

RI

04-18-2003

Docket No.:

20728/33

Tab settings

4-16-03



To the Honorable Commissioner of Patents

102423807

ached original documents or copy thereof.

1. Name of conveying party(ies): **2003 APR 16 AM 9: 01**
VIRGIN MOBILE USA, LLC

FINANCE SECTION

- Individual(s)
- General Partnership
- Corporation-State **Delaware**
- Other

- Association
- Limited Partnership

Additional names(s) of conveying party(ies) Yes No

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

Name: **FLEET RETAIL FINANCE INC.**

Internal Address:

Street Address: **40 Broad Street**

City: **Boston** State: **MA** ZIP: **02109**

- Individual(s) citizenship
- Association
- General Partnership
- Limited Partnership
- Corporation-State **Delaware**
- Other

If assignee is not domiciled in the United States, a domestic designation is Yes N
(Designations must be a separate document from Additional name(s) & address(es) Yes N

3. Nature of conveyance:

- Assignment
- Security Agreement
- Other **Security Agreement as amended**
- Merger
- Change of Name

Execution Date: **December 2, 2002**

4. Application number(s) or registration numbers(s):

A. Trademark Application No.(s)

76/359,415 Filed 1/16/02
76/359,388 Filed 1/16/02
76/359,375 Filed 1/16/02

B. Trademark Registration No.(s)

Additional numbers Yes No

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

Name: **Mark S. Leonardo, Esq.**

Internal Address: **Brown Rudnick Berlack Israels LLP**

Street Address: **One Financial Center**

18th Floor, Box IP

City: **Boston** State: **MA** ZIP: **02111**

6. Total number of applications and registrations involved: **13**

7. Total fee (37 CFR 3.41): \$ **340.00**

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:

50-0369

04/17/2003 ECDOPER 00000151 76359415

DO NOT USE THIS SPACE

01 FC:0521 40.00 OP
02 FC:0522 300.00 OP

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Mark S. Leonardo, Esq. (Reg. No. 41,433)

Name of Person Signing

Signature

April 10, 2003

Date

Total number of pages including cover sheet, attachments, and

TRADEMARK

EXHIBIT A (Cont.)

TRADEMARK APPLICATION NO.(S)

76/359,544		Filed on 1/16/02
76/397,305		Filed on 4/18/02
76/397,211		Filed on 4/18/02
76/397,306		Filed on 4/18/02
76/425,582		Filed on 6/27/02
76/429,355		Filed on 7/11/02
76/429,126		Filed on 7/11/02
76/458,584		Filed on 10/16/02
76/458,585		Filed on 10/16/02
76/458,586		Filed on 10/16/02

#1194915 v1 - 20728/33

TRADEMARK SECURITY AGREEMENT

This Trademark Security Agreement ("Agreement") is made as of the 2nd day of December, 2002, by VIRGIN MOBILE USA, LLC ("Borrower"), a Delaware limited liability company having a mailing address at 10 Independence Boulevard, Warren, New Jersey 07059, and delivered to FLEET RETAIL FINANCE INC., a Delaware corporation with an address at 40 Broad Street, Boston, Massachusetts 02109 ("Lender").

BACKGROUND

A. This Agreement is being executed contemporaneously with that certain Loan and Security Agreement of even date herewith among Borrower and Lender (as it may hereafter be supplemented, restated, amended, superseded or replaced from time to time, the "Loan Agreement"), under which, inter alia, Borrower is granting Lender a lien on and security interest in certain assets of Borrower associated with or relating to services or products sold or leased under Borrower's Trademarks (as defined herein) and the goodwill associated therewith, and under which Lender is entitled to foreclose or otherwise deal with such assets, under the terms and conditions set forth therein. Capitalized terms not defined herein shall have the meanings given to such terms in the Loan Agreement.

B. Borrower has adopted, used and/or is using (or has filed applications for the registration of) the trademarks, service marks and trade names listed on Schedule "A" attached hereto and made part hereof (all such marks or names hereinafter referred to as the "Trademarks").

C. Pursuant to the Loan Agreement, Lender is acquiring a lien on, and security interest in, the Trademarks, together with all the goodwill of Borrower associated therewith and represented thereby, as security for all of the Liabilities, and Lender desires to have its security interest in such Trademarks confirmed by a document identifying same and in such form that it may be recorded in the United States Patent and Trademark Office.

NOW THEREFORE, with the foregoing Background hereinafter deemed incorporated by reference and made a part hereof, and in consideration of the premises and mutual promises herein contained, the parties hereto, intending to be legally bound hereby, covenant and agree as follows:

1. In consideration of and pursuant to the terms of the Loan Agreement, and for other good, valuable and sufficient consideration, the receipt of which is hereby acknowledged, and to secure the Liabilities, Borrower grants to Lender a lien on and security interest in all of its present and future right, title and interest in and to the Trademarks, together with all the goodwill of Borrower associated with and represented by the Trademarks, and the registration thereof and the right (but not the obligation) to sue for past, present and future infringements, and the proceeds thereof, including, without limitation, license royalties and proceeds of infringement suits, (collectively the "Trademark Collateral").

2. Except as provided in Paragraph 12 herein, Borrower hereby covenants and agrees to maintain the Trademarks in full force and effect and otherwise perform all of its obligations and undertakings under this Agreement until all of the Liabilities are indefeasibly paid and satisfied in full and the Revolving Credit has been terminated.

3. Borrower represents, warrants and covenants to Lender that:

(a) The Trademarks have not been adjudged invalid or unenforceable;

(b) To the Borrower's knowledge, each of the Trademarks is valid and enforceable;

(c) Borrower is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each of the Trademarks, and each of the Trademarks is free and clear of any liens, claims, charges and encumbrances, including, without limitation, pledges, assignments, licenses (other than to Borrower and Lender hereunder) and covenants by Borrower not to sue third persons;

(d) Borrower has the unqualified right, power and authority to enter into this Agreement and perform its terms; and

(e) Borrower has complied with, and will continue for the duration of this Agreement to comply with, the requirements set forth in 15 U.S.C. §§ 1051-1127 and any other applicable statutes, rules and regulations in connection with its use of the Trademarks, except where the failure to comply would not have a Material Adverse Effect.

4. Borrower further covenants that:

(a) If Borrower acquires ownership rights in and to any new Trademark Collateral, excluding any trademarks covered by the Tri-Party Agreement entered into by and among Sprint Communications Company, L.P., Fleet Retail Finance Inc., and Virgin Mobile USA, LLC or the Tri-Party Agreement entered into by and among Virgin Enterprises Limited, Fleet Retail Finance Inc., and Virgin Mobile USA, LLC, the provisions of this Agreement shall automatically apply thereto and such trademarks shall be deemed part of the Trademark Collateral

(b) Within 30 days following the end of each calendar quarter, Borrower shall give Lender written notice of any new Trademark Collateral (1) for which it has filed an application for registration with the U.S. or foreign Trademark Office, or (2) which it has begun to use in commerce, in each case along with an amended **Schedule "A"**.

5. So long as this Agreement is in effect and so long as Borrower has not received notice from Lender that an Event of Default has occurred and is continuing under the Loan Agreement and that Lender has elected to exercise its rights hereunder (i) Borrower shall continue to have the exclusive right to use the Trademarks; and (ii) Lender shall have no right to use the Trademarks or

issue any exclusive or non-exclusive license with respect thereto, or assign, pledge or otherwise transfer title in the Trademarks to anyone else.

6. Borrower agrees not to sell, license, grant any option, assign or further encumber its rights and interest in the Trademarks without the prior written consent of Lender.

7. Anything herein contained to the contrary notwithstanding, if and while Borrower shall be in default hereunder or an Event of Default exists under the Loan Agreement, Borrower hereby covenants and agrees that Lender, as the holder of a security interest under the Uniform Commercial Code, as now or hereafter in effect in the State of New York, may take such action permitted under the Loan Documents or permitted by law, in its exclusive discretion, to foreclose upon or otherwise exercise its rights against the Trademarks covered hereby. For such purposes, and in the event of Borrower's default hereunder or an Event of Default under the Loan Agreement and while such default or Event of Default exists, Borrower hereby authorizes and empowers Lender to make, constitute and appoint any officer or agent of Lender as Lender may select, in its exclusive discretion, as Borrower's true and lawful attorney-in-fact, with the power to endorse Borrower's name on all applications, documents, papers and instruments necessary for Lender to use the Trademarks or to grant or issue any exclusive or non-exclusive license under the Trademarks to anyone else, or necessary for Lender to assign, pledge, convey or otherwise transfer title in or dispose of the Trademarks to anyone else including, without limitation, the power to execute on Borrower's behalf a trademark assignment in the form attached hereto as **Exhibit I**. Borrower hereby ratifies all that such attorney or agent shall lawfully do or cause to be done by virtue hereof, except for the gross negligence or willful misconduct of such attorney or agent. This power of attorney shall be irrevocable for the life of this Agreement, the Loan Documents, and until all the Liabilities are indefeasibly paid and satisfied in full and the Revolving Credit is terminated.

8. This Agreement shall be subject to the terms, provisions, and conditions set forth in the Loan Agreement and, including this Paragraph 8, may not be modified without the written consent of the party against whom enforcement is being sought.

9. All rights and remedies herein granted to Lender shall be in addition to any rights and remedies granted to Lender under the Loan Documents. In the event of an inconsistency between this Agreement and Loan Agreement, the language of this Agreement shall control.

10. Upon Borrower's performance of all of the obligations under the Loan Documents and full and unconditional satisfaction of all of the Borrower's Liabilities and termination of the Revolving Credit, Lender shall execute and deliver to Borrower all documents reasonably necessary to terminate Lender's security interest in the Trademarks.

11. Any and all reasonable fees, costs and expenses, of whatever kind or nature, including the reasonable attorneys' fees and legal expenses incurred by Lender in connection with the preparation and execution of this Agreement and all other documents relating hereto and the consummation of this transaction, the filing or recording of any documents (including all taxes in connection therewith) in public offices, the payment or discharge of any taxes, reasonable counsel fees, maintenance fees, encumbrances or costs otherwise incurred in protecting, maintaining, preserving the Trademarks, or in defending or prosecuting any actions or proceedings arising out of or related to the Trademarks, or defending, protecting or enforcing Lender's rights hereunder, in each case in accordance with the terms of this Agreement, shall be borne and paid by Borrower on demand by Lender and until so paid shall be added to the principal amount of the Liabilities to Lender and shall bear interest at the rate prescribed in the Loan Agreement for Revolving Credit Loans.

12. Subject to the terms of the Loan Agreement, Borrower (1) shall have the duty to prosecute diligently any trademark application with respect to the Trademarks pending as of the date of this Agreement or thereafter to preserve and maintain all rights in the Trademarks, and (2) shall not abandon any Trademark without Lender's prior written consent, which shall not be unreasonably withheld; provided, however, in each case, that any decision made by Borrower in its reasonable business judgment to discontinue a service, product, or product line such that the Borrower ceases to use a Trademark and the abandonment of any trademark rights in connection therewith shall not require Lender's consent and shall not be a violation of this Agreement. Upon reasonable request of Lender, Borrower shall apply for a federal registration with the United States Patent and Trademark Office on registrable but unregistered trademarks belonging to Borrower. Any reasonable expenses incurred in connection with such applications shall be borne by Borrower.

13. Borrower shall have the right to bring suit in its own name to enforce the Trademarks, in which event Lender may, if Borrower reasonably deems it necessary, be joined as a nominal party to such suit if Lender shall have been satisfied, in its sole discretion, that it is not thereby incurring any risk of liability because of such joinder. Borrower shall promptly, upon demand, reimburse and indemnify Lender for all damages, reasonable costs and expenses, including reasonable attorneys' fees and costs, incurred by Lender in the fulfillment of the provisions of this paragraph.

14. If an Event of Default is outstanding under the Loan Agreement, Lender may, without any obligation to do so, complete any obligation of Borrower hereunder, in Borrower's name or in Lender's name, but at Borrower's expense, and Borrower hereby agrees to reimburse Lender in full for all reasonable costs and expenses, including attorneys' fees, incurred by Lender in protecting, defending and maintaining the Trademarks.

15. No course of dealing between Borrower and Lender nor any failure to exercise, nor any delay in exercising, on the part of Lender, any right, power or privilege hereunder, shall operate as a waiver thereof, and all of Lender's rights and remedies with respect to the Trademarks, whether established hereby or by the Loan Documents, or by any other future agreements between Borrower and Lender or by law, shall be cumulative and may be exercised singularly or concurrently.

16. The provisions of this Agreement are severable and the invalidity or unenforceability of any provision herein shall not affect the remaining provisions which shall continue unimpaired and in full force and effect.

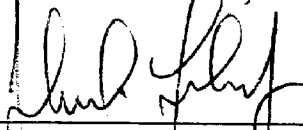
17. This Agreement shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the parties.

18. This Agreement shall be governed by and construed in conformity with the laws of the State of New York.

19. BORROWER AND LENDER EACH WAIVES ANY AND ALL RIGHTS EITHER MAY HAVE TO A JURY TRIAL ARISING IN CONNECTION WITH ANY PROCEEDING OR CONTROVERSY RELATING TO THIS AGREEMENT.

IN WITNESS WHEREOF, the parties hereto have executed this Trademark Security Agreement, the day and year first above written.

VIRGIN MOBILE USA, LLC

By: 

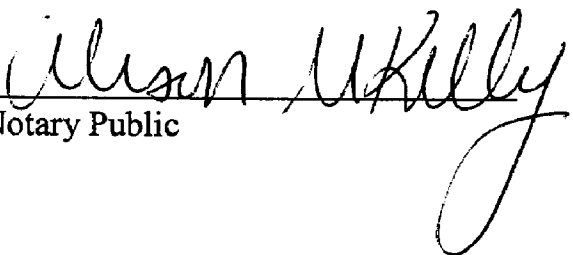
Name: John O. Feehan Jr.

Title: VP-Finance, Supply Chain

CORPORATE ACKNOWLEDGMENT

UNITED STATES OF AMERICA :
STATE OF : SS
COUNTY OF :

On this 2nd day of December, 2002, before me personally appeared JOHN FEEHAN, to me known and being duly sworn, deposes and says that s/he is VP FINANCE, SUPPLY CHAIN of VIRGIN MOBILE USA, LLC; that s/he signed the Agreement thereto as such officer pursuant to the authority vested in him by law; that the within Agreement is the voluntary act of such company; and s/he desires the same to be recorded as such.


Notary Public

My Commission Expires:

ALISON M. KELLY
NOTARY PUBLIC, State of New York
No. 01KE6080740
Qualified in New York County
Commission Expires September 23, 2006

SCHEDULE "A"

TRADEMARKS

<u>TITLE</u>	<u>SER. NO.</u>	<u>DATE FILED</u>
<u>RESCUE RING</u>	<u>76/359,415</u>	<u>January 16, 2002.</u>
<u>THE PARTY ANIMAL</u>	<u>76/359,388</u>	<u>January 16, 2002.</u>
<u>THE ROCK STAR</u>	<u>76/359,375</u>	<u>January 16, 2002.</u>
<u>THE SUPER MODEL</u>	<u>76/359,544</u>	<u>January 16, 2002.</u>
<u>I'M EASY. TAKE ME HOME. TURN ME ON</u>	<u>76/397,305</u>	<u>April 18, 2002.</u>
<u>PLAY WITH ME. MUSIC. MESSAGING AND MORE</u>	<u>76/397,211</u>	<u>April 18, 2002.</u>
<u>THE MORE YOU TALK THE CHEAPER IT GETS</u>	<u>76/397,306</u>	<u>April 18, 2002.</u>
<u>CELL DEFENSE</u>	<u>76/425,582</u>	<u>June 27, 2002.</u>
<u>CENTRAL INTELLIGENCE</u>	<u>76/429,355</u>	<u>July 11, 2002.</u>
<u>CENTRAL INTELLIGENCE ADVISOR</u>	<u>76/429,126</u>	<u>July 11, 2002.</u>
<u>THE ROCK STAR</u>	<u>76/458,584</u>	<u>October 16, 2002.</u>
<u>THE PARTY ANIMAL</u>	<u>76/458,585</u>	<u>October 16, 2002.</u>
<u>THE SUPER MODEL</u>	<u>76/458,586</u>	<u>October 16, 2002.</u>

#1164764 v2 - strelap - _yqk02!.doc - 20728/33

Exhibit I

TRADEMARK ASSIGNMENT

WHEREAS, VIRGIN MOBILE USA, LLC ("Grantor") is the registered owner of the United States trademarks, trade names and registrations listed on Schedule "A" attached hereto and made a part hereof (the "Trademarks"), which are applications for registration, or are registered in the United States Patent and Trademark Office; and

WHEREAS, _____ ("Grantee"), having a place of business at _____, is desirous of acquiring said Trademarks;

NOW THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, and intending to be legally bound hereby, Grantor, its successors and assigns, does hereby transfer, assign and set over unto Grantee, its successors, transferees and assigns, all of its present and future right, title and interest in and to the Trademarks and all proceeds thereof and all goodwill associated therewith issued under and pursuant to the Power of Attorney.

IN WITNESS WHEREOF, the undersigned has caused this Trademark Assignment to be executed as of the ___ day of _____, _____.

By: _____
As Attorney-in-fact

STATE OF :
 : S.S.
COUNTY OF :

On this day of , before me, a Notary Public for the said County and State, personally appeared known to me or satisfactorily proven to me to be attorney-in-fact on behalf of _____ ("Grantor") and s/he acknowledged to me that s/he executed the foregoing Trademark Assignment on behalf of Grantor, and as the act and deed of Grantor for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My Commission Expires:

POWER OF ATTORNEY

VIRGIN MOBILE USA, LLC, a Delaware limited liability company ("Grantor"), hereby authorizes FLEET RETAIL FINANCE INC., and its successors and assigns, and any officer or agent thereof (collectively, "Grantee") as Grantor's true and lawful attorney-in-fact, with the power to endorse Grantor's name on all applications, assignments, documents, papers and instruments necessary for Grantee to enforce and effectuate its rights under a certain Trademark Security Agreement between Grantor and Grantee dated the date hereof (as it may hereafter be supplemented, restated, superseded, amended or replaced, the "Trademark Agreement"), including, without limitation, the power to use the Trademarks (as defined in the Trademark Agreement) and listed on **Schedule A** attached hereto and made a part hereof, to grant or issue any exclusive or nonexclusive license under the Trademarks to anyone else, or to assign, pledge, convey or otherwise transfer title in or dispose of the Trademarks, in each case subject to the terms of the Trademark Agreement.

This Power of Attorney is given and any action taken pursuant hereto is intended to be so given or taken pursuant to a certain Loan and Security Agreement bearing even date herewith between Grantor and Lender, as it may be hereinafter supplemented, restated, superseded, amended or replaced.

Grantor hereby unconditionally ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof and in accordance with the terms of the Trademark Agreement.

This Power of Attorney shall be irrevocable for the life of the Trademark Agreement.

IN WITNESS WHEREOF, the Grantor has executed this Power of Attorney, this 2nd day of December, 2002.

VIRGIN MOBILE USA, LLC

By: *John D. Feehan Jr.*
Name: John D. Feehan Jr.
Title: VP Finance, Supply Chain

Alison M. Kelly
ALISON M. KELLY
NOTARY PUBLIC, State of New York
No. 01856609740
Qualified in New York County
Commission Expires September 2007

CORPORATE ACKNOWLEDGMENT

UNITED STATES OF AMERICA :
STATE OF :
COUNTY OF :

SS

On this 2nd of December, 2002 personally appeared Johan Aehnan, to me known and being duly sworn, deposes and says that s/he is VP Finance Supp. Off of VIRGIN MOBILE USA, LLC, the Grantor company described in the foregoing Power of Attorney; that s/he signed the Power of Attorney as such officer pursuant to the authority vested in her/him by law; that the within Power of Attorney is the voluntary act of such company; and s/he desires the same to be recorded as such.

Alison M. Kelly
Notary Public

My Commission Expires:

ALISON M. KELLY
NOTARY PUBLIC, State of New York
No. 01KE6080740
Qualified in New York County
Commission Expires September 23, 2006

**AMENDMENT TO
TRADEMARK SECURITY AGREEMENT
AND PATENT SECURITY AGREEMENT**

March 11, 2003

THIS AGREEMENT is made between Fleet Retail Finance Inc., a Delaware corporation as agent (in such capacity and in its capacity as collateral agent for the Lenders, herein the “**Collateral Agent**”), for the benefit of the Lenders party to the Loan Agreement referred to below, and Virgin Mobile USA, LLC, a Delaware limited liability company (the “**Borrower**”).

RECITALS

WHEREAS, the Borrower and Fleet Retail Finance Inc., in its capacity as a lender, entered into a Loan and Security Agreement dated as of December 2, 2002 (the “**Existing Loan Agreement**”), whereby Fleet Retail Finance Inc. agreement to make loans and other financial accommodations up to a principal amount of \$25,000,000. The Existing Loan Agreement has been superceded by that certain Amended and Restated Loan and Security Agreement dated as of March 11, 2003 (together with any amendments and modifications thereto, the “**Loan Agreement**”) among the Borrower, Fleet Retail Finance Inc. (in its capacities as Administrative Agent, Collateral Agent and a Lender) and the other Lenders party thereto. All initially capitalized terms used herein shall have the same meaning as set forth in the Loan Agreement. The Loan Agreement provides for the terms and conditions under which the Commitments are increased to \$50,000,000 and syndicated to the lenders identified therein (the “**Lenders**”).

WHEREAS, the parties wish to conform the Trademark Security Agreement (“**TM Security Agreement**”) and Patent Security Agreement (“**P Security Agreement**”), each dated as of December 2, 2002 (together with the Trademark Assignment, Patent Assignment and Powers of Attorney executed in connection therewith, the “**IP Security Agreements**”), and each executed in connection with the Existing Loan Agreement, to the terms and conditions of the Loan Agreement.

AGREEMENT

1. The IP Security Agreements are hereby amended to provided that each reference to “Lender”, except the first reference to “Lender” in paragraph A, of the IP Agreements shall be amended to refer to “Collateral Agent”. The first reference to “Lender” in paragraph A of the IP Agreements shall be amended to refer to Administrative Agent, the Collateral Agent and the Lenders referred to therein, and the reference to Lender in the Power of Attorney shall be amended to refer to “Grantee” (in its respective capacities as Administrative Agent, Collateral Agent and a Lender) and the other Lenders party thereto.

2. In all other respects the IP Agreements are ratified and confirmed.

FLEET RETAIL FINANCE INC. (as
“**Collateral Agent**”)

By: DM Murzay
Print Name: DM Murzay
Title: Mg. Dir

FLEET RETAIL FINANCE INC. (as
“**Administrative Agent**”)

By: DM Murzay
Print Name: DM Murzay
Title: Mg. Dir

FLEET RETAIL FINANCE INC. (as
“**Lender**”)

By: DM Murzay
Print Name: DM Murzay
Title: Mg. Dir

VIRGIN MOBILE USA, LLC (as
“**Borrower**”)

By: _____
Print Name: _____
Title: _____

WHEREAS, the parties wish to conform the Trademark Security Agreement (“**TM Security Agreement**”) and Patent Security Agreement (“**P Security Agreement**”), each dated as of December 2, 2002 (together with the Trademark Assignment, Patent Assignment and Powers of Attorney executed in connection therewith, the “**IP Security Agreements**”), and each executed in connection with the Existing Loan Agreement, to the terms and conditions of the Loan Agreement.

AGREEMENT

1. The IP Security Agreements are hereby amended to provided that each reference to “Lender”, except the first reference to “Lender” in paragraph A, of the IP Agreements shall be amended to refer to “Collateral Agent”. The first reference to “Lender” in paragraph A of the IP Agreements shall be amended to refer to Administrative Agent, the Collateral Agent and the Lenders referred to therein, and the reference to Lender in the Power of Attorney shall be amended to refer to “Grantee” (in its respective capacities as Administrative Agent, Collateral Agent and a Lender) and the other Lenders party thereto.

2. In all other respects the IP Agreements are ratified and confirmed.

FLEET RETAIL FINANCE INC. (as
“**Collateral Agent**”)

FLEET RETAIL FINANCE INC. (as
“**Administrative Agent**”)

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

FLEET RETAIL FINANCE INC. (as
“**Lender**”)

VIRGIN MOBILE USA, LLC (as
“**Borrower**”)

By: _____

By:  _____

Print Name: _____

Print Name: John D. Rehan Jr.

Title: _____

Title: VP-Finance, Supply Chain