquired after the Closing Date, (ii) all of the Pledged Interests are duly authorized, validly issued, fully paid and non-assessable and the Pledged Interests constitute or will constitute the percentage of the issued and outstanding Equity Interests of the Pledged Companies of such Grantor identified on Schedule 4 as supplemented or modified by any Pledged Interests Addendum or any Joinder to this Agreement, (iii) such Grantor has the right and requisite authority to pledge, the Investment Property pledged by such Grantor to the Lender as provided herein, (iv) all actions necessary to perfect and establish the first priority (subject only to Permitted Liens which are non-consensual Permitted Liens, permitted purchase money Liens, or the interests of lessors under Capital Leases) of, or otherwise protect, the Lender's Liens in the Investment Property, and the proceeds thereof, have been duly taken, upon (A) the execution and delivery of this Agreement, (B) the taking of possession by the Lender (or its agent or designee) of any certificates representing the Pledged Interests, to the extent such Pledged Interests are represented by certificates, together with undated powers (or other documents of transfer acceptable to the Lender) endorsed in blank by the applicable Grantor, (C) the filing of financing statements in the applicable jurisdiction set forth on Schedule 9 for such Grantor with respect to the Pledged Interests of such Grantor that are not represented by certificates, and (D) with respect to any Securities Accounts, the delivery of Control Agreements with respect thereto, and (v) each Grantor has delivered to and deposited with the Lender all certificates representing the Pledged Interests owned by such Grantor to the extent such Pledged Interests are represented by certificates, and undated powers (or other documents of transfer acceptable to the Lender) endorsed in blank with respect to such certificates. None of the Pledged Interests owned or held by such Grantor has been issued or transferred in violation of any securities registration, securities disclosure, or similar laws of any jurisdiction to which such issuance or transfer may be subject.

(k) No consent, approval, authorization, or other order or other action by, and no notice to or filing with, any Governmental Authority or any other Person is required (i) for the grant of a Security Interest by such Grantor in and to the Collateral pursuant to this Agreement or for the execution, delivery, or performance of this Agreement by such Grantor, or (ii) for the exercise by the Lender of the voting or other rights provided for in this Agreement with respect to the Investment Property or the remedies in respect of the Collateral pursuant to this Agreement, except (A) as may be required in connection with such disposition of Investment Property by laws affecting the offering and sale of securities generally, (B) for consents, approvals, authorizations, or other orders or actions that have already been obtained or given (as applicable) and that are still in force, and (C) the filing of financing statements and other filings necessary to perfect the Security Interests granted hereby. No Intellectual Property License of any Grantor that is necessary in or material to the conduct of such Grantor's business requires any consent of any other Person that has not been obtained in order for such Grantor to grant the security interest granted hereunder in such Grantor's right, title or interest in or to such Intellectual Property License.

(l) As to all limited liability company or partnership interests, issued under any Pledged Operating Agreement or Pledged Partnership Agreement, each Grantor hereby represents and warrants that the Pledged Interests issued pursuant to such agreement (i) are not dealt in or traded on securities exchanges or in securities markets, (ii) do not constitute investment company securities, and

(iii) are not held by such Grantor in a Securities Account. In addition, none of the Pledged Operating Agreements, the Pledged Partnership Agreements, or any other agreements governing any of the Pledged Interests issued under any Pledged Operating Agreement or Pledged Partnership Agreement, provides that such Pledged Interests are securities governed by Article 8 of the Uniform Commercial Code as in effect in any relevant jurisdiction.

6. Covenants. Each Grantor, jointly and severally, covenants and agrees with the Lender that from and after the date of this Agreement and until the date of termination of this Agreement in accordance with Section 22:

(a) Possession of Collateral. In the event that any Collateral, including Proceeds, is evidenced by or consists of Negotiable Collateral, Investment Property, or Chattel Paper having an aggregate value or face amount of \$50,000 or more for all such Negotiable Collateral, Investment Property, or Chattel Paper, the Grantors shall promptly (and in any event within five Business Days (or such longer period as agreed to by the Lender in writing in its reasonable discretion) after acquisition thereof), notify the Lender thereof, and if and to the extent that perfection or priority of the Lender's Security Interest is dependent on or enhanced by possession, the applicable Grantor, promptly (and in any event within five Business Days (or such longer period as agreed to by the Lender in writing in its reasonable discretion)) after request by the Lender, shall execute such other documents and instruments as shall be requested by the Lender or, if applicable, endorse and deliver physical possession of such Negotiable Collateral, Investment Property, or Chattel Paper to the Lender, together with such undated powers (or other relevant document of transfer reasonably acceptable to the Lender) endorsed in blank as shall be requested by the Lender, and shall do such other acts or things deemed necessary by the Lender to protect the Lender's Security Interest therein.

(b) Chattel Paper.

(i) Promptly (and in any event within five Business Days (or such longer period as agreed to by the Lender in writing in its sole discretion)) after request by the Lender, each Grantor shall take all steps reasonably necessary to grant the Lender control of all electronic Chattel Paper in accordance with the Code and all "transferable records" as that term is defined in Section 16 of the Uniform Electronic Transaction Act and Section 201 of the federal Electronic Signatures in Global and National Commerce Act as in effect in any relevant jurisdiction, to the extent that the aggregate value or face amount of such electronic Chattel Paper equals or exceeds \$50,000; and

(ii) If any Grantor retains possession of any Chattel Paper or instruments (which retention of possession shall be subject to the extent permitted hereby and by the Facility Agreement), promptly upon the request of the Lender, such Chattel Paper and instruments shall be marked with the following legend: "This writing and the obligations evidenced or secured hereby are subject to the Security Interest of Aurelius Finance Company Limited, as the Lender for the benefit of it as Lender".

(c) Control Agreements.

(i) Each Grantor shall obtain an authenticated Controlled Account Agreement from each bank maintaining a Controlled Account for such Grantor (other than with respect to any Excluded Accounts) within the timeframe set out in clause 21.37 (d) (*Conditions Subsequent*) of the Facility Agreement;

(ii) Each Grantor shall obtain an authenticated control agreement, from each issuer of uncertificated securities, securities intermediary, or commodities intermediary issuing or holding

any financial assets or commodities to or for any Grantor, or maintaining a Securities Account for such Grantor; and

(iii) If requested by Lender, each Grantor shall obtain an authenticated control agreement with respect to all of such Grantor's investment property.

(d) Letter-of-Credit Rights. If the Grantors (or any of them) are or become the beneficiary of letters of credit having a face amount or value of \$50,000 or more in the aggregate, other than any Letters of Credit which support a LC Backed Receivable, then the applicable Grantor or Grantors shall promptly (and in any event within five Business Days (or such longer period as agreed to by the Lender in writing in its sole discretion) after becoming a beneficiary), notify the Lender thereof and, promptly (and in any event within five Business Days (or such longer period as agreed to by the Lender in writing in its reasonable discretion)) after request by the Lender, enter into a tri-party agreement with the Lender and the issuer or confirming bank with respect to letter-of-credit rights assigning such letter-of-credit rights to the Lender and directing all payments thereunder to the Lender, all in form and substance reasonably satisfactory to the Lender.

(e) Commercial Tort Claims. If the Grantors (or any of them) obtain Commercial Tort Claims having a value, or involving an asserted claim, in the amount of \$50,000 or more in the aggregate for all Commercial Tort Claims, then the applicable Grantor or Grantors shall promptly (and in any event within five Business Days (or such longer period as agreed to by the Lender in writing in its reasonable discretion) of obtaining such Commercial Tort Claim), notify the Lender upon incurring or otherwise obtaining such Commercial Tort Claims and, promptly (and in any event within five Business Days (or such longer period as agreed to by the Lender in writing in its reasonable discretion)) after request by the Lender, amend Schedule 1 to describe such Commercial Tort Claims in a manner that reasonably identifies such Commercial Tort Claims and which is otherwise reasonably satisfactory to the Lender, and hereby authorizes the filing of additional financing statements or amendments to existing financing statements describing such Commercial Tort Claims, and agrees to do such other acts or things deemed necessary by the Lender to give the Lender a first priority (subject only to Permitted Liens which are non-consensual Permitted Liens, permitted purchase money Liens, or the interests of lessors under Capital Leases), perfected security interest in any such Commercial Tort Claim.

(f) Government Contracts. Other than Accounts and Chattel Paper the aggregate value of which does not at any one time exceed \$50,000, if any Account or Chattel Paper arises out of a contract or contracts with the United States of America or any department, agency, or instrumentality thereof, Grantors shall promptly (and in any event within five Business Days (or such longer period as agreed to by the Lender in writing in its reasonable discretion) of the creation thereof) notify the Lender thereof and, promptly (and in any event within five Business Days (or such longer period as agreed to by the Lender in writing in its reasonable discretion)) after request by the Lender, execute any instruments or take any steps reasonably required by the Lender in order that all moneys due or to become due under such contract or contracts shall be assigned to the Lender, for its benefit, and shall provide written notice thereof under the Assignment of Claims Act or other applicable law.

(g) Intellectual Property.

(i) In order to facilitate filings with the PTO and the United States Copyright Office, each Grantor shall execute and deliver to the Lender one or more Copyright Security Agreements, Trademark Security Agreements, or Patent Security Agreements to further evidence the Lender's Lien on such Grantor's United States issued and registered Patents, Trademarks, or Copyrights, and the General Intangibles of such Grantor relating thereto or represented thereby;

(ii) On a continuing basis, each Grantor shall, at its sole cost and expense, (i) promptly following its becoming aware thereof, notify the Lender of (A) any adverse determination in any proceeding in the United States Patent and Trademark Office or the United States Copyright Office with respect to any Patent, Trademark or Copyright necessary for the conduct of business of such Grantor or (B) the institution of any proceeding or any adverse determination in any federal, state or local court or administrative body regarding such Grantor's claim of ownership in or right to use any of the Intellectual Property material to the use and operation of the Collateral, its right to register such Intellectual Property or its right to keep and maintain such registration in full force and effect, (ii) maintain and protect the Intellectual Property necessary for the conduct of business of such Grantor, (iii) not permit to lapse or become abandoned any Intellectual Property necessary for the conduct of business of such Grantor, and not settle or compromise any pending or future litigation or administrative proceeding with respect to such Intellectual Property, in each case except as shall be consistent with commercially reasonable business judgment and, if any Event of Default has occurred and is continuing, with the prior approval of the Lender (such approval not to be unreasonably withheld, delayed or conditioned), (iv) upon such Grantor's obtaining knowledge thereof, promptly notify the Lender in writing of any event which may be reasonably expected to materially and adversely affect the value or utility of the Intellectual Property or any portion thereof material to the use and operation of the Collateral, the ability of such Grantor or the Lender to dispose of the Intellectual Property or any portion thereof or the rights and remedies of the Lender in relation thereto including, without limitation, a levy or threat of levy or any legal process against the Intellectual Property or any portion thereof, (v) not license the Intellectual Property other than licenses entered into by such Grantor in, or incidental to, the ordinary course of business, or amend or permit the amendment of any of the material licenses in a manner that materially and adversely affects the right to receive payments thereunder, or in any manner that would materially impair the value of the Intellectual Property or the Lien on and security interest in the Collateral constituting Intellectual Property intended to be granted to the Lender or the benefit of the Credit Parties, without the consent of the Lender and (vi) until the Lender exercises its rights to make collection, diligently keep adequate records respecting the Intellectual Property material and necessary for the conduct of the business of such Grantor;

(iii) Grantors acknowledge and agree that the Lender shall have no duties with respect to any Intellectual Property or Intellectual Property Licenses of any Grantor. Without limiting the generality of this Section 6(g)(iii), Grantors acknowledge and agree that Lender shall not be under any obligation to take any steps necessary to preserve rights in the Collateral consisting of Intellectual Property or Intellectual Property Licenses against any other Person, but the Lender may do so at its option solely during the continuance of an Event of Default, and all expenses incurred in connection therewith (including reasonable fees and expenses of attorneys and other professionals) shall be for the sole account of Borrowers; and

(iv) If reasonably requested by the Lender or if an Event of Default is continuing, each Grantor shall provide the Lender with a written report of all new Patents, Trademarks or Copyrights that are registered or the subject of pending applications for registrations, and of all Intellectual Property Licenses that are material to the conduct of such Grantor's business, in each case, which were acquired, registered, or for which applications for registration were filed by any Grantor during the prior period and any statement of use or amendment to allege use with respect to any intent-to-use trademark applications. In the case of such registrations or applications therefor, which were acquired by any Grantor, each such Grantor shall file the necessary documents with the appropriate Governmental Authority identifying the applicable Grantor as the owner (or as a co-owner thereof, if such is the case) of such Intellectual Property. In each of the foregoing cases, the applicable Grantor shall promptly cause to be prepared, executed, and delivered to the Lender supplemental schedules to the applicable Finance Documents to identify such Patent, Trademark and Copyright registrations and applications therefor (with the exception of Trademark applications filed on an intent-to-use basis for which no statement of use or

amendment to allege use has been filed) and Intellectual Property Licenses as being subject to the security interests created thereunder.

(h) Investment Property.

(i) If any Grantor shall acquire, obtain, receive or become entitled to receive any Pledged Interests after the Closing Date, it shall promptly (and in any event within five Business Days (or such longer period as agreed to by the Lender in writing in its reasonable discretion) of acquiring or obtaining such Collateral) deliver to the Lender a duly executed Pledged Interests Addendum identifying such Pledged Interests;

(ii) Upon the occurrence and during the continuance of an Event of Default, following the request of the Lender, all sums of money and property paid or distributed in respect of the Investment Property that are received by any Grantor shall be held by the Grantors in trust for the benefit of the Lender segregated from such Grantor's other property, and such Grantor shall deliver it forthwith to the Lender in the exact form received;

(iii) Upon the occurrence and during the continuance of an Event of Default, and subject to any confidentiality restrictions, each Grantor shall promptly deliver to the Lender a copy of each material notice or other material communication received by it in respect of any Pledged Interests;

(iv) No Grantor shall make or consent to any amendment or other modification or waiver with respect to any Pledged Interests, Pledged Operating Agreement, or Pledged Partnership Agreement, or enter into any agreement or permit to exist any restriction with respect to any Pledged Interests if the same is prohibited pursuant to the Finance Documents;

(v) Each Grantor agrees that it will cooperate with the Lender in obtaining all necessary approvals and making all necessary filings under federal, state, local, or foreign law to effect the perfection of the Security Interest on the Investment Property or to effect any sale or transfer thereof; and

(vi) As to all limited liability company or partnership interests owned by such Grantor and issued under any Pledged Operating Agreement or Pledged Partnership Agreement, each Grantor hereby covenants that the Pledged Interests issued pursuant to such agreement (A) are not and shall not be dealt in or traded on securities exchanges or in securities markets, (B) do not and will not constitute investment company securities, and (C) are not and will not be held by such Grantor in a securities account. In addition, none of the Pledged Operating Agreements, the Pledged Partnership Agreements, or any other agreements governing any of the Pledged Interests issued under any Pledged Operating Agreement or Pledged Partnership Agreement, provides or shall provide that such Pledged Interests are securities governed by Article 8 of the Uniform Commercial Code as in effect in any relevant jurisdiction; and

(vii) With regard to any Pledged Interests that are not certificated, any such Grantor of such non-certificated Pledged Interests (i) agrees promptly to note on its books the security interests granted to the Lender and confirmed under this Agreement, (ii) agrees that after the occurrence and during the continuation of an Event of Default, it will comply with instructions of the Lender or its nominee with respect to the applicable Pledged Interests without further consent by the applicable Grantor, (iii) to the extent permitted by law, agrees that the "issuer's jurisdiction" (as defined in Section 8-110 of the UCC) is the State of Delaware, (iv) agrees to notify the Lender upon obtaining knowledge of any interest in favor of any person in the applicable Pledged Interests that is materially adverse to the interest of the Lender therein, other than any Permitted Liens and (v) waives any right or requirement at any time hereafter

to receive a copy of this Agreement in connection with the registration of any Pledged Interests hereunder in the name of the Lender or its nominee or the exercise of voting rights by the Lender or its nominee.

(i) Real Property; Fixtures. Each Grantor covenants and agrees that upon the acquisition of any fee interest in Real Property having a fair market value in excess of \$50,000 it will promptly (and in any event within five Business Days (or such longer period as agreed to by the Lender in writing in its reasonable discretion) of acquisition) notify the Lender of the acquisition of such Real Property and will grant to the Lender, for its benefit, a first priority (subject only to Permitted Liens which are non-consensual Permitted Liens, permitted purchase money Liens, or the interests of lessors under Capital Leases) Mortgage on each fee interest in Real Property now or hereafter owned by such Grantor and shall deliver such other documentation and opinions, in form and substance satisfactory to the Lender, in connection with the grant of such Mortgage as the Lender shall reasonably request, including title insurance policies, financing statements, fixture filings and environmental audits and such Grantor shall pay all recording costs, intangible taxes and other fees and costs (including reasonable attorneys' fees and expenses) incurred in connection therewith. Each Grantor acknowledges and agrees that, to the extent permitted by applicable law, all of the Collateral shall remain personal property regardless of the manner of its attachment or affixation to real property.

(j) Transfers and Other Liens. To the fullest extent permitted by law Grantors shall not (i) sell, assign (by operation of law or otherwise) or otherwise dispose of, or grant any option with respect to, any of the Collateral, except as expressly permitted by the Facility Agreement, or (ii) create or permit to exist any Lien upon or with respect to any of the Collateral of any Grantor, except for Permitted Liens. The inclusion of Proceeds in the Collateral shall not be deemed to constitute the Lender's consent to any sale or other disposition of any of the Collateral except as expressly permitted in this Agreement or the other Finance Documents.

(k) Controlled Accounts; Controlled Investments.

(i) Each Grantor shall, in accordance with Clause 21.31 (*Blocked Accounts and cash management*) of the Facility Agreement, take reasonable steps to ensure that all of its Account Debtors forward payment of the amounts owed by them directly to a Controlled Account (by wire transfer to the applicable Controlled Account Bank or to a lockbox maintained by the applicable Controlled Account Bank for deposit into such Controlled Account), and (B) deposit or cause to be deposited promptly, and in any event no later than the first Business Day after the date of receipt thereof, all of their Collections (including those sent directly by their Account Debtors to a Grantor) and proceeds of Collateral into a Controlled Account;

(ii) Each Grantor shall establish and maintain Controlled Account Agreements with the Lender and the applicable Controlled Account Bank, in form and substance reasonably acceptable to the Lender in respect of each Controlled Account within the time period specified by Clause 21.37(d) of the Facility Agreement. Each such Controlled Account Agreement shall provide, among other things, that (A) the Controlled Account Bank will comply with any instructions originated by the Lender directing the disposition of the funds in each applicable Controlled Account without further consent by the applicable Grantor, (B) the Controlled Account Bank waives, subordinates, or agrees not to exercise any rights of setoff or recoupment or any other claim against each applicable Controlled Account other than for payment of its service fees and other charges directly related to the administration of such Controlled Account and for returned checks or other items of payment, and (C) upon the instruction of the Lender (an "Activation Instruction"), the Controlled Account Bank will forward by daily sweep all amounts in each applicable Controlled Account to an account specified by the Lender. The Lender agrees not to issue an Activation Instruction with respect to the Controlled Accounts unless the Lender reasonably suspects that a Default is continuing at the time such Activation Instruction is issued.

(iii) So long as no Default or Event of Default has occurred and is continuing or would result therefrom, Borrowers may amend Schedule 8 to add or replace a Controlled Account Bank or Controlled Account and shall upon such addition or replacement provide to the Lender an amended Schedule 8; provided, that (A) such prospective Controlled Account Bank shall be reasonably satisfactory to the Lender, and (B) the applicable Grantor and such prospective Controlled Account Bank shall execute and deliver to the Lender a Controlled Account Agreement. Each Grantor shall close any of its Controlled Accounts (and establish replacement Controlled Account accounts in accordance with the foregoing sentence) as promptly as practicable and in any event within 45 days after notice from the Lender that the operating performance, funds transfer, or availability procedures or performance of the Controlled Account Bank with respect to Controlled Account Accounts or the Lender's liability under any Controlled Account Agreement with such Controlled Account Bank is no longer acceptable in the Lender's reasonable judgment.

(l) Name, Etc. No Grantor will change its name, chief executive office, organizational identification number, jurisdiction of organization or organizational identity; provided, that any Grantor may change its name or chief executive office upon at least ten days (or such shorter period of time as the Lender may agree in its reasonable discretion) prior written notice to the Lender of such change.

(m) Account Verification. If an Event of Default has occurred and is continuing, each Grantor will, and will cause each of its Subsidiaries to, permit the Lender, in the Lender's name or in the name or a nominee of the Lender, to verify the validity, amount or any other matter relating to any Account, by mail, telephone, facsimile transmission or other electronic means of transmission or otherwise. Further, at the request of the Lender, each Grantor will, and will cause each of its Subsidiaries to, send requests for verification of Accounts or, after the occurrence and during the continuance of an Event of Default, send notices of assignment of Accounts to Account Debtors and other obligors.

(n) Keepwell. Each Qualified ECP Grantor hereby jointly and severally absolutely, unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each other Obligor to guaranty and otherwise honor all obligations in respect of Swap Obligations. The obligations of each Qualified ECP Grantor under this Section shall remain in full force and effect until payment in full of the Secured Liabilities. Each Qualified ECP Grantor intends that this Section 6(n) constitute, and this Section 6(n) shall be deemed to constitute, a "keepwell, support, or other agreement" for the benefit of each other Grantor for all purposes of Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

7. Relation to Other Security Documents. The provisions of this Agreement shall be read and construed with the other Finance Documents referred to below in the manner so indicated.

(a) Facility Agreement. In the event of any conflict between any provision in this Agreement and a provision in the Facility Agreement, such provision of the Facility Agreement shall control.

(b) Patent, Trademark, Copyright Security Agreements. The provisions of the Copyright Security Agreements, Trademark Security Agreements, and Patent Security Agreements are supplemental to the provisions of this Agreement, and nothing contained in the Copyright Security Agreements, Trademark Security Agreements, or the Patent Security Agreements shall limit any of the rights or remedies of the Lender hereunder. In the event of any conflict between any provision in this Agreement and a provision in a Copyright Security Agreement, Trademark Security Agreement or Patent Security Agreement, such provision of this Agreement shall control.

8. Further Assurances.

(a) Each Grantor agrees that from time to time, at its own expense, such Grantor will promptly execute and deliver all further instruments and documents, and take all further action, that the Lender may reasonably request, in order to perfect and protect the Security Interest granted hereby, to create, perfect or protect the Security Interest purported to be granted hereby or to enable the Lender to exercise and enforce its rights and remedies hereunder with respect to any of the Collateral.

(b) Each Grantor authorizes the filing by the Lender of financing or continuation statements, or amendments thereto, and such Grantor will execute and deliver to the Lender such other instruments or notices, as the Lender may reasonably request, in order to perfect and preserve the Security Interest granted or purported to be granted hereby.

(c) Each Grantor authorizes the Lender at any time and from time to time to file, transmit, or communicate, as applicable, financing statements and amendments (i) describing the Collateral as "all personal property of debtor" or "all assets of debtor" or words of similar effect, (ii) describing the Collateral as being of equal or lesser scope or with greater detail, or (iii) that contain any information required by part 5 of Article 9 of the Code for the sufficiency or filing office acceptance. Each Grantor also hereby ratifies any and all financing statements or amendments previously filed by the Lender in any jurisdiction.

(d) Each Grantor acknowledges that it is not authorized to file any financing statement or amendment or termination statement with respect to any financing statement filed in connection with this Agreement without the prior written consent of the Lender, subject to such Grantor's rights under Section 9-509(d)(2) of the Code.

9. Lender's Right to Perform Contracts, Exercise Rights, etc. If an Event of Default has occurred and is continuing, the Lender (or its designee) (a) may proceed to perform any and all of the obligations of any Grantor contained in any contract, lease, or other agreement and exercise any and all rights of any Grantor therein contained as fully as such Grantor itself could, (b) shall have the right (subject to Section 16(b)) to use any Grantor's rights under Intellectual Property Licenses in connection with the enforcement of the Lender's rights hereunder, including the right to prepare for sale and sell any and all Inventory and Equipment now or hereafter owned by any Grantor and now or hereafter covered by such licenses, and (c) shall have the right to request that any Equity Interests that are pledged hereunder be registered in the name of the Lender or any of its nominees.

10. Lender Appointed Attorney-in-Fact. Each Grantor hereby irrevocably appoints the Lender its attorney-in-fact, with full authority in the place and stead of such Grantor and in the name of such Grantor or otherwise, at such time as an Event of Default has occurred and is continuing under the Facility Agreement, to take any action and to execute any instrument which the Lender may reasonably deem necessary or advisable to accomplish the purposes of this Agreement, including:

(a) to ask, demand, collect, sue for, recover, compromise, receive and give acquittance and receipts for moneys due and to become due under or in connection with the Accounts or any other Collateral of such Grantor;

(b) to receive and open all mail addressed to such Grantor and to notify postal authorities to change the address for the delivery of mail to such Grantor to that of the Lender;

(c) to receive, indorse, and collect any drafts or other instruments, documents, Negotiable Collateral or Chattel Paper;

(d) to file any claims or take any action or institute any proceedings which the Lender may deem necessary for the collection of any of the Collateral of such Grantor or otherwise to enforce the rights of the Lender with respect to any of the Collateral;

(e) to repair, alter, or supply goods, if any, necessary to fulfill in whole or in part the purchase order of any Person obligated to such Grantor in respect of any Account of such Grantor;

(f) to use any Intellectual Property or Intellectual Property Licenses of such Grantor, including but not limited to any labels, Patents, Trademarks, trade names, URLs, domain names, industrial designs, Copyrights, or advertising matter, in preparing for sale, advertising for sale, or selling Inventory or other Collateral and to collect any amounts due under Accounts, contracts or Negotiable Collateral of such Grantor; and

(g) the Lender shall have the right, but shall not be obligated, to bring suit in its own name to enforce the Intellectual Property and Intellectual Property Licenses and, if the Lender shall commence any such suit, the appropriate Grantor shall, at the request of the Lender, do any and all lawful acts and execute any and all proper documents reasonably required by the Lender in aid of such enforcement.

To the extent permitted by law, each Grantor hereby ratifies all that such attorney-in-fact shall lawfully do or cause to be done by virtue hereof. This power of attorney is coupled with an interest and shall be irrevocable until this Agreement is terminated.

11. Lender May Perform. If any Grantor fails to perform any agreement contained herein, the Lender may itself perform, or cause performance of, such agreement, and the reasonable expenses of the Lender incurred in connection therewith shall be payable, jointly and severally, by Grantors in accordance with the terms of the Facility Agreement.

12. Lender's Duties. The powers conferred on the Lender hereunder are solely to protect the Lender's interest in the Collateral, for its benefit, and shall not impose any duty upon the Lender to exercise any such powers. Except for the safe custody of any Collateral in its actual possession and the accounting for moneys actually received by it hereunder, the Lender shall have no duty as to any Collateral or as to the taking of any necessary steps to preserve rights against prior parties or any other rights pertaining to any Collateral. The Lender shall be deemed to have exercised reasonable care in the custody and preservation of any Collateral in its actual possession if such Collateral is accorded treatment substantially equal to that which the Lender accords its own property.

13. Collection of Accounts, General Intangibles and Negotiable Collateral. If an Event of Default has occurred and is continuing, the Lender or the Lender's designee may (a) make direct verification from Account Debtors with respect to any or all Accounts that are part of the Collateral, (b) notify Account Debtors of any Grantor that the Accounts, General Intangibles, Chattel Paper or Negotiable Collateral of such Grantor have been assigned to the Lender, for its benefit, or that the Lender has a security interest therein, or (c) collect the Accounts, General Intangibles and Negotiable Collateral of any Grantor directly, and any collection costs and expenses shall constitute part of such Grantor's Secured Liabilities under the Finance Documents.

14. Disposition of Pledged Interests by the Lender. None of the Pledged Interests existing as of the date of this Agreement are, and none of the Pledged Interests hereafter acquired on the date of acquisition thereof will be, registered or qualified under the various federal or state securities laws of the United States and disposition thereof after an Event of Default has occurred and is continuing may be restricted to one or more private (instead of public) sales in view of the lack of such registration. Each Grantor understands that in connection with such disposition, the Lender may approach only a restricted number of potential purchasers and further understands that a sale under such circumstances may yield a lower price for the Pledged Interests than if the Pledged Interests were registered and qualified pursuant to federal and state securities laws and sold on the open market. Each Grantor, therefore, agrees that: (a) if the Lender shall, pursuant to the terms of this Agreement, sell or cause the Pledged Interests or any portion thereof to be sold at a private sale, the Lender shall have the right to rely upon the advice and opinion of any nationally recognized brokerage or investment firm (but shall not be obligated to seek such advice and the failure to do so shall not be considered in determining the commercial reasonableness of such action) as to the best manner in which to offer the Pledged Interest or any portion thereof for sale and as to the best price reasonably obtainable at the private sale thereof, and (b) such reliance shall be conclusive evidence that the Lender has handled the disposition in a commercially reasonable manner.

15. Voting and Other Rights in Respect of Pledged Interests.

(a) If an Event of Default has occurred and is continuing, (i) the Lender may, at its option, and in addition to all rights and remedies available to the Lender under any other agreement, at law, in equity, or otherwise, exercise all voting rights, or any other ownership or consensual rights (including any dividend or distribution rights) in respect of the Pledged Interests owned by such Grantor, but under no circumstances is the Lender obligated by the terms of this Agreement to exercise such rights, and provided that in the absence of notice from the Lender each Grantor may and shall continue to exercise any and all such rights subject always to the terms of this Agreement and (ii) if the Lender duly exercises its right to vote any of such Pledged Interests, each Grantor hereby appoints the Lender, such Grantor's true and lawful attorney-in-fact and IRREVOCABLE PROXY to vote such Pledged Interests in any manner the Lender deems advisable for or against all matters submitted or which may be submitted to a vote of shareholders, partners or members, as the case may be. The power-of-attorney and proxy granted hereby is coupled with an interest and shall be irrevocable.

(b) For so long as any Grantor shall have the right to vote the Pledged Interests owned by it, such Grantor covenants and agrees that it will not, without the prior written consent of the Lender, vote or take any consensual action with respect to such Pledged Interests which would materially adversely affect the rights of the Lender, or the value of the Pledged Interests.

16. Remedies. If an Event of Default has occurred and is continuing:

(a) the Lender may exercise in respect of the Collateral, in addition to other rights and remedies provided for herein, in the other Finance Documents, or otherwise available to it, all the rights and remedies of a secured party on default under the Code or any other applicable law. Without limiting the generality of the foregoing, each Grantor expressly agrees that, in any such event, the Lender without demand of performance or other demand, advertisement or notice of any kind (except a notice specified below of time and place of public or private sale) to or upon any Grantor or any other Person (all and each of which demands, advertisements and notices are hereby expressly waived to the maximum extent permitted by the Code or any other applicable law), may take immediate possession of all or any portion of the Collateral and (i) require Grantors to, and each Grantor hereby agrees that it will at its own expense and upon request of the Lender forthwith, assemble all or part of the Collateral as directed by the Lender and make it available to the Lender at one or more locations where such Grantor regularly maintains Inventory,

and (ii) without notice except as specified below, sell the Collateral or any part thereof in one or more parcels at public or private sale, at any of the Lender's offices or elsewhere, for cash, on credit, and upon such other terms as the Lender may deem commercially reasonable. Each Grantor agrees that, to the extent notification of sale shall be required by law, at least ten days notification by mail to the applicable Grantor of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification and specifically such notification shall constitute a reasonable "authenticated notification of disposition" within the meaning of Section 9-611 of the Code. The Lender shall not be obligated to make any sale of Collateral regardless of notification of sale having been given. The Lender may adjourn any public sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned. Each Grantor agrees that (A) the internet shall constitute a "place" for purposes of Section 9-610(b) of the Code, and (B) to the extent notification of sale shall be required by law, notification by mail of the URL where a sale will occur and the time when a sale will commence at least ten days prior to the sale shall constitute a reasonable notification for purposes of Section 9-611(b) of the Code. Each Grantor agrees that any sale of Collateral to a licensor pursuant to the terms of a license agreement between such licensor and a Grantor is sufficient to constitute a commercially reasonable sale (including as to method, terms, manner, and time) within the meaning of Section 9-610 of the Code.

(b) The Lender is hereby granted a license or other right to use, without liability for royalties or any other charge, each Grantor's Intellectual Property, including but not limited to, any labels, Patents, Trademarks, trade names, URLs, domain names, industrial designs, Copyrights, and advertising matter, whether owned by any Grantor or with respect to which any Grantor has rights under license, sublicense, or other agreements (including any Intellectual Property License), as it pertains to the Collateral, in preparing for sale, advertising for sale and selling any Collateral, and each Grantor's rights under all licenses and all franchise agreements shall inure to the benefit of the Lender.

(c) The Lender may, in addition to other rights and remedies provided for herein, in the other Finance Documents, or otherwise available to it under applicable law and without the requirement of notice to or upon any Grantor or any other Person (which notice is hereby expressly waived to the maximum extent permitted by the Code or any other applicable law), (i) with respect to any Grantor's Deposit Accounts in which the Lender's Liens are perfected by control under Section 9-104 of the Code, instruct the bank maintaining such Deposit Account for the applicable Grantor to pay the balance of such Deposit Account to or for the benefit of the Lender, and (ii) with respect to any Grantor's Securities Accounts in which the Lender's Liens are perfected by control under Section 9-106 of the Code, instruct the securities intermediary maintaining such Securities Account for the applicable Grantor to (A) transfer any cash in such Securities Account to or for the benefit of the Lender, or (B) liquidate any financial assets in such Securities Account that are customarily sold on a recognized market and transfer the cash proceeds thereof to or for the benefit of the Lender.

(d) Any cash held by the Lender as Collateral and all cash proceeds received by the Lender in respect of any sale of, collection from, or other realization upon all or any part of the Collateral shall be applied against the Secured Liabilities in the order set forth in the Facility Agreement. In the event the proceeds of Collateral are insufficient to satisfy all of the Secured Liabilities in full, each Grantor shall remain jointly and severally liable for any such deficiency.

(e) Each Grantor hereby acknowledges that the Secured Liabilities arise out of a commercial transaction, and agrees that if an Event of Default shall occur and be continuing the Lender shall have the right to an immediate writ of possession without notice of a hearing. The Lender shall have the right to the appointment of a receiver for the properties and assets of each Grantor, and each Grantor

hereby consents to such rights and such appointment and hereby waives any objection such Grantor may have thereto or the right to have a bond or other security posted by the Lender.

17. Remedies Cumulative. Each right, power, and remedy of the Lender as provided for in this Agreement or the other Finance Documents now or hereafter existing at law or in equity or by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power, or remedy provided for in this Agreement and the other Finance Documents now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by the Lender of any one or more of such rights, powers, or remedies shall not preclude the simultaneous or later exercise by the Lender of any or all such other rights, powers, or remedies.

18. Marshaling. The Lender shall not be required to marshal any present or future collateral security (including but not limited to the Collateral) for, or other assurances of payment of, the Secured Liabilities or any of them or to resort to such collateral security or other assurances of payment in any particular order, and all of its rights and remedies hereunder and in respect of such collateral security and other assurances of payment shall be cumulative and in addition to all other rights and remedies, however existing or arising. To the extent that it lawfully may, each Grantor hereby agrees that it will not invoke any law relating to the marshaling of collateral which might cause delay in or impede the enforcement of the Lender's rights and remedies under this Agreement or under any other instrument creating or evidencing any of the Secured Liabilities or under which any of the Secured Liabilities is outstanding or by which any of the Secured Liabilities is secured or payment thereof is otherwise assured, and, to the extent that it lawfully may, each Grantor hereby irrevocably waives the benefits of all such laws.

19. Indemnity. Each Grantor agrees to indemnify the Lender from and against all claims, lawsuits and liabilities (including reasonable attorneys' fees) arising out of or resulting from this Agreement (including enforcement of this Agreement) or any other Finance Document to which such Grantor is a party in accordance with and to the extent set forth in the Facility Agreement. This provision shall survive the termination of this Agreement and the Facility Agreement and the repayment of the Secured Liabilities.

20. Merger, Amendments; Etc. THIS AGREEMENT, TOGETHER WITH THE OTHER FINANCE DOCUMENTS, REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN AGREEMENTS BETWEEN THE PARTIES. No waiver of any provision of this Agreement, and no consent to any departure by any Grantor herefrom, shall in any event be effective unless the same shall be in writing and signed by the Lender, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No amendment of any provision of this Agreement shall be effective unless the same shall be in writing and signed by the Lender and each Grantor to which such amendment applies.

21. Addresses for Notices. All notices and other communications provided for hereunder shall be given in the form and manner and delivered to the Lender at its address specified in the Facility Agreement, and to any of the Grantors at the notice address specified for Borrowers in the Facility Agreement, or as to any party, at such other address as shall be designated by such party in a written notice to the other party.

22. Continuing Security Interest: Assignments under Facility Agreement.

(a) This Agreement shall create a continuing security interest in the Collateral and shall (i) remain in full force and effect until the Secured Liabilities have been paid in full in accordance

with the provisions of the Facility Agreement and the Commitments have expired or have been terminated, (ii) be binding upon each Grantor, and their respective successors and assigns, and (iii) inure to the benefit of, and be enforceable by, the Lender, and its successors, transferees and assigns. Without limiting the generality of the foregoing clause (iii), the Lender may, in accordance with the provisions of the Facility Agreement, assign or otherwise transfer all or any portion of its rights and obligations under the Facility Agreement to any other Person, and such other Person shall thereupon become vested with all the benefits in respect thereof granted to such Lender herein or otherwise. Upon payment in full of the Secured Liabilities in accordance with the provisions of the Facility Agreement and the expiration or termination of the Commitments, the Security Interest granted hereby shall terminate and all rights to the Collateral shall revert to Grantors or any other Person entitled thereto. At such time, upon Borrowers' request, the Lender will authorize the filing of appropriate termination statements to terminate such Security Interest. No transfer or renewal, extension, assignment, or termination of this Agreement or of the Facility Agreement, any other Finance Document, or any other instrument or document executed and delivered by any Grantor to the Lender nor any additional loans made by the Lender to any Borrower, nor the taking of further security, nor the retaking or re-delivery of the Collateral to Grantors, or any of them, by the Lender, nor any other act of the Lender, shall release any Grantor from any obligation, except a release or discharge executed in writing by the Lender in accordance with the provisions of the Facility Agreement. The Lender shall not by any act, delay, omission or otherwise, be deemed to have waived any of its rights or remedies hereunder, unless such waiver is in writing and signed by the Lender and then only to the extent therein set forth. A waiver by the Lender of any right or remedy on any occasion shall not be construed as a bar to the exercise of any such right or remedy which the Lender would otherwise have had on any other occasion.

(b) If the Lender repays, refunds, restores, or returns in whole or in part, any payment or property (including any proceeds of Collateral) previously paid or transferred to the Lender in full or partial satisfaction of any Secured Obligation or on account of any other obligation of any Obligor under any Finance Document, because the payment, transfer, or the incurrence of the obligation so satisfied is asserted or declared to be void, voidable, or otherwise recoverable under any law relating to creditors' rights, including provisions of the Bankruptcy Code relating to fraudulent transfers, preferences, or other voidable or recoverable obligations or transfers (each, a "Voidable Transfer"), or because the Lender elects to do so on the reasonable advice of its counsel in connection with a claim that the payment, transfer, or incurrence is or may be a Voidable Transfer, then, as to any such Voidable Transfer, or the amount thereof that the Lender elects to repay, restore, or return (including pursuant to a settlement of any claim in respect thereof), and as to all reasonable costs, expenses, and attorneys' fees of the Lender related thereto, (i) the liability of the Obligors with respect to the amount or property paid, refunded, restored, or returned will automatically and immediately be revived, reinstated, and restored and will exist, and (ii) the Lender's Liens securing such liability shall be effective, revived, and remain in full force and effect, in each case, as fully as if such Voidable Transfer had never been made. If, prior to any of the foregoing, (A) the Lender's Liens shall have been released or terminated, or (B) any provision of this Agreement shall have been terminated or cancelled, the Lender's Liens, or such provision of this Agreement, shall be reinstated in full force and effect and such prior release, termination, cancellation or surrender shall not diminish, release, discharge, impair or otherwise affect the obligation of any Obligor in respect of such liability or any Collateral securing such liability.

23. Survival. All representations and warranties made by the Grantors in this Agreement and in the certificates or other instruments delivered in connection with or pursuant to this Agreement shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of this Agreement and the making of any loans and issuance of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Lender, L/C Issuer or the Lender may have had notice or knowledge of any Default or Event of Default or incorrect representation or warranty at the time any credit is extended under the Facility Agreement, and shall

continue in full force and effect as long as the principal of or any accrued interest on any loan or any fee or any other amount payable under the Facility Agreement is outstanding and unpaid or any L/C is outstanding and so long as the Commitments have not expired or terminated.

24. CHOICE OF LAW AND VENUE; JURY TRIAL WAIVER; JUDICIAL REFERENCE PROVISION.

(a) THE VALIDITY OF THIS AGREEMENT, THE CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT HEREOF, THE RIGHTS OF THE PARTIES HERETO WITH RESPECT TO ALL MATTERS ARISING HEREUNDER OR RELATED HERETO, AND ANY CLAIMS, CONTROVERSIES OR DISPUTES ARISING HEREUNDER OR RELATED HERETO SHALL BE DETERMINED UNDER, GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO THE CONFLICTS OF LAWS PRINCIPLES THEREOF (OTHER THAN SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW).

(b) THE PARTIES AGREE THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS AGREEMENT SHALL BE TRIED AND LITIGATED ONLY IN THE STATE AND, TO THE EXTENT PERMITTED BY APPLICABLE LAW, FEDERAL COURTS LOCATED IN THE STATE OF NEW YORK, COUNTY OF NEW YORK; PROVIDED, THAT ANY SUIT SEEKING ENFORCEMENT AGAINST ANY COLLATERAL OR OTHER PROPERTY MAY BE BROUGHT, AT LENDER'S OPTION, IN THE COURTS OF ANY JURISDICTION WHERE THE LENDER ELECTS TO BRING SUCH ACTION OR WHERE SUCH COLLATERAL OR OTHER PROPERTY MAY BE FOUND. EACH GRANTOR AND THE LENDER WAIVE, TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, ANY RIGHT EACH MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS SECTION 24(b).

(c) TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EACH GRANTOR AND THE LENDER HEREBY WAIVE THEIR RESPECTIVE RIGHTS, IF ANY, TO A JURY TRIAL OF ANY CLAIM, CONTROVERSY, DISPUTE OR CAUSE OF ACTION DIRECTLY OR INDIRECTLY BASED UPON OR ARISING OUT OF THIS AGREEMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS (EACH A "CLAIM"). EACH GRANTOR AND THE LENDER REPRESENT THAT EACH HAS REVIEWED THIS WAIVER AND EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. IN THE EVENT OF LITIGATION, A COPY OF THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

(d) EACH GRANTOR HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS LOCATED IN THE STATE OF NEW YORK, COUNTY OF NEW YORK, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT SHALL AFFECT ANY RIGHT THAT LENDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING

RELATING TO THIS AGREEMENT AGAINST ANY GRANTOR OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(e) NO CLAIM MAY BE MADE BY ANY GRANTOR AGAINST THE LENDER OR ANY AFFILIATE, DIRECTOR, OFFICER, EMPLOYEE, COUNSEL, REPRESENTATIVE, AGENT, OR ATTORNEY-IN-FACT OF ANY OF THEM FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES IN RESPECT OF ANY CLAIM FOR BREACH OF CONTRACT OR ANY OTHER THEORY OF LIABILITY ARISING OUT OF OR RELATED TO THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT, OR ANY ACT, OMISSION, OR EVENT OCCURRING IN CONNECTION HERewith, AND EACH GRANTOR HEREBY WAIVES, RELEASES, AND AGREES NOT TO SUE UPON ANY CLAIM FOR SUCH DAMAGES, WHETHER OR NOT ACCRUED AND WHETHER OR NOT KNOWN OR SUSPECTED TO EXIST IN ITS FAVOR.

25. New Subsidiaries. If pursuant to the terms of the Facility Agreement any Subsidiaries (whether by acquisition or creation) of any Grantor are required to enter into this Agreement, such Subsidiary shall execute and deliver in favor of the Lender a Joinder to this Agreement in substantially the form of Annex 1. Upon the execution and delivery of Annex 1 by any such new Subsidiary, such Subsidiary shall become a Grantor hereunder with the same force and effect as if originally named as a Grantor herein. The execution and delivery of any instrument adding an additional Grantor as a party to this Agreement shall not require the consent of any Grantor hereunder. The rights and obligations of each Grantor hereunder shall remain in full force and effect notwithstanding the addition of any new Grantor hereunder.

26. Miscellaneous.

(a) This Agreement is a Finance Document. This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Agreement. Delivery of an executed counterpart of this Agreement by telefacsimile or other electronic method of transmission shall be equally as effective as delivery of an original executed counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by telefacsimile or other electronic method of transmission also shall deliver an original executed counterpart of this Agreement but the failure to deliver an original executed counterpart shall not affect the validity, enforceability, and binding effect of this Agreement. The foregoing shall apply to each other Finance Document *mutatis mutandis*.

(b) Any provision of this Agreement which is prohibited or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof in that jurisdiction or affecting the validity or enforceability of such provision in any other jurisdiction. Each provision of this Agreement shall be severable from every other provision of this Agreement for the purpose of determining the legal enforceability of any specific provision.

(c) Headings and numbers have been set forth herein for convenience only. Unless the contrary is compelled by the context, everything contained in each Section applies equally to this entire Agreement.

(d) Neither this Agreement nor any uncertainty or ambiguity herein shall be construed against the Lender or any Grantor, whether under any rule of construction or otherwise. This Agreement has been reviewed by all parties and shall be construed and interpreted according to the ordinary meaning of the words used so as to accomplish fairly the purposes and intentions of all parties hereto.