

02-01-1999

To the Honorable Commiss

ie attached original documents or copy thereof.

1. Name of conveying party(ies):  
Goerlich's, Inc.  
300 Dixie Trail  
Goldsboro, North Carolina 27530-7198  
a North Carolina Corporation



100953348

address of receiving party(ies)

Name: American National Bank and Trust Company of Chicago

Internal Address:

Street Address: 120 S. LaSalle St. 8th Floor

City: Chicago State: IL ZIP: 60603-3400

1-29-99

3. Nature of conveyance:

- Assignment
- Merger
- Security Agreement
- Change of Name
- Other

Execution Date: May 29, 1998

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

Trademark Application No(s).

B. Trademark Registration No(s). Please see Schedule I (attached)

Additional numbers attached?  Yes  No

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

Name: Linda A. Heban

Internal Address: JONES, DAY, REAVIS & POGUE

Street Address: 77 W. Wacker Dr.

City: Chicago State: IL ZIP: 60601-1692

6. Total number of applications and registrations involved

7. Total fee (37 CFR 3.41) . . . . . \$ 2440.00

- Enclosed
- Authorized to be charged to deposit account.

8. Deposit account number:

10-1202  
(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

2440E

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.

LINDA A HEBAN Linda A Heban

Jan 15, 1999

Name of Person Signing

Signature

Date

02/01/1999 SBURMS 00000014 1793599

01 FC:481 40.00 OP  
02 FC:482 2400.00 OP

Total number of pages including cover sheet, attachments, and document: 18

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING DEPOSITED WITH THE U.S POSTAL SERVICE AS FIRST CLASS MAIL IN AN ENVELOPE ADDRESSED TO: COMMISSIONER OF PATENTS AND TRADEMARKS, BOX ASSIGNMENTS, WASHINGTON, D.C. 20231

ON January 19, 1999  
Melanie M. Williams

# **SCHEDULE I**

## **Trademarks**

Attached.

**SCHEDULE I**

<b><u>MARK</u></b>	<b><u>REGISTRATION NO.</u></b>
2943	1793599
2976	1793598
3006	1793600
3054	1879521
3158	1794872
3159	1802015
3164	1900360
3188	1900361
3197	1900364
3204	1796336
3216	1794691
3217	1794875
3226	1878449
3241	1799265
3277	1891952
3283	1907089
3363	1794871
3500	1871067
6503	1732869
6519	1732871

6533	1736396
6534	1713436
6539	1711519
6540	1732863
6543	1711509
6544	1729174
6550	1711514
6560	1711511
6651	1711522
6653	1732870
6655	1715462
6656	1711521
990	1187544
AMERICA STOPS HERE FOR QUALITY	1850897
CHALLENGE	1749360
CHALLENGE PREMIUM MUFFLER LINE	1745161
COLUMBUS	1546303
COMPETITOR	1397562
CREST & DESIGN	0764636
CREST & DESIGN	0783544
DYNATONE	1455172
DYNATONE & DESIGN	1459974

ENFORCER	1102071
ENFORCER & DESIGN	1444045
FOR THE SMOOTHEST RIDE ACROSS AMERICA	1850896
G & DESIGN	1323083
G GOERLICH & DESIGN	1323075
G GOERLICH & DESIGN	1410413
GOERLICH	0924144
GOERLICH 1 & DESIGN	1871050
GOERLICH 1 & DESIGN	0938546
GOERLICH 1 & DESIGN	0973832
GOERLICH'S NOBODY DOES IT BETTER	1891679
GOERLICH'S NOBODY DOES IT BETTER	1881399
GOERLICH'S NOBODY DOES IT BETTER & DESIGN	1891681
GOERLICH'S THE ONE WAY THE RIGHT WAY & DESIGN	1427223
KBY	0764637
KBY	0783543
LEAK-TITE	0843539
LIFETIME	0327797
LIFT MATES	1144927
MASTER	0339172

MAX-FIT	2037427
MERIT	1316608
MERIT II AND DESIGN	1171134
MODULARAK & DESIGN	1604348
MONARCH	0809848
MSL	1269748
MSL BIG MAX	1516307
MSL MAXIMUM & DESIGN	1430152
MUFFLE UP WITH MB M MUFFLERS & DESIGN	1232006
RIDE KING	0722179
ROADMATE	1574723
ROADMATES	1581390
ROADMATES & DESIGN	1581389
ROADMATES PLUS +	1636501
SHUR-SEAL	0786177
SILENTONE	1317984
SILENTONE & DESIGN	0587225
SILENTONE PLUS	1649420
STEALTH	1550076
STOCK LABEL & DESIGN	1139454
STOCK LABEL & DESIGN	1139455
SUPPORT PAK	1239774

THE G MARKETING COMPANY & DESIGN	1378623
THE LIFTER & DESIGN	1364365
THE ORIGINAL MUFFLER SHOP & DESIGN	1140531
THE ORIGINAL MUFFLER SHOP & DESIGN	1140769
THRUWAY	0912579
THRUWAY	0969515
TUFF GRIP	1353679
TUFF-GRIP	0786176
TURBO-M	1271713
UNDERDAWG	0997968
UP-RISER 200	1190613
VALOR & DESIGN	0754068

## TRADEMARK SECURITY AGREEMENT

This Trademark Security Agreement, made as of May 29, 1998 (this "Agreement"), is made by Goerlich's, Inc., a North Carolina corporation (the "Borrower") and American National Bank and Trust Company of Chicago, a national banking association (the "Lender"). Capitalized terms used in this Agreement and not otherwise defined have the meanings assigned to such terms in the Loan Agreement (as defined below).

### WITNESSETH:

WHEREAS, the Borrower and the Lender are parties to the Loan and Security Agreement of even date herewith (as such agreement may be amended, restated, supplemented or otherwise modified from time to time, the "Loan Agreement"), between the Borrower and the Lender, under which the Lender may, from time to time, extend credit to the Borrower; and

WHEREAS, the Lender has required the Borrower to execute and deliver this Agreement in favor of the Lender (i) in order to secure complete payment of the Liabilities and performance of its obligations under the Loan Agreement and the other Financing Agreements and (ii) as a condition precedent to any extension of credit under the Loan Agreement;

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Borrower and the Lender agree as follows:

**1. Security Interest in Trademarks.** To secure the complete and timely payment, performance and satisfaction of the Liabilities, the Borrower grants to the Lender a security interest in, as and by way of a first mortgage and security interest having priority over all other security interests, with power of sale to the extent permitted by applicable law, all of the Borrower's now owned or existing and hereafter acquired or arising:

(A) trademarks, registered trademarks, trademark applications, service marks, registered service marks and service mark applications, including, without limitation, the trademarks, registered trademarks, trademark applications, service marks, registered service marks and service mark applications listed on the attached Schedule I and (i) all renewals thereof, (ii) all income, royalties, damages and payments now and hereafter due and/or payable under and with respect thereto, including, without limitation, payments under all licenses entered into in connection therewith and damages and payments for past or future infringements or dilutions thereof, (iii) the right to sue for past, present and future infringements and dilutions thereof, (iv) the goodwill of the Borrower's business symbolized by the foregoing and connected therewith and (v) all of the Borrower's rights corresponding thereto throughout the world (all of the foregoing trademarks, registered trademarks and trademark applications and service marks, registered service marks and service mark applications, together with the items described in clauses (i)-(v) above are referred to collectively as the "Trademarks"); and



(B) rights under or interests in any trademark license agreements or service mark license agreements with any other party, whether the Borrower is licensee or licensor under any such license agreement, including, without limitation, those trademark license agreements and service mark license agreements listed on the attached Schedule II, together with any goodwill connected with and symbolized by any such trademark license agreements or service mark license agreements, and the right to prepare for sale and sell any and all Inventory now or hereafter owned by the Borrower and now or hereafter covered by such licenses (all of the foregoing are referred to collectively as the "Licenses"). Notwithstanding the foregoing provisions of this Section 1(B), the Licenses do not include any license agreement in effect as of the date of this Agreement which by its terms prohibits the grant of the security contemplated by this Agreement; *provided, however*, that upon the termination of such prohibitions for any reason whatsoever, the provisions of this Section 1 are deemed to apply thereto automatically.

**2. Restrictions on Future Agreements.** The Borrower will not, without the Lender's prior written consent, enter into any agreement, including, without limitation, any license agreement, which is inconsistent with this Agreement and the Borrower further agrees that it will not take any action, and will use its best efforts not to permit any action to be taken by others, including, without limitation, licensees, or fail to take any action, which would in any respect affect the validity or enforcement of the rights transferred to the Lender under this Agreement or the rights associated with the Trademarks or Licenses.

**3. New Trademarks and Licenses.** The Borrower represents and warrants that, from and after the date of this Agreement, (i) the Trademarks listed on Schedule I include all of the trademarks, registered trademarks, trademark applications, service marks, registered service marks and service mark applications now owned or held by the Borrower, (ii) the Licenses listed on Schedule II include all of the trademark license agreements and service mark license agreements under which the Borrower is the licensee or licensor and (iii) no Liens, claims or encumbrances in such Trademarks and Licenses have been granted by the Borrower to any Person or asserted by any Person against the Borrower other than the Lender, except for Permitted Liens. If, prior to the termination of this Agreement, the Borrower (a) obtains rights to any new trademarks, registered trademarks, trademark applications, service marks, registered service marks or service mark applications, (b) becomes entitled to the benefit of any trademarks, registered trademarks, trademark applications, trademark licenses, trademark license renewals, service marks, registered service marks, service mark applications, service mark licenses or service mark license renewals whether as licensee or licensor or (c) enters into any new trademark license agreement or service mark license agreement, the provisions of Section 1 automatically apply thereto. The Borrower will give to the Lender written notice of events described in clauses (a)-(c) above promptly after the occurrence thereof, but in any event not less frequently than on a quarterly basis. The Borrower authorizes the Lender to modify this Agreement unilaterally (x) by amending Schedule I to include any future trademarks, registered trademarks, trademark applications, service marks, registered service marks and service mark applications and by amending Schedule II to include any future trademark license agreements and service mark license agreements, which are Trademarks or Licenses under Section 1 or under this Section 3 and (y) by filing, in addition to and not in substitution for this Agreement, a duplicate original of this Agreement containing on Schedule I or Schedule II thereto, as the case may be, such future trademarks, registered trademarks, trademark applications, service marks,

registered service marks and service mark applications, and trademark license agreements and service mark license agreements.

**4. Royalties.** The Borrower agrees that the use by the Lender of the Trademarks and Licenses as authorized under this Agreement in connection with the Lender's exercise of its rights and remedies under Section 12 or under Section 9.2 of the Loan Agreement are coextensive with the Borrower's rights thereunder and with respect thereto and without any liability to the Borrower for royalties or other related charges from the Lender.

**5. Right to Inspect; Further Assignments and Security Interests.** The Lender may at all reasonable times (and at any time when an Event of Default exists) have access to, examine, audit, make copies (at the Borrower's expense) and extracts from and inspect the Borrower's premises and examine the Borrower's books, records and operations relating to the Trademarks and Licenses. From and after the occurrence of an Event of Default, the Borrower agrees that the Lender, or a conservator appointed by the Lender, has the right to establish such reasonable additional product quality controls as the Lender or such conservator, in its sole and absolute judgment, may deem necessary to assure maintenance of the quality of products sold by the Borrower under the Trademarks and the Licenses or in connection with which such Trademarks and Licenses are used. The Borrower agrees (i) not to sell or assign its respective interests in, or grant any license under, the Trademarks or the Licenses without the prior written consent of the Lender, (ii) to maintain the quality of such products as of the date of this Agreement, and (iii) not to change the quality of such products in any material respect without the Lender's prior written consent.

**6. Nature and Continuation of the Lender's Security Interest; Termination of the Lender's Security Interest.** This Agreement is made for collateral security purposes only. This Agreement creates a continuing security interest in the Trademarks and Licenses and terminates only when the Lender has no further obligation to make any Loans, the Liabilities have been paid in full in cash and the Loan Agreement has been terminated. When this Agreement has terminated, the Lender will promptly execute and deliver to the Borrower, at the Borrower's expense, all termination statements and other instruments as may be necessary or proper to terminate the Lender's security interest in the Trademarks and the Licenses, subject to any disposition thereof which may have been made by the Lender under this Agreement or the Loan Agreement.

**7. Duties of the Borrower.** The Borrower has the duty, to the extent desirable in the normal conduct of the Borrower's business, to: (i) prosecute diligently and in good faith any trademark application or service mark application that is part of the Trademarks pending as of the date of this Agreement or hereafter until the termination of this Agreement and (ii) make application for trademarks or service marks. The Borrower will use its best efforts to maintain in full force and effect the Trademarks and the Licenses that are or will be necessary or economically desirable in the operation of the Borrower's business, except for those which would have no reasonable likelihood of having a Material Adverse Effect. Any expenses incurred in connection with the foregoing will be borne by the Borrower. The Lender does not have any duty with respect to the Trademarks and Licenses. Without limiting the generality of the foregoing, the Lender is not under any obligation to take any steps necessary to preserve rights in the Trademarks or Licenses against other parties, but may do so at its option from and after the occurrence of an Event of Default and all expenses

incurred in connection therewith will be for the sole account of the Borrower and will be added to the Liabilities secured thereby.

**8. The Lender's Right to Sue.** From and after the occurrence and during the continuance of an Event of Default, the Lender has the right, but is not obligated, to bring suit in its own name to enforce the Trademarks and the Licenses and, if the Lender commences any such suit, the Borrower will, at the request of the Lender, do any and all lawful acts and execute any and all proper documents required by the Lender in aid of such enforcement. The Borrower will, upon demand, promptly reimburse the Lender for all costs and expenses incurred by the Lender in the exercise of its rights under this Section 8 (including, without limitation, fees and expenses of attorneys and paralegals for the Lender).

**9. Waivers.** The Lender's failure, at any time or times hereafter, to require strict performance by the Borrower of any provision of this Agreement does not waive, affect or diminish any right of the Lender thereafter to demand strict compliance and performance therewith nor does any course of dealing between the Borrower and the Lender have such effect. No single or partial exercise of any right under this Agreement precludes any other or further exercise thereof or the exercise of any other right. None of the undertakings, agreements, warranties, covenants and representations of the Borrower contained in this Agreement are deemed to have been suspended or waived by the Lender unless such suspension or waiver is in writing signed by an officer of the Lender and directed to the Borrower specifying such suspension or waiver.

**10. Severability.** Whenever possible, each provision of this Agreement is interpreted in such manner as to be effective and valid under applicable law, but the provisions of this Agreement are severable, and if any clause or provision is held invalid and unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability will affect only such clause or provision, or part of such clause or provision, in such jurisdiction, and does not in any manner affect such clause or provision in any other jurisdiction, or any other clause or provision of this Agreement in any jurisdiction.

**11. Modification.** This Agreement cannot be altered, amended or modified in any way, except as specifically provided in Sections 1 and 3 or by a writing signed by the Borrower and the Lender.

**12. Cumulative Remedies; Power of Attorney.** (A) The Borrower irrevocably designates, constitutes and appoints the Lender (and all Persons designated by the Lender in its sole and absolute discretion) as the Borrower's true and lawful attorney-in-fact, and authorizes the Lender and any of the Lender's designees, in the Borrower or the Lender's name, to take any action and execute any instrument to the extent necessary to accomplish the purposes of this Agreement, including, without limitation, from and after the occurrence and during the continuance of an Event of Default and the giving by the Lender of notice to the Borrower of the Lender's intention to enforce its rights and claims against the Borrower, to (i) endorse the Borrower's name on all applications, documents, papers and instruments necessary or desirable for the Lender in the use of the Trademarks or the Licenses, (ii) assign, pledge, convey or otherwise transfer title in or dispose of the Trademarks or the Licenses to anyone, (iii) grant or issue any exclusive or nonexclusive license under the Trademarks or, to the extent permitted, under the Licenses, to anyone and (iv) take any

other actions with respect to the Trademarks or the Licenses as the Lender deems necessary to protect its interests under this Agreement. The Borrower ratifies all that such attorney-in-fact lawfully does or causes to be done by virtue of the provisions of this Section 12. This power of attorney is coupled with an interest and is irrevocable until the Lender has no further obligation to make any Loans, the Liabilities have been paid in full in cash and the Loan Agreement has been terminated. The Borrower acknowledges and agrees that this Agreement is not intended to limit or restrict in any way the rights and remedies of the Lender under the Loan Agreement or any of the Financing Agreements, but rather is intended to facilitate the exercise of such rights and remedies.

(B) The Lender has, in addition to all other rights and remedies given it by the terms of this Agreement, all rights and remedies allowed by law and the rights and remedies of a secured party under the Uniform Commercial Code as enacted in any jurisdiction in which the Trademarks or the Licenses may be located or deemed located. Upon the occurrence and during the continuance of an Event of Default and the election by the Lender to exercise any of its remedies under Section 9-504 or Section 9-505 of the Uniform Commercial Code with respect to the Trademarks and Licenses, the Borrower agrees to assign, convey and otherwise transfer title in and to the Trademarks and the Licenses to the Lender or any transferee of the Lender and to execute and deliver to the Lender or any such transferee all such agreements, documents and instruments as may be necessary, in the Lender's sole discretion, to effect such assignment, conveyance and transfer. All of the Lender's rights and remedies with respect to the Trademarks and the Licenses, whether established by this Agreement, by the Loan Agreement, by any other agreements or by law, are cumulative and may be exercised separately or concurrently. Notwithstanding anything set forth in this Agreement to the contrary, it is expressly agreed that upon the occurrence of an Event of Default, the Lender may exercise any of the rights and remedies provided in this Agreement, the Loan Agreement and any of the other Financing Agreements.

**13. Successors and Assigns.** This Agreement is binding upon the Borrower and its successors and assigns, and inures to the benefit of the Lender and its successors and assigns. The Borrower's successors and assigns include, without limitation, a receiver, trustee or debtor-in-possession of or for the Borrower; *provided, however*, that the Borrower will not voluntarily assign or transfer its rights or obligations under this Agreement without the Lender's prior written consent.

**14. Governing Law.** The Lender and the Borrower accept this Agreement at Chicago, Illinois by signing and delivering it there. Any dispute between the Lender and the Borrower arising out of, connected with, related to or incidental to the relationship between them in connection with this Agreement, and whether arising in contract, tort, equity or otherwise, will be resolved in accordance with the internal laws (as opposed to conflict of laws provisions) of the State of Illinois.

**15. Notices.** All notices or other communications under this Agreement will be given in the manner and to the addresses set forth in the Loan Agreement.

**16. Section Titles.** The section and paragraph titles of this Agreement are for convenience of reference only, and do not affect in any way the interpretation of any of the provisions of this Agreement.

**17. Execution in Counterparts.** This Agreement may be executed in any number of counterparts and by different parties to this Agreement in separate counterparts, each of which when so executed will be deemed to be an original and all of which taken together constitute one and the same agreement.

\* \* \*

Delivered at Chicago, Illinois, as of the day and year first above written.

GOERLICH'S, INC.

By: Evangelos P. Proimos  
Name: Evangelos P. Proimos  
Title: President

Accepted and agreed to as of  
the day and year first above written.

AMERICAN NATIONAL BANK AND  
TRUST COMPANY OF CHICAGO

By: TEH  
Thomas E. O'Hare  
Title: Vice President

STATE OF:                    )  
                                      )  
COUNTY OF:                )

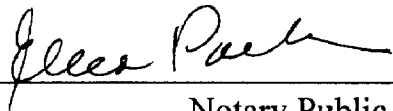
The foregoing Trademark Security Agreement was acknowledged before me this 28<sup>th</sup> day of May, 1998, by Evangelos Proinos the President of Goerlich's, Inc., on behalf of such corporation.

Ellen Park  
\_\_\_\_\_  
Notary Public

My commission expires: 9/11/99

STATE OF ILLINOIS     )  
                                  )  
COUNTY OF COOK     )

The foregoing Trademark Security Agreement was acknowledged before me this 28<sup>th</sup> day of May, 1998, by Thomas E. O'Hare, a Vice President of American National Bank and Trust Company of Chicago, a national banking association, on behalf of such association.

  
\_\_\_\_\_  
Notary Public

My commission expires: 9/11/99