

**TRADEMARK ASSIGNMENT**

Electronic Version v1.1  
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT
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NATURE OF CONVEYANCE:	ASSIGNS THE ENTIRE INTEREST AND THE GOODWILL
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CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
Hoffend & Sons, Inc.		09/13/2004	CORPORATION: NEW YORK

RECEIVING PARTY DATA	
Name:	Keltic Financial Partners, LP
Street Address:	555 Theodore Fremd Ave.
Internal Address:	Suite C-207
City:	Rye
State/Country:	NEW YORK
Postal Code:	10580
Entity Type:	LIMITED PARTNERSHIP: DELAWARE

PROPERTY NUMBERS Total: 1		
Property Type	Number	Word Mark
Registration Number:	2833249	VORTEK

CORRESPONDENCE DATA	
Fax Number:	(716)631-0240
<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>	
Phone:	(716) 631-0200
Email:	tgreiner@gclaw.biz
Correspondent Name:	Terrence A. Greiner, Esq.
Address Line 1:	5687 Main Street
Address Line 2:	Suite 200
Address Line 4:	Williamsville, NEW YORK 14221

NAME OF SUBMITTER:	Terrence A. Greiner
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Total Attachments: 8  
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## TRADEMARK SECURITY AGREEMENT

This **TRADEMARK SECURITY AGREEMENT** (this "Agreement"), dated as of September 13, 2004 is made between **HOFFEND & SONS, INC.**, a New York corporation with offices located at 66 School Street, Victor, New York 14564 (the "Assignor"), and **KELTIC FINANCIAL PARTNERS LP**, a Delaware limited partnership with a place of business at 555 Theodore Fremd Avenue, Suite C-207, Rye, New York 10580 ("Lender");

### WITNESSETH:

WHEREAS, pursuant to the Revolving Credit Agreement dated as of the date hereof by and between Assignor and the Lender (as amended, supplemented, amended and restated or otherwise modified from time to time, the "Credit Agreement", and together with any document, instrument or agreement executed in connection with the Credit Agreement, as the same may be modified, amended, restated or replaced from time to time, collectively, the "Loan Documents") the Lender is extending certain credit facilities to Assignor;

WHEREAS, the Assignor possesses one or more Trademarks used by the Assignor in connection with its business; and

WHEREAS, the Lender is unwilling to extend the Revolving Credit to the Assignor unless it receives this Agreement; and

WHEREAS, the Assignor is willing to enter into this Agreement in order to induce the Lender to extend the Revolving Credit to the Assignor.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, and in order to induce the Lender to make each Loan (including the initial Loan) to the Assignor pursuant to the Loan Documents, the Assignor agrees, for the benefit of the Lender, as follows:

**SECTION 1. Definitions.** Unless otherwise defined herein or the context otherwise requires, terms used in this Agreement, including its preamble and recitals, have the meanings provided (or incorporated by reference) in the other Loan Documents.

**SECTION 2. Grant of Security Interest.** For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, to secure the prompt payment and performance of all of the Obligations to Lender, the Assignor does hereby mortgage, pledge and hypothecate to the Lender, and grant to the Lender for its benefit, a first priority lien and security interest in and to, all of the following property (the "Trademark Collateral"), whether now owned or hereafter acquired or existing by it.

(a) all trademarks, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, certification marks, collective marks, logos, other source of business identifiers, prints and labels on which any of the foregoing have appeared or appear, designs and general intangibles of a like nature (all of the foregoing items in this paragraph (a) being collectively called a "Trademark"), now existing anywhere in the world or hereafter adopted or acquired, whether currently in use or not, all registrations and recordings thereof and all applications in connection therewith, whether pending or in preparation for filing,

including registrations, recordings and applications in the United States Patent and Trademark Office or in any office or agency of the United States of America or any State thereof or any foreign country, including those referred to in Item 1 of Exhibit A attached hereto;

(b) all Trademark licenses, including each Trademark license referred to in Item 2 of Exhibit A attached hereto;

(c) all reissues, extensions or renewals of any of the items described in paragraph (a), above;

(d) all of the goodwill of the business connected with the use of, and symbolized by the items described in, paragraphs (a) and (b), above; and

(e) all proceeds of, and rights associated with, the foregoing, including any claim by the Assignor against third parties for past, present or future infringement or dilution of any Trademark registration or Trademark license, including any Trademark, Trademark registration or Trademark license referred to in Item 1 or Item 2 of Exhibit A attached hereto, or for any injury to the goodwill associated with the use of any such Trademark or for breach or enforcement of any Trademark license.

Notwithstanding the foregoing, "Trademark Collateral" shall not include any general intangibles or other rights arising under any contracts, instruments, licenses or other documents as to which the grant of a security interest would constitute a violation of a valid and enforceable restriction in favor of a third party on such grant, unless and until any required consents shall have been obtained. The Assignor agrees to use its best efforts (which shall not require the expenditure of cash or the making of any material concessions under the relevant contract, instrument, license or document) to obtain any such required consent to the extent reasonably requested by the Lender.

**SECTION 3. Perfection.** Assignor acknowledges and agrees that this Agreement has been executed and delivered by the Assignor for the purpose of registering the security interest of the Lender in the Trademark Collateral with the United States Trademark and Trademark Office and corresponding offices in other countries of the world. The security interest granted hereby has been granted as a supplement to, and not in limitation of, the security interest granted to the Lender for its benefit under the General Security Agreement by and between Lender and Assignor dated the date hereof (the "Security Agreement"). The Security Agreement (and all rights and remedies of the Lender thereunder shall remain in full force and effect in accordance with its terms.

**SECTION 4. Acknowledgment.** Assignor hereby acknowledges and affirms that the rights and remedies of the Lender with respect to the security interest in the Trademark Collateral granted hereby are more fully set forth in the Security Agreement, the terms and provisions of which (including the remedies provided for therein) are incorporated by reference herein as if fully set forth herein.

**SECTION 5. Standstill.** Lender hereby agrees that, unless earlier terminated as described below, for a period of seventy five (75) consecutive calendar days following the occurrence of a Default or Event of Default (such period to be referred to as the "Standstill Period"), Lender will take no action, directly or indirectly, to foreclose upon or take possession of the Trademark Collateral or otherwise enforce the security interests in the Trademark Collateral granted to Lender pursuant to the terms hereof. Notwithstanding the foregoing, Assignor and Lender hereby acknowledge and agree that the Standstill Period will terminate immediately and without notice to Assignor, and Lender shall be permitted to enforce any and all rights and take any and

all actions permitted to be taken by Lender following the occurrence of a Default or Event of Default described herein and/or in the Security Agreement the upon the earliest to occur of:

(a) The commencement of any action, suit or proceeding or administrative action before any court or administrative body having jurisdiction with respect to such action, suit or proceeding or administrative action (a "Proceeding") which directly or indirectly seeks to terminate, make subordinate or otherwise impair Lender's first priority security interests in the Trademark Collateral granted hereunder; or

(b) The commencement of any Proceeding by Assignor or any successor in interest of Assignor which directly or indirectly seeks to challenge the enforceability or binding effect of this Agreement the Security Agreement or any terms of conditions hereof or thereof; or

(c) The filing of any agreement, document or instrument with the United States Patent and Trademark Office ("USPTO") or the Secretary of State of the State of New York ("NYSS") other than with Lender's prior written consent which purports to terminate, modify, or amend any agreement, document or instrument filed by Lender with the USPTO or NYSS to perfect or otherwise evidence Lender's first priority security interests in the Trademark Collateral granted hereunder or the Security Agreement, or make subordinate or otherwise adversely impair Lender's first priority security interests in the Trademark Collateral granted hereunder or under the Security Agreement.

Notwithstanding anything to the contrary contained herein, Assignor hereby acknowledges and agrees that upon termination of the Standstill Period Lender shall have full authority to enforce all rights and take all actions following a Default or Event of Default granted to Lender by the terms of this Agreement and/or the Security Agreement.

**SECTION 6. Release of Security Interest.** Upon final and indefeasible payment in full of all Obligations, the Lender shall, at the Assignor's expense, execute and deliver to the Assignor all instruments and other documents as may be necessary or proper to release the lien on and security interest in the Trademark Collateral which has been granted hereunder.

**SECTION 7. General Provisions.**

(a) Loan Document, etc. This Agreement is a Loan Document executed pursuant to the Credit Agreement and shall (unless otherwise expressly indicated herein) be construed, administered and applied in accordance with the terms and provisions of the Credit Agreement.

(b) Successors and Assigns. This Agreement is entered into for the benefit of the parties hereto and their successors and assigns. It shall be binding upon and shall inure to the benefit of such parties, their successors and assigns. Lender shall have the right, without the necessity of any further consent or authorization by the Assignor, to sell, assign, securitize or grant participation in all, or a portion of, Lender's interest in the Trademark Collateral, to other financial institutions of the Lender's choice and on such terms as are acceptable to Lender in its sole and absolute discretion.

(c) Construction of Agreement. The parties hereto agree that the terms and language of this Agreement were the result of negotiations between the parties, and, as a result, there shall be no prescription that any ambiguities in this Agreement shall be resolved against either party. Any controversy over the construction of this Agreement shall be decided mutually without regard to events of authorship or negotiation.

(d) Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute but one and the same agreement.

(e) **GOVERNING LAW; CONSENT TO JURISDICTION.**

(i) THIS AGREEMENT WAS NEGOTIATED IN THE STATE OF NEW YORK, AND MADE BY LENDER AND ACCEPTED BY ASSIGNOR IN THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREIN, AND IN ALL RESPECTS, INCLUDING MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS AGREEMENT AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION, AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS CREATED PURSUANT HERETO AND PURSUANT TO THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE IN WHICH THE APPLICABLE INDIVIDUAL PROPERTY IS LOCATED, IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF NEW YORK SHALL GOVERN THE VALIDITY AND THE ENFORCEABILITY OF ALL LOAN DOCUMENTS AND ALL OF THE INDEBTEDNESS OR OBLIGATIONS ARISING HEREUNDER OR THEREUNDER. TO THE FULLEST EXTENT PERMITTED BY LAW, LENDER AND ASSIGNOR HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVE ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS AGREEMENT AND THE OBLIGATIONS, AND THIS AGREEMENT AND THE OBLIGATIONS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

(ii) ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER OR ASSIGNOR, ANY GUARANTOR OR OTHER PARTY TO THIS TRANSACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL BE INSTITUTED IN THE SOLE OPTION OF LENDER IN ANY FEDERAL OR STATE COURT LOCATED IN ERIE COUNTY, NEW YORK OR MONROE COUNTY, NEW YORK, PURSUANT TO § 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW; HOWEVER, LENDER MAY, AT ITS OPTION, COMMENCE ANY ACTION, SUIT OR PROCEEDING IN ANY OTHER APPROPRIATE FORUM OR JURISDICTION TO OBTAIN POSSESSION OF OR FORECLOSE UPON ANY COLLATERAL, TO OBTAIN EQUITABLE RELIEF OR TO ENFORCE ANY JUDGMENT OR ORDER OBTAINED BY LENDER AGAINST ASSIGNOR OR ANY GUARANTOR OR WITH RESPECT TO ANY COLLATERAL, IF ANY, TO ENFORCE ANY OTHER RIGHT OR REMEDY UNDER THIS AGREEMENT OR TO OBTAIN ANY OTHER RELIEF DEEMED APPROPRIATE BY LENDER, AND LENDER AND ASSIGNOR WAIVE ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING

**OF VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND LENDER AND ASSIGNOR HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. ASSIGNOR REPRESENTS AND WARRANTS THAT IT HAS REVIEWED THIS CONSENT TO JURISDICTION PROVISION WITH ITS LEGAL COUNSEL, AND HAS MADE THIS WAIVER KNOWINGLY AND VOLUNTARILY.**

***[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]***

***[SIGNATURE PAGE IMMEDIATELY FOLLOWS]***

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

HOFFEND & SONS, INC.

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

Name: \_\_\_\_\_

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

**KELTIC FINANCIAL PARTNERS, LP**  
By: **KELTIC FINANCIAL SERVICES LLC,**  
its general partner

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

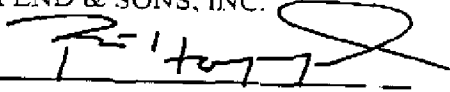
Name: Robert N. Laughlin

Title: Managing Partner



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

HOFFEND & SONS, INC.

By: 

Name: Peter E. Hoffend

Title: President

**KELTIC FINANCIAL PARTNERS, LP**  
By: **KELTIC FINANCIAL SERVICES LLC,**  
its general partner

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

Name: Robert N. Laughlin

Title: Managing Partner

**EXHIBIT A  
to Assignor Trademark  
Security Agreement**

**Item 1. Trademarks**

Registered Trademarks

<u>*Country</u>	<u>Serial No.</u>	<u>Registration No.</u>	<u>Registration Date</u>
USA	78165873	2833249	4/13/2004

Pending Trademark Applications

<u>*Country</u>	<u>Trademark</u>	<u>Serial No.</u>	<u>Filing Date</u>
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Trademark Applications in Preparation

<u>*Country</u>	<u>Trademark</u>	<u>Docket No.</u>	<u>Expected Filing Date</u>	<u>Products/ Services</u>
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**Item B. Trademark Licenses**

<u>*Country or Territory</u>	<u>Trademark</u>	<u>Licensor</u>	<u>Licensee</u>	<u>Effective Date</u>	<u>Expiration Date</u>
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\* List items related to the United States first for ease of recordation. List items related to other countries next, grouped by country and in alphabetical order by country name.