



## SECOND AMENDMENT TO TRADEMARK SECURITY AGREEMENT

THIS SECOND AMENDMENT TO TRADEMARK SECURITY AGREEMENT ("Amendment") is entered into by and between RELAX THE BACK CORPORATION, a Delaware corporation, having its principal place of business and executive headquarters at 900 Congress Avenue, Suite 400, Austin, Texas 78703 ("Debtor"), PACIFIC MEZZANINE FUND L.P., a California Limited Partnership having its principal place of business at 2200 Powell Street, Suite 1250, Emeryville, CA 94608 ("PMF"), DOMINION FUND IV, a Delaware Limited Partnership, having its principal place of business at 44 Montgomery Street, Suite 4200, San Francisco, California 94104 ("Dominion") and SIRROM CAPITAL CORPORATION, a Tennessee corporation, having its principal business at Suite 200, 500 Church Street, Nashville, Tennessee 37219 ("SCC" and, together with PMF and Dominion, collectively "Lenders"). This Agreement shall be effective as of the 31st day of October, 1997.

### RECITALS

A. Debtor and PMF have entered into a Loan Agreement dated as of August 27, 1996 (the "PMF Loan Agreement") and related debt instruments, as now or hereafter amended or supplemented.

B. Debtor and Dominion have entered into a Loan Agreement dated as of June 10, 1997 (the "Dominion Loan Agreement") and related debt instruments, as now or hereafter amended or supplemented.

C. Pursuant to the provisions of the PMF Loan Agreement and Dominion Loan Agreement, Debtor executed and delivered that certain Trademark Security Agreement dated as of September 30, 1996, as amended by that certain First Amendment to Trademark Security Agreement dated as of June 10, 1997 (the "Agreement") to PMF and Dominion, as additional security for Debtor's Obligations under the PMF Loan Agreement and related Loan Documents (as such term is defined in the PMF Loan Agreement) and the Dominion Loan Agreement and related Loan Documents (as such term is defined in the Dominion Loan Agreement).

D. Debtor and SCC have entered into a Loan Agreement dated as of even date herewith (the "SCC Loan Agreement") and related debt instruments, as now or hereafter amended or supplemented.

E. Pursuant to the provisions of the SCC Loan Agreement, Debtor has agreed to execute and deliver this Amendment to the Agreement to SCC as additional security for Debtor's Loan under

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the SCC Loan Agreement, the Note and the other Loan Documents (as such terms are defined in the SCC Loan Agreement).

F. Debtor and Lenders intend that the Agreement, as amended by this Amendment, shall secure pari passu the Obligations described in the Dominion Loan Agreement and the PMF Loan Agreement, and the Loan described in the SCC Loan Agreement. Terms defined in the Dominion Loan Agreement, PMF Loan Agreement and SCC Loan Agreement are used herein as therein defined, as the context shall require.

## A G R E E M E N T

**NOW THEREFORE**, in consideration of the premises, Debtor hereby agrees with Lenders as follows:

1. Representations and Warranties. The Debtor reaffirms each and every representation and warranty made in the Agreement.
2. Amendments.
  - (a) All references to "this Agreement" or "the Agreement" shall mean the Trademark Security Agreement as amended by this Amendment;
  - (b) All references to "the Obligations" shall include the Obligations described in the Dominion Loan Agreement, the Obligations described in the PMF Loan Agreement and the Loan described in the SCC Loan Agreement.
  - (c) All references to the Loan Agreement shall include the PMF Loan Agreement, the Dominion Loan Agreement and the SCC Loan Agreement and all references to Loan Documents (and any particular Loan Document) shall include the Loan Documents referenced in the PMF Loan Agreement, the Dominion Loan Agreement, and the SCC Loan Agreement, respectively.
3. No Other Amendments. All other terms and conditions of the Agreement shall remain in full force and effect and the Agreement shall be read and construed as if the terms of this Amendment were included therein by way of addition or substitution, as the case may be.
4. Costs. Any and all reasonable fees, costs and expenses, of whatever kind or nature, including without limitation attorneys' fees and other legal expenses, incurred by Lenders in connection with the enforcement of this Amendment and the filing or recording of any documents (including all taxes in connection therewith) in public offices, the payment or discharge of any taxes, maintenance and other fees and costs, or in otherwise protecting, maintaining or preserving the Trademarks, or in defending or prosecuting any actions or proceedings arising out of or related

to the Trademarks, shall be borne and paid by Debtor on demand by Lenders and until so paid shall be added to the principal amount of the Obligations and Loan (without duplication) and shall bear interest at the highest rate prescribed in the respective Loan Agreement.

5. Successors and Assigns. The benefits and burdens of this Agreement shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the parties.

6. Governing Laws. IT IS THE INTENTION OF THE PARTIES HERETO THAT THE INTERNAL LAWS OF THE STATE OF CALIFORNIA, INCLUDING, WITHOUT LIMITATION, THE CALIFORNIA UNIFORM COMMERCIAL CODE AND ANY LAWS GOVERNING USURY OR PERMISSIBLE RATES OF INTEREST, SHALL GOVERN THE VALIDITY OF THIS AMENDMENT, THE CONSTRUCTION OF ITS TERMS, AND THE INTERPRETATION AND ENFORCEMENT OF THE RIGHTS AND DUTIES OF THE PARTIES HERETO, EXCEPT TO THE EXTENT THAT SUCH LAWS ARE PREEMPTED BY FEDERAL LAW. EXCEPT AS SET FORTH BELOW, THE PARTIES HEREBY AGREE THAT ANY SUIT TO ENFORCE ANY PROVISION OF THIS AMENDMENT ARISING OUT OF OR BASED UPON THIS AGREEMENT OR THE BUSINESS RELATIONSHIP BETWEEN ANY OF THE PARTIES HERETO SHALL BE BROUGHT IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA OR THE SUPERIOR OR MUNICIPAL COURT IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA. EACH PARTY HEREBY AGREES THAT SUCH COURTS SHALL HAVE IN PERSONAM JURISDICTION AND VENUE WITH RESPECT TO SUCH PARTY, AND EACH PARTY HEREBY SUBMITS TO THE IN PERSONAM JURISDICTION AND VENUE OF SUCH COURTS. IN ADDITION TO THE FOREGOING JURISDICTION, LENDERS, AT THEIR SOLE OPTION, MAY COMMENCE ANY SUCH SUIT IN ANY JURISDICTION IN WHICH DEBTOR HAS A BUSINESS OFFICE OR IN WHICH ANY OF THE COLLATERAL IS LOCATED.

7. Counterparts. This Amendment may be executed in any number of counterparts, each of which shall be an original as against any party whose signature appears thereon and all of which together shall constitute one and the same instrument. This Amendment shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all of the parties reflected hereon as signatories.

8. Notices. SCC's address for notices pursuant to Section 22 of the Agreement shall be as follows:

SCC: SIRROM CAPITAL CORPORATION  
Suite 200  
500 Church Street  
Nashville, TN 37219  
Attn: David M. Resha

EXCERPTS FROM THE ORIGINAL INSTRUMENT

9. Further Assurances. Each party agrees to cooperate fully with the other party and to execute such further instruments, documents and agreements and to give such further written assurances, as may be reasonably requested by the other party to better evidence and reflect the transactions described herein and contemplated hereby, and to carry into effect the intents and purposes of this Amendment.

10. Priorities. The priorities of Lenders hereunder are as set forth in that certain Amended and Restated Intercreditor Agreement dated of even date herewith.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement as of the date first hereinabove written.

Lenders:

**PACIFIC MEZZANINE FUND L.P.**

By: *Stella Blue*

Title: *General Partner*

**DOMINION FUND IV, a Delaware Limited Partnership**

By: \_\_\_\_\_

Title: \_\_\_\_\_

**SIRROM CAPITAL CORPORATION, a Tennessee corporation**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Debtor:

**RELAX THE BACK CORPORATION**

By: \_\_\_\_\_

Title: \_\_\_\_\_

9. Further Assurances. Each party agrees to cooperate fully with the other party and to execute such further instruments, documents and agreements and to give such further written assurances, as may be reasonably requested by the other party to better evidence and reflect the transactions described herein and contemplated hereby, and to carry into effect the intents and purposes of this Amendment.

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IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement as of the date first hereinabove written.

Lenders:

**PACIFIC MEZZANINE FUND L.P.**

By: *Stella Bell*

Title: *General Partner*

**DOMINION FUND IV, a Delaware Limited Partnership**

By: \_\_\_\_\_

Title: \_\_\_\_\_

**SIRROM CAPITAL CORPORATION, a Tennessee corporation**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Debtor:

**RELAX THE BACK CORPORATION**

By: \_\_\_\_\_

Title: \_\_\_\_\_

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Alameda

On October 31, 1997 before me, Erika Broyard Kelly, Notary  
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Nathan W. Bell  
Name(s) of Signer(s)

- personally known to me
- proved to me on the basis of satisfactory evidence



to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Erika Broyard Kelly  
Signature of Notary Public

### OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

### Description of Attached Document

Title or Type of Document: 2nd Amend. to Trademark Sec. Agreement

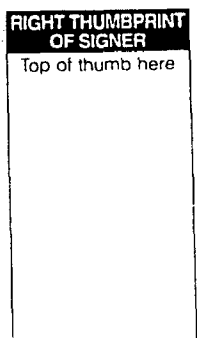
Document Date: 10/31/97 Number of Pages: 3

Signer(s) Other Than Named Above: Reps of Dominion Fund/Sirrom Cap/Relax the Back

### Capacity(ies) Claimed by Signer(s)

Signer's Name: Nathan W. Bell

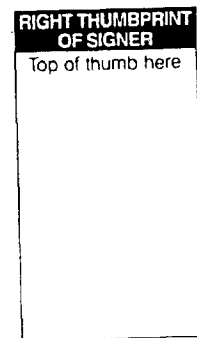
- Individual
- Corporate Officer
- Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing:  
Pacific Mezz.  
Fund

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer
- Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing:  
\_\_\_\_\_  
\_\_\_\_\_

9. Further Assurances. Each party agrees to cooperate fully with the other party and to execute such further instruments, documents and agreements and to give such further written assurances, as may be reasonably requested by the other party to better evidence and reflect the transactions described herein and contemplated hereby, and to carry into effect the intents and purposes of this Amendment.

10. Priorities. The priorities of Lenders hereunder are as set forth in that certain Amended and Restated Intercreditor Agreement dated of even date herewith.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement as of the date first hereinabove written.

Lenders:

**PACIFIC MEZZANINE FUND L.P.**

By: \_\_\_\_\_

Title: \_\_\_\_\_

**DOMINION FUND IV, a Delaware Limited Partnership**

By:  \_\_\_\_\_

Title: CR \_\_\_\_\_

**SIRROM CAPITAL CORPORATION, a Tennessee corporation**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Debtor:

**RELAX THE BACK CORPORATION**

By: \_\_\_\_\_

Title: \_\_\_\_\_



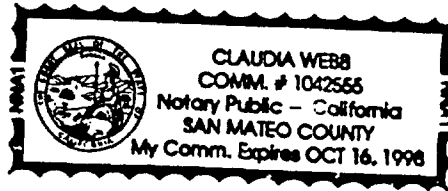
State of California )  
 )  
County of SAN FRANCISCO )

On NOVEMBER 3, 1997, before me, the undersigned, a notary public for the State of California, personally appeared MICHAEL K. LEE, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Claudia Webb

[Seal]



State of California )  
 )  
County of \_\_\_\_\_ )

On \_\_\_\_\_, before me, the undersigned, a notary public for the State of California, personally appeared \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

[Seal]

9. Further Assurances. Each party agrees to cooperate fully with the other party and to execute such further instruments, documents and agreements and to give such further written assurances, as may be reasonably requested by the other party to better evidence and reflect the transactions described herein and contemplated hereby, and to carry into effect the intents and purposes of this Amendment.

10. Priorities. The priorities of Lenders hereunder are as set forth in that certain Amended and Restated Intercreditor Agreement dated of even date herewith.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement as of the date first hereinabove written.

Lenders:

**PACIFIC MEZZANINE FUND L.P.**

By: \_\_\_\_\_

Title: \_\_\_\_\_

**DOMINION FUND IV, a Delaware Limited Partnership**

By: \_\_\_\_\_

Title: \_\_\_\_\_

**SIRROM CAPITAL CORPORATION, a Tennessee corporation**

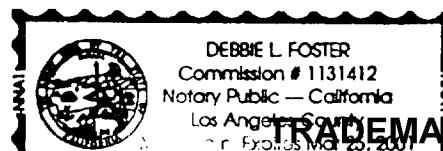
By: \_\_\_\_\_

Title: \_\_\_\_\_

Debtor:

**RELAX THE BACK CORPORATION**

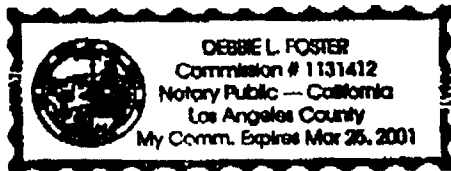
By: *[Signature]*  
Title: PRES.



*Debbie L. Foster*  
*Notary Public*  
*10/31/97*

SHALL BE DEEMED TO HAVE GIVEN UP THIS WAIVER OF JURY TRIAL UNLESS THE PARTY CLAIMING THAT THIS WAIVER HAS BEEN RELINQUISHED HAS A WRITTEN INSTRUMENT SIGNED BY THE OTHER PARTIES STATING THAT THIS WAIVER HAS BEEN GIVEN UP. IN THE EVENT OF LITIGATION, A COPY OF THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO TRIAL BY THE COURT.

IN WITNESS WHEREOF, the parties hereto, by their officers thereunto duly authorized, have executed and delivered this Agreement as of the day and year first above written.



*Debbie L. Foster  
Notary Public 10/31/97*

RTB, INC. (the "Company")

By: *[Signature]*  
Title: *[Signature]*

RELAX THE BACK CORPORATION  
("Pledgor")

By: *[Signature]*  
Title: *[Signature]*

SIRROM CAPITAL CORPORATION, a  
Tennessee corporation ("SCC")

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

State of California )  
 )  
County of \_\_\_\_\_ )

On \_\_\_\_\_, before me, the undersigned, a notary public for the State of California, personally appeared \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

[Seal]

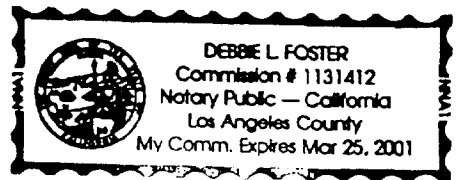
State of California )  
 )  
County of Los Angeles )

On October 31, 1997, before me, the undersigned, a notary public for the State of California, personally appeared Mirl M. Johnson, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Debbie L. Foster 10/31/97  
Notary Public

[Seal]



SCHEDULE 2.1.10.7

INTELLECTUAL PROPERTY RIGHTS

1. Applications for Registration of Patents.

<u>Country</u>	<u>Patent Application No.</u>	<u>Filing Date</u>
U.S.A.	08/555,581	11/8/95
Canada	2,171,499	3/11/96

2. Registered Trademarks.

1,763,540  
1,714,372

3. Trademark Applications.

"Relax the Back Store<sup>®</sup>" and reclining figure logo in Europe.

4. Copyrights.

*Operations and Procedures Manual*  
*Technical and Sales Manual*  
Other miscellaneous documents and materials.

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