

01/27/2014



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Form PTO-1594 (Rev. 12-11)  
OMB Collection 0651-0027 (exp. 04/30/2015)

U.S. DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office

### RECORDATION FORM COVER SHEET TRADEMARKS ONLY

To the Director of the U. S. Patent and Trademark Office: Please record the attached documents or the new address(es) below.

**1. Name of conveying party(ies):**

Blue Spark Technologies, Inc.

- Individual(s)
- Partnership
- Corporation- State: Ohio
- Other
- Association
- Limited Partnership

Citizenship (see guidelines) Ohio

Additional names of conveying parties attached?  Yes  No

**3. Nature of conveyance/Execution Date(s) :**

Execution Date(s) October 16, 2013

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

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

Additional names, addresses, or citizenship attached?  Yes  No

Name: Ohio Development Services Agency

Street Address: 77 S. High St., 28th Floor

City: Columbus

State: Ohio

Country: USA Zip: 43216

- Individual(s) Citizenship
- Association Citizenship
- Partnership Citizenship
- Limited Partnership Citizenship
- Corporation Citizenship
- Other Govt. agency Citizenship Ohio

If assignee is not domiciled in the United States, a domestic representative designation is attached:  Yes  No  
(Designations must be a separate document from assignment)

**4. Application number(s) or registration number(s) and identification or description of the Trademark.**

A. Trademark Application No.(s) Text

78/760,422; 85/091,775; 85/091,788; 85/091,842

B. Trademark Registration No.(s)

3,205,428; 4,043,065; 4,050,338; 4,043,066

Additional sheet(s) attached?  Yes  No

**C. Identification or Description of Trademark(s) (and Filing Date if Application or Registration Number is unknown):**

POWERING INNOVATION; BLUE SPARK; [logo]; [logo with text]

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

Name: Thomas G. Belden, Esq.

Internal Address: Cavitch Familo & Durkin Co., L.P.A.

Street Address: 1300 East Ninth Street, 20th Floor

City: Cleveland

State: Ohio Zip: 44114

Phone Number: 216-621-7860

Docket Number: \_\_\_\_\_

Email Address: tbelden@cavitch.com

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

4

**7. Total fee (37 CFR 2.6(b)(6) & 3.41) \$115.00**

- Authorized to be charged to deposit account
- Enclosed

**8. Payment Information:**

Deposit Account Number \_\_\_\_\_

Authorized User Name KNGUYEN1 00000005 78760422

**9. Signature:**

Signature

01 FC:8521  
02 FC:8522

10/18/13  
Date

40.00 OP  
75.00 OP

Michael R. Rasor, Authorized Representative

Name of Person Signing



Total number of pages including cover sheet, attachments, and document: 2

Documents to be recorded (including cover sheet) should be faxed to (571) 273-0140, or mailed to:  
Mail Stop Assignment Recordation Branch, Director of the USPTO, P.O. Box 1460, Alexandria, VA 22313-1460

TRADEMARK  
REEL: 005204 FRAME: 0283

10.21.2013

CONTINUATION OF ITEM 4

Mark	Country	Application No.	Filed	Status
POWERING INNOVATION	US	78/760,422	February 6, 2007	Registered as Reg. No. 3,205,428 on 2/6/2007
BLUE SPARK	US	85/091,776	July 23, 2010	Registered as Reg. No. 4,043,065 on 10/18/2011
	US	85/091,788	July 23, 2010	Registered as Reg. No. 4,050,338 on 11/1/2011
	US	85/091,842	July 23, 2010	Registered as Reg. No. 4,043,066 on 10/18/2011

## SECURITY AGREEMENT

This SECURITY AGREEMENT, made and entered into as of October 16, 2013, is executed and delivered by Blue Spark Technologies, Inc., an Ohio corporation (the "Borrower"), as debtor, whose address is 806 Sharon Drive, Suite G, Westlake, Ohio 44145, in favor of the Director of the Ohio Development Services Agency (the "Director"), his successors and assigns, as secured party, whose address is Ohio Department of Development, Attn: Loans and Servicing Office, 77 South High Street, 28<sup>th</sup> Floor, Columbus, Ohio 43215.

All capitalized terms used herein shall have the meanings set forth in Schedule 1 attached to that certain Loan Agreement between the Director and the Borrower, dated October 16, 2013, as the same may be amended, modified, supplemented, extended, renewed, restated or replaced from time to time (the "Loan Agreement") unless the context or use expressly indicates different meaning or intent. Such definitions shall be equally applicable to both the singular and plural forms of any of the words and terms therein defined.

As an inducement to and in consideration of the Loan to the Borrower by the Director pursuant to the Loan Agreement and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and for the purpose of securing: (i) all payments to be made by the Borrower with respect to the Loan and under the Loan Agreement, the Note, this Security Agreement and all other Loan Documents, together with interest and monthly service fees as provided therein and herein, (ii) any amounts advanced or costs incurred by the Director with respect to the Collateral, including but not limited to amounts advanced or costs incurred for the payment of taxes, assessments, insurance premiums or amounts advanced or costs incurred for the protection of the Collateral or enforcement of this Security Agreement, the Note, the Loan Agreement and all other Loan Documents, together with interest and monthly service fees as provided therein and herein, and (iii) the performance and observance of each covenant and agreement of the Borrower contained in this Security Agreement, the Note, the Loan Agreement and the other Loan Documents, (iv) payment and performance of all future advances and other obligations that the Borrower or any successor in ownership of all or part of the Collateral may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of the Director; and (v) payment and performance of all modifications, amendments, extensions, and renewals, however evidenced, of any of the obligations set forth in this paragraph, the Borrower does hereby grant, bargain, sell, convey, assign, grant a lien on and security interest in and transfer unto the Director, the Director's successors and assigns, the Collateral.

TO HAVE AND TO HOLD the Collateral unto the Director, the Director's successors and assigns, forever;

AND, IT IS HEREBY COVENANTED that this Security Agreement is given and the Collateral is to be held in the manner and to the extent and applied subject to the further terms herein set forth:

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REEL: 005204 FRAME: 0285

**Section 1. Preservation of Security.**

**1.1 Representations, Warranties and Covenants.** The Borrower represents, warrants and covenants to the Director that:

- (a) The Borrower (i) has (or will have upon acquisition by the Borrower) good and sufficient title to all Collateral subject to the Lender Security Agreement and other Permitted Encumbrances, (ii) has full right and authority to sell and convey the Collateral, without the consent or approval of any other Person other than any consent or approval that has been obtained prior to the date of execution and delivery of this Security Agreement, and (iii) will warrant and defend to the Director such title to the Collateral and the lien, pledge and security interest of the Director therein and thereon against all claims and demands whatsoever, and will, except as otherwise herein expressly provided, maintain the priority of the lien of, and the pledge and security interest granted by, this Security Agreement upon the Collateral until the Borrower shall be entitled to defeasance as provided herein.
- (b) The lien, pledge and security interest of this Security Agreement is a good and valid lien, pledge and security interest on all the Collateral (or will be upon acquisition by the Borrower), subject only to Permitted Encumbrances.
- (c) The Collateral shall be used by the Borrower in its business and does not and will not constitute consumer goods within the meaning of the Commercial Code.
- (d) All Equipment and other tangible Collateral shall remain in the Borrower's possession or control at all times at the Borrower's risk for loss.
- (e) If, with respect to any part of the Collateral, any certificate of title or similar negotiable document, except negotiable instruments received in the ordinary course of business in collection of accounts receivable, is at any time outstanding, the Borrower shall within five (5) Business Days, advise the Director thereof, cause the interest of the Director to be properly and promptly noted thereon, and promptly deliver to the Director any such negotiable certificate or document.
- (f) No financing statement or security agreement purporting to cover any of the Collateral has heretofore been signed by the Borrower or names the Borrower as "debtor," except for the Lender Security Agreement, and no such financing statement or security agreement is now on file in any public office, except for the Lender Security Agreement and other Permitted Encumbrances.
- (g) All of the Collateral, and all records concerning the Collateral or copies of such records, shall be kept at the Project Site.

- (h) Upon prior notice, the Borrower will permit the Director and the Director's agents and representatives to inspect the Collateral and any property or records with respect thereto and to make copies thereof and to enter upon the Project Site for such purpose, in each case during normal business hours.
- (i) The Borrower shall, at the Borrower's own expense, from time to time as requested by the Director take such actions and execute and deliver to the Director all such instruments, supplements, further assurances and security or other agreements as may be required or requested by the Director in order to perfect and continue the Director's lien, pledge and security interest in the Collateral hereunder or to enable the Director to exercise and enforce his rights and remedies hereunder with respect to any Collateral. The Borrower hereby irrevocably appoints the Director as the Borrower's agent and attorney-in-fact to sign all such instruments, supplements, further assurances and security and other agreements.
- (j) Neither the execution and delivery by the Borrower of this Security Agreement, the creation and perfection of the security interest in the Collateral granted hereunder, nor compliance with the terms and provisions hereof will violate any law, rule, regulation, order, writ, judgment, injunction, decree or award binding on the Borrower or its articles of incorporation or by-laws, the provisions of any indenture, instrument or agreement to which the Borrower is a party or is subject, or by which it, or its property, is bound, or conflict with or constitute a default thereunder, or result in the creation or imposition of any Lien pursuant to the terms of any such indenture, instrument or agreement (other than the security interest in favor of the Director or the security interest resulting from the Lender Security Agreement).
- (k) Except for its prior name, Thin Battery Technologies, Inc., Borrower has not conducted business under any name except the name in which it has executed this Security Agreement, which is the exact name as it appears in the Borrower's amended organizational documents as filed with the Borrower's jurisdiction of organization.
- (l) The Borrower shall (i) preserve its existence as a corporation and not, in one transaction or a series of related transactions, merge into or consolidate with any other entity, or sell all or substantially all of its assets; (ii) not change its state of organization; and (iii) not change its name or taxpayer identification number, unless permitted by the terms of Loan Agreement and the Borrower shall have given the Director not less than 30 days' prior written notice of such event or occurrence and the Director shall have either (x) determined that such event or occurrence will not adversely affect the validity, perfection or priority of the Director's security interest in the Collateral, or (y) taken such steps (with the cooperation of the Borrower to the extent necessary or

advisable) as are necessary or advisable to properly maintain the validity, perfection and priority of the Director's security interest in the Collateral.

- (m) No Copyrights, Patents, Trademarks, Tradenames or Domain Names listed on Schedule A, if any, have been adjudged invalid or unenforceable or have been canceled, in whole or in part, or are not presently subsisting. Each of such Copyrights, Patents, Trademarks, Tradenames and Domain Names is valid and enforceable. The Borrower is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each of such Copyrights, Patents, Trademarks, Tradenames or Domain Names free and clear of any Liens, including without limitation licenses, shop rights and covenants by the Borrower not to sue third Persons subject to the security interest created by the Lender Security Agreement. The Borrower has adopted, used and is currently using, or has a current bona fide intention to use, all of such Trademarks, Copyrights, Tradenames and Domain Names. The Borrower has no notice of any suits or actions commenced or threatened with reference to the Copyrights, Patents, Trademarks, Tradenames or Domain Names.
- (n) The Borrower agrees to deliver to the Director updated Schedules attached to this Security Agreement within five days of any change thereto.
- (o) The Borrower's federal employer identification number is 02-0642227. The Borrower is an Ohio corporation and the Borrower's organizational identification number issued by the State of Ohio is 1329169.
- (p) The Borrower has not used or conducted business under any other trade name, assumed name, fictitious name and other name at any time during the five (5) years prior to the date hereof.
- (q) The Borrower has not merged with, or acquired substantially all of the assets of, any other entity at any time during the five (5) years prior to the date hereof.

**1.2 Recordation and Filing.** Subject to the terms of Section 6.2 hereof, the Director, at the Borrower's expense, is authorized to file UCC Financing Statements and any other financing statements, amendments, supplements and continuation and correction statements and any other documents as may be required to establish, perfect, preserve and protect the lien, pledge and security interest of this Security Agreement as a good and valid perfected lien on and security interest in all property and interests therein included in the Collateral (together with, without limitation, any such property and interests acquired after the execution hereof). The Borrower shall, at the Borrower's expense, from time to time as requested by the Director execute and deliver to the Director assignments, instruments or other documents as may be required in order to perfect and continue the Director's lien, pledge and security interest in the Collateral hereunder. If requested by the Director, the Borrower, at the Borrower's expense, shall furnish to the Director an opinion of Independent Counsel specifying the action, if any, required to be taken in order to continue

the Director's lien, pledge and security interest in the Collateral hereunder and the required priority thereof since the date of this Security Agreement or the date of the most recent such opinion, as applicable. The Borrower hereby ratifies and authorizes the filing by the Director of any UCC Financing Statements with respect to the Collateral made prior to the date hereof.

**1.3 After-Acquired Property.** Subject to the terms of Section 6.2 hereof, all Collateral acquired by the Borrower after the date hereof shall promptly upon the acquisition thereof by the Borrower, and without further action by the Borrower, become subject to the lien, pledge and security interest of this Security Agreement as fully as though now owned by the Borrower and specifically described herein. Nevertheless, the Borrower shall take such actions and execute, acknowledge and deliver such additional instruments as the Director shall require to further evidence or confirm the subjection of any such property to the lien, pledge and security interest of this Security Agreement.

**1.4 Disposition: Liens and Encumbrances.** Except as otherwise expressly permitted by this Security Agreement or the Loan Agreement, the Borrower shall not directly or indirectly sell, convey, assign, transfer or otherwise dispose of the Collateral or any part thereof or interest therein without the prior written consent of the Director. The Borrower shall not directly or indirectly create or permit to remain, and will promptly discharge, any Lien in or on the Collateral or any part thereof or the interest of the Borrower or the Director therein or any revenues, income or profit or other sums arising from the Collateral or any part thereof (including, without limitation, any Lien arising by operation of law) other than the "Permitted Encumbrances" defined below:

- (a) Liens for taxes, fees, assessments, and other governmental charges or levies, which are not at the time required to be paid pursuant to Section 2.1 hereof;
- (b) Liens imposed by law, such as liens of carriers, warehousemen, mechanics, materialmen, suppliers or vendors and other similar Liens or rights thereto arising in the ordinary course of business which secure payment obligations of more ten (10) days past due or which are being contested in good faith by appropriate proceedings to the extent permitted by Section 2.2 hereof;
- (c) Statutory Liens in favor of landlords and real property leased by the Borrower or any Subsidiary, provided that the Borrower is current with respect to payment of all rent and other material amounts due to such landlord under any lease of such real property;
- (d) Liens arising out of pledges or deposits under worker's compensation laws, unemployment insurance, old age pensions, or other social security or retirement benefits, or similar legislation or to secure the performance of bids, tenders, or contracts (other than for the repayment of indebtedness) or to secure indemnity, performance, or other similar bonds for the performance of bids, tenders, or contracts (other than for the repayment of indebtedness or to secure statutory obligations (other than liens arising

under ERISA or Environmental Laws) or surety or appeal bonds, or to secure indemnity, performance, or other similar bonds;

- (e) Liens arising in connection with any other financing acquired after the Closing Date, which Liens, except as provided in Section 6.2 hereof, shall be subordinate to the security interest created in favor of the Director pursuant to this Security Agreement; and
- (f) The security interest created by the Lender Security Agreement.

**1.5 Security Agreement.** This Security Agreement constitutes a security agreement as to all or any part of the Collateral which is of a nature that a security interest therein can be created under the Commercial Code.

**1.6 No Claims Against the Director.** Nothing contained in this Security Agreement shall constitute a request by the Director, express or implied, for the performance of any labor or services or the furnishing of any materials or other property in respect of the Collateral or any part thereof, or be construed to give the Borrower any right, power or authority to contract for or permit the performance of any labor or services or the furnishing of any materials or other property in such fashion as would provide the basis for any claim either against the Director, or that any Lien based on the performance of such labor or services or the furnishing of any such materials or other property is prior to the lien, pledge and security interest of this Security Agreement.

**1.7 The Director's Powers.** Without affecting the liability of any other Person liable for the payment of any obligation herein mentioned, and without affecting the lien, pledge or security interest of this Security Agreement upon any portion of the Collateral not then or theretofore released as security for the full amount of all unpaid obligations, the Director may, from time to time and without notice, (a) release any Person so liable, (b) extend the maturity or alter any of the terms of any such obligation, (c) grant other indulgences, (d) release or reconvey, or cause to be released or reconveyed at any time at the Director's option any parcel, portion or all of the Collateral, (e) take or release any other or additional security for any obligations herein mentioned, or (f) make compositions or other arrangements with debtors in relation thereto.

**1.8 Security for Advances.** In addition to securing the Borrower's debts and obligations under and pursuant to this Security Agreement, the Loan Agreement, the Note and all other Loan Documents, this Security Agreement is intended to and does secure unpaid balances of advances made pursuant hereto, together with interest thereon at the Interest Rate for Advances from the respective dates thereof, including, without limitation, for the payment of taxes, assessments, insurance premiums and costs incurred for the protection of the Collateral.

**1.9 Instruments, Securities, Chattel Paper, Documents and Pledged Deposits.** The Borrower shall upon the occurrence and during the continuance of an Event of Default, (i) hold in trust for the Director upon receipt, and upon the request of the Director at any time



and from time to time deliver to the Director, any Chattel Paper, Securities and Instruments constituting Collateral, (ii) upon the designation of any Pledged Deposits, deliver to the Director such Pledged Deposits which are evidenced by certificates included in the Collateral endorsed in blank, marked with such legends and assigned as the Director shall specify, and (iii) upon the Director's request, deliver to the Director (and thereafter hold in trust for the Director upon receipt and promptly deliver to the Director) any Document evidencing or constituting Collateral.

**1.10 Deposit Accounts.** The Borrower represents and warrants that the Deposit Accounts listed on Schedule B constitute all of the Deposit Accounts of the Borrower. If the Borrower shall open a new Deposit Account, the provisions of this Agreement shall automatically apply thereto and the Borrower shall give to the Director prompt written notice thereof. The Borrower hereby authorizes the Director to modify this Agreement by amending Schedule B to include any such Deposit Accounts. The Borrower shall (i) upon the Director's request, use commercially reasonable efforts to cause each bank or other financial institution in which it maintains (a) a Deposit Account to enter into a control agreement with the Director, in which such bank or financial institution agrees in writing following the occurrence and continuance of an Event of Default to comply with instructions from the Director to such bank or financial institution directing the disposition of funds from time to time credited to such Deposit Account, without further consent of the Borrower or any other Person, in form and substance satisfactory to the Director in order to give the Director Control of the Deposit Account, or (b) other deposits (general or special, time or demand, provisional or final) to be notified of the security interest granted to the Director hereunder and use commercially reasonable efforts to cause each such bank or other financial institution to acknowledge such notification in writing, and (ii) upon the Director's request, upon the occurrence and during the continuance of an Event of Default, deliver to each such bank or other financial institution a letter, in form and substance acceptable to the Director, transferring ownership of the Deposit Account to the Director or transferring dominion and Control over each such other deposit to the Director.

**1.11 Federal, State or Municipal Claims.** The Borrower shall notify the Director of any Collateral which constitutes a claim against the United States government or any state or local government or any instrumentality or agency thereof, the assignment of which claim is restricted by federal, state or municipal law.

**1.12 Letter of Credit Rights.** The Borrower shall upon the occurrence and during the continuance of an Event of Default, upon the Director's request cause each issuer of a letter of credit to consent to the assignment of proceeds of the letter of credit in order to give the Director Control of the Letter-of-Credit Rights to such letter of credit.

**1.13 Pledged Deposits.** The Borrower shall not withdraw all or any portion of any Pledged Deposit or fail to rollover said Pledged Deposit without the prior written consent of the Director.

**1.14 Commercial Tort Claims.** The Borrower represents and warrants that the Commercial Tort Claims listed on Schedule C constitute all of the Commercial Tort Claims of the Borrower. If the Borrower holds or acquires a new Commercial Tort Claim, the provisions of this Agreement shall automatically apply thereto and the Borrower shall give to the Director prompt written notice thereof. The Borrower hereby authorizes the Director to modify this Agreement by amending Schedule C to include any such Commercial Tort Claims. If the Borrower shall at any time hold or acquire a Commercial Tort Claim, the Borrower shall promptly notify the Director in writing signed by the Borrower of the details thereof and grant to the Director in such writing a security interest therein and in the proceeds thereof, all upon the terms of this Security Agreement, with such writing to be in form and substance satisfactory to the Director. Without limiting the obligations of the Borrower set forth in the preceding sentence, the Borrower irrevocably authorizes the Director at any time and from time to time after receipt of any such notice and appoints the Director as its attorney in fact to sign on behalf of the Borrower any such writing necessary or desirable in the Director's sole discretion to grant, perfect and to maintain the perfection and priority of the Director's security interest in any such Commercial Tort Claim.

**1.15 Electronic Chattel Paper and Transferable Records.** If the Borrower at any time holds or acquires an interest in any Electronic Chattel Paper or any "transferable record," as that term is defined in Section 201 of the federal Electronic Signatures in Global and National Commerce Act, or in §16 of the Uniform Electronic Transactions Act as in effect in any relevant jurisdiction, the Borrower shall promptly notify the Director thereof and, at the request of the Director, shall take such action as the Director may reasonably request to vest in the Director Control under Section 9-105 of the Commercial Code of such Electronic Chattel Paper or control under Section 201 of the federal Electronic Signatures in Global and National Commerce Act or, as the case may be, §16 of the Uniform Electronic Transactions Act, as so in effect in such jurisdiction, of such transferable record. The Director agrees with the Borrower that the Director will arrange, pursuant to procedures satisfactory to the Director and so long as such procedures will not result in the Director's loss of Control, for the Borrower to make alterations to the Electronic Chattel Paper or transferable record permitted under Section 9-105 of the Commercial Code or, as the case may be, Section 201 of the federal Electronic Signatures in Global and National Commerce Act or §16 of the Uniform Electronic Transactions Act for a party in Control to make without loss of Control, unless an Event of Default has occurred and is continuing or would occur after taking into account any action by the Borrower with respect to such Electronic Chattel Paper or transferable record.

**1.16 Uncertificated Securities and Certain Other Investment Property.** The Borrower shall use commercially reasonable efforts to cause the appropriate issuers (and, if held with a securities intermediary, such securities intermediary) of uncertificated Securities or other types of Investment Property not represented by certificates which are Collateral to mark their books and records with the numbers and face amounts of all such uncertificated Securities or other types of Investment Property not represented by certificates and all rollovers and replacements therefor to reflect the security interest of the Director granted pursuant to this Security Agreement. At the request of the Director, the Borrower shall

take any actions necessary to cause (i) the issuers of uncertificated Securities which are Collateral and (ii) any financial intermediary which is the holder of any Investment Property, to cause the Director to have and retain Control over such Securities or other Investment Property. Without limiting the foregoing, at the request of the Director the Borrower shall, with respect to Investment Property held with a financial intermediary, cause such financial intermediary to enter into a control agreement with the Director pursuant to which such financial intermediary agrees upon the occurrence and during the continuance of an Event of Default to comply with instructions from the Director to such financial intermediary directing the disposition of financial assets from time to time credited to such Investment Property, without further consent of the Borrower or any other Person, in form and substance satisfactory to the Director.

**1.17 Intellectual Property.** The Borrower represents and warrants that the Copyrights, Patents, Trademarks, Tradenames and Domain Names listed on Schedule A constitute all of the registered Copyrights and all of the Patents, Trademarks, Tradenames and Domain Names now owned by the Borrower. If the Borrower shall (i) obtain rights to any new patentable inventions, any registered Copyrights or any Patents, Trademarks, Tradenames or Domain Names, or (ii) become entitled to the benefit of any registered Copyrights or any Patents, Trademarks, Tradenames or Domain Names or any improvement on any Patent, the provisions of this Agreement above shall automatically apply thereto and the Borrower shall give to the Director prompt written notice thereof. The Borrower hereby authorizes the Director to modify this Agreement by amending Schedule A to include any such registered Copyrights or any such Patents, Trademarks, Tradenames or Domain Names. The Borrower shall have the duty (i) to prosecute diligently any patent, trademark, tradename, domain name or service mark applications pending as of the date hereof or hereafter, (ii) to make application on unpatented but patentable inventions and on trademarks, tradenames, domain names, copyrights and service marks, as appropriate, (iii) to preserve and maintain all rights in the Copyrights, Patents, Trademarks, Tradenames and Domain Names, to the extent material to the operations of the business of the Borrower and (iv) to ensure that the Copyrights, Patents, Trademarks, Tradenames and Domain Names are and remain enforceable, to the extent material to the operations of the business of the Borrower. Any expenses incurred in connection with the Borrower's obligations under this Section 1.17 shall be borne by the Borrower. The Borrower shall not abandon any right to file a Patent, Trademark, Tradename, Domain Name, or service mark application, or abandon any pending patent, application or any other Copyright, Patent, Trademark, Tradename or Domain Name without the written consent of the Director, which consent shall not be unreasonably withheld unless such Patent, Trademark, Tradename, Domain Name or service mark is deemed immaterial to the business of Borrower.

**1.18 Authorization for Director to Take Certain Action.** The Borrower irrevocably authorizes the Director at any time and from time to time in the sole discretion of the Director and appoints the Director as its attorney in fact (i) to execute on behalf of the Borrower as debtor and/or to file initial financing statements, amendments of financing statements, correction statements with respect to financing statements and other documents necessary or desirable in the Director's sole discretion to perfect and to

maintain the perfection and priority of the Director's security interest in the Collateral, including to file in any filing office in the State or any other jurisdiction any initial financing statements and amendments thereto that (a) indicate the Collateral (1) as all assets and/or personal property of the Borrower or words of similar effect, regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the Commercial Code or the Uniform Commercial Code of any other applicable jurisdiction, or (2) as being of an equal or lesser scope or with greater detail, and (b) provide any other information required by part 5 of Article 9 of the Commercial Code or the Uniform Commercial Code of such other jurisdiction for the sufficiency or filing office acceptance of any financing statement or amendment, including (1) whether the Borrower is an organization, the type of organization and any organizational identification number issued to the Borrower, and (2) in the case of a financing statement filed as a fixture filing or indicating Collateral as as-extracted collateral or timber to be cut, a sufficient description of real property to which the Collateral relates; (ii) to indorse and collect any cash proceeds of the Collateral, (iii) to contact and enter into one or more agreements with the issuers of uncertificated securities which are Collateral and which are Securities or with financial intermediaries holding other Investment Property as may be necessary or advisable to give the Director Control over such Securities or other Investment Property, (iv) to enforce payment of the Accounts, Instruments and Chattel Paper in the name of the Director or the Borrower, (v) to apply the proceeds of any Collateral received by the Director to the obligations secured hereby as provided in Article V, (vi) to discharge past due taxes, assessments, charges, fees or Liens on the Collateral (except for the security interest created by the Lender Security Agreement), and the Borrower agrees to reimburse the Director on demand for any payment made or any expense incurred by the Director in connection therewith, and (vii) to grant to the Director in writing a security interest in Commercial Tort Claims and in the proceeds thereof as set forth in Section 1.14, which security interest shall be upon the terms of this Security Agreement, with such writing to be in form and substance satisfactory to the Director, provided that this authorization shall not relieve the Borrower of any of its obligations under this Security Agreement or under the other Loan Documents.

## **Section 2.**

### **Taxes, Mechanics' Liens and Insurance**

**2.1 Payment of Taxes and Other Governmental Charges.** The Borrower shall pay promptly when due, and before penalty or interest accrues thereon, all taxes, assessments, whether general or special, all other governmental charges and all public or private utility charges of any kind whatsoever, foreseen or unforeseen, ordinary or extraordinary, that now or may at any time hereafter be assessed, levied or imposed against or with respect to the Collateral or any part thereof (including, without limitation, any taxes levied upon or with respect to the revenues, income or profits of the Borrower from the Collateral) which, if not paid, may become or be made a Lien on the Collateral or any part thereof or a charge on such revenues, income or profits. The Borrower shall also pay promptly when due any public or private utility charges and other charges incurred in the operation, maintenance or use of the Collateral.

Notwithstanding the preceding paragraph, the Borrower may, at the Borrower's expense and in the Borrower's name and behalf and after prior written notice to the Director, by appropriate proceedings diligently prosecuted, contest in good faith the validity or amount of any such taxes, assessments and other charges, and during the period of contest and after written notice to the Director, may permit the items so contested to remain unpaid, provided, at the option of the Director, the Borrower has deposited security in form and amount satisfactory to the Director. If at any time, however, the Director shall notify the Borrower that, in the opinion of Independent Counsel, by nonpayment of any such items the lien, pledge or security interest created by this Security Agreement or the interests of the Borrower or the Director in the Collateral as to any part of the Collateral will be materially affected or the Collateral or any part thereof will be subject to imminent loss or forfeiture, the Borrower shall promptly pay all such taxes, assessments or charges. In the event that the Borrower shall fail to pay any of the foregoing items required by this Section to be paid by the Borrower, the Director may, but shall be under no obligation to, pay the same, and any amounts so advanced shall be paid by the Borrower to the Director on demand, together with interest thereon at the Interest Rate for Advances from the date thereof in addition to all other payments to be made pursuant to the Loan Documents and shall be subject to and secured by this Security Agreement as additional indebtedness in accordance with the provisions of Section 1.8 hereof.

If any Event of Default shall have occurred and be continuing, at the request of the Director, the Borrower shall pay to the Director, on each Payment Date, an amount equal to 1/12<sup>th</sup> of the annual taxes, assessments or other charges reasonably estimated by the Director to pay the installment of such taxes, assessments or other charges next due on the Collateral. In such event, the Borrower further agrees to cause all bills, statements or other documents relating to taxes, assessments or other charges to be sent or mailed directly to the Director. Upon receipt of such bills, statements or other documents and provided the Borrower has deposited sufficient funds with the Director pursuant to this Section, the Director shall pay such amounts as may be due thereunder from the funds so deposited with the Director. If at any time and for any reason the funds deposited with the Director are or will be insufficient to pay such amounts as may then or subsequently be due, the Director shall notify the Borrower and the Borrower shall promptly deposit the amount necessary to eliminate such insufficiency with the Director. Notwithstanding the foregoing, nothing contained herein shall cause the Director to be deemed a trustee of said funds or to be obligated to pay any amounts in excess of the amount of funds deposited with the Director pursuant to this Section. The Director may commingle said funds with the Director's own funds and with other funds held by the Director, and the Director shall not be obligated to pay or allow any interest on any funds held by the Director pending disbursement or application hereunder. The Director may impound or reserve for future payment of taxes, assessments or other charges such portion of such payments made pursuant to the Loan Documents as the Director may reasonably deem proper, applying the balance on the principal of or interest or monthly service fee on the obligations secured hereby. Should the Borrower fail to deposit with the Director, exclusive of that portion of said payments which has been applied by the Director on the principal of or interest or monthly service fee on the indebtedness secured by this Security Agreement, sums sufficient to fully pay such taxes, assessments or other charges at least 30 days before delinquency thereof, the

Director may, at the Director's election, but without any obligation so to do, advance any amounts required to make up the deficiency, which advances, if any, shall be paid by the Borrower to the Director on demand, together with interest thereon at the Interest Rate for Advances from the date thereof in addition to all other payments to be made by the Borrower pursuant to the Loan Documents and shall be subject to and secured by this Security Agreement as additional indebtedness in accordance with the provisions of Section 1.8 hereof, or at the option of the Director, the Director may, without making any advances whatever, apply any sums held by the Director upon any obligations of the Borrower secured hereby. Should any default occur or exist in the payment or performance of any of the Borrower's obligations under the terms of the Loan Documents or any other instrument given to secure the Note, the Director may, at any time at the Director's option, apply any sums or amounts received and/or held by the Director pursuant hereto, or as rents or income of the Collateral or otherwise, upon any indebtedness or obligation of the Borrower secured hereby in such manner and order as the Director may elect. The receipt, use or application of any such sums paid by the Borrower to the Director hereunder shall not be construed to affect the maturity of any indebtedness secured by this Security Agreement or any of the rights or powers of the Director under the terms of the Loan Documents or any other instrument given to secure the Note, or any of the obligations of the Borrower under the Loan Documents or any other instrument given to secure the Note.

**2.2 Mechanics' and Other Liens.** Except for Permitted Encumbrances, the Borrower shall not suffer or permit any mechanics' or other Liens to be filed or to exist against the Collateral or any payments paid or payable under the Loan Documents, by reason of work, labor, services or materials supplied or claimed to have been supplied to, for or in connection with the Collateral or to the Borrower, the Director or anyone holding the Collateral or any part thereof through or under the Borrower. If any such Lien shall at any time be filed, the Borrower shall, within 30 days after notice of the filing thereof but subject to the right to contest as herein set forth, cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise, provided, at the option of the Director, the Borrower has deposited security in form and amount satisfactory to the Director. Notwithstanding the foregoing, the Borrower shall have the right, at the Borrower's expense and after written notice to the Director, by appropriate proceeding timely instituted and diligently prosecuted, to contest in good faith the validity or the amount of any such Lien. If, however, the Director shall notify the Borrower that, in the opinion of Independent Counsel, by nonpayment of any such items the lien, pledge or security interest created by this Security Agreement as to any part of the Collateral will be materially affected or the Collateral or any part thereof will be subject to imminent loss or forfeiture, the Borrower shall promptly cause such Lien to be discharged of record, as herein provided. Should the Borrower fail to cause such Lien to be discharged or to contest the validity or amount thereof, within the period aforesaid, then, the Director may, but shall be under no obligation to, discharge the same either by paying the claim or by procuring the discharge of such Lien by making a deposit or obtaining a bond, which advances if any shall be paid by the Borrower to the Director on demand, together with interest thereon at the Interest Rate for Advances from the date thereof, in addition to all other payments to be made by the Borrower pursuant to the Loan Documents and shall be subject to and secured

by this Security Agreement as additional indebtedness in accordance with the provisions of Section 1.8 hereof.

**2.3 Insurance.** The Borrower shall keep the Collateral continuously insured with Required Property Insurance Coverage and shall keep and maintain the Required Public Liability Insurance Coverage. All insurance shall be contained in and maintained by means of policies with generally recognized, responsible insurance companies alone or in conjunction with other companies through an insurance trust or other arrangements satisfactory to the Director, and all such companies are to be qualified to do business in the State. All such insurance shall name the Director as an additional insured or as a loss payee, as applicable. The insurance to be provided may be by blanket policies in which event the Borrower shall furnish the Director with a certificate of insurance for each policy setting forth the coverage, the limits of liability, the name of the carrier, the policy number and the expiration date. Each policy of insurance shall be written so as not to be subject to cancellation or substantial modification, which phrase shall include any reduction in the scope or limits of coverage, upon less than 30 days advance written notice to the Director. The Borrower shall deposit with the Director certificates or other evidence satisfactory to the Director that (i) the insurance required hereby has been obtained and is in full force and effect and (ii) all premiums thereon have been paid in full. At least 30 days prior to the expiration of any such insurance, the Borrower shall furnish the Director with evidence satisfactory to the Director that such insurance has been renewed or replaced and that all premiums thereon have been paid in full and all insurance policies required hereby are in full force and effect.

All policies providing the Required Property Insurance Coverage shall contain standard mortgage clauses requiring all proceeds resulting from any claim for loss or damage in excess of \$10,000 to be paid to the Director and any Net Proceeds of insurance providing such coverage shall be paid and applied as provided in Section 4.2 hereof. Any proceeds of policies providing Required Public Liability Insurance Coverage shall be applied toward the extinguishment or satisfaction of the liability with respect to which such insurance proceeds have been paid.

In the event the Borrower fails to provide, maintain, keep in force, deliver or furnish to the Director the policies of insurance required by this Section, the Director may procure such insurance or single-interest insurance for such risks covering the Director's interest, and the Borrower shall pay all premiums thereon promptly upon demand by the Director, and until such payment is made by the Borrower, the amount of all such premiums, together with interest thereon at the Interest Rate for Advances from the date thereof in addition to all other payments to be made by the Borrower pursuant to the Loan Documents shall be subject to and secured by this Security Agreement as additional indebtedness in accordance with the provisions of Section 1.8 hereof.

If an Event of Default shall have occurred and be continuing, at the request of the Director, the Borrower shall deposit with the Director, on each Payment Date, an amount equal to 1/12<sup>th</sup> of the estimated aggregate annual insurance premiums on all policies of insurance required by this Security Agreement. In such event, the Borrower further agrees to cause

copies of all bills, statements or other documents relating to the foregoing insurance premiums to be sent or mailed directly to the Director. Upon receipt of such bills, statements or other documents, and providing the Borrower has deposited sufficient funds with the Director pursuant to this Section, the Director shall pay such amounts, provided the Borrower has not already made the required payments, as may be due thereunder from the funds so deposited with the Director. If at any time and for any reason the funds deposited with the Director are or will be insufficient to pay such amounts as may then or subsequently be due, the Director shall notify the Borrower and the Borrower shall promptly deposit the amount necessary to eliminate such insufficiency with the Director. Notwithstanding the foregoing, nothing contained herein shall cause the Director to be deemed a trustee of said funds or to be obligated to pay any amounts in excess of the amount of funds deposited with the Director pursuant to this Section. The Director may commingle said funds with the Director's own funds and with other funds held by the Director. The Director shall not be obligated to pay or allow any interest on any funds held by the Director pending disbursement or application hereunder, and the Director may impound or reserve for future payment of insurance premiums, such portion of such payments made pursuant to the Loan Documents as the Director may reasonably deem proper, applying the balance on the principal of or interest and monthly service fee on the obligations secured hereby. Should the Borrower fail to deposit with the Director, exclusive of that portion of said payments which has been applied by the Director on the principal of or interest and monthly service fee on the indebtedness secured by this Security Agreement, sums sufficient to fully pay such insurance premiums at least 30 days before such premiums are due, the Director may, at the Director's election, but without any obligation so to do, advance any amounts required to make up the deficiency, which advances, if any, shall be paid by the Borrower to the Director on demand, together with interest thereon at the Interest Rate for Advances from the date thereof in addition to all other payments to be made by the Borrower pursuant to the Loan Documents and shall be subject to and secured by this Security Agreement as additional indebtedness in accordance with the provisions of Section 1.8 hereof, or at the option of the Director, the Director may, without making any advances whatever, apply any sums held by the Director upon any obligations of the Borrower secured hereby. Should any default occur or exist in the payment or performance of any of the Borrower's obligations under the terms of any of the Loan Documents or any other instrument given to secure the Note, the Director may, at any time at the Director's option, apply any sums or amounts in received and/or held by the Director pursuant hereto, or as rents or income from the Collateral or otherwise, upon any indebtedness or obligation of the Borrower secured hereby in such manner and order as the Director may elect. The receipt, use or application of any such sums paid by the Borrower to the Director hereunder shall not be construed to affect the maturity of any indebtedness secured by this Security Agreement or any of the rights or powers of the Director under the terms of the Loan Documents or any other instrument given to secure the Note, or any of the obligations of the Borrower under the Loan Documents or any other instrument given to secure the Note. The Borrower waives any and all right to claim or recover against the Director or the State and any officers, employees, agents and representatives of the Director or the State, for loss of or damage to the Borrower, the Collateral, the Borrower's property or the property of others under the Borrower's control,



from any cause insured against or required to be insured against by the provisions of this Security Agreement.

All policies of insurance required by the terms of this Security Agreement shall contain an endorsement or agreement by the insurer that any loss shall be payable in accordance with the terms of such policy notwithstanding any act or negligence of the Borrower which might otherwise result in forfeiture of said insurance, and the further agreement of the insurer waiving all rights of setoff, counterclaim or deductions against the Borrower.

**2.4 Workers' Compensation Coverage.** The Borrower shall maintain or cause to be maintained in connection with the Borrower's business operations and the Collateral any workers' compensation coverage required by the applicable laws of the State.

**2.5 Advances by Director.** If the Borrower fails (i) to pay the taxes, assessments and other governmental or utility charges as required by Section 2.1 hereof, (ii) to pay any mechanics' or other Liens as required by Section 2.2 hereof, (iii) to maintain and keep in force the insurance required by Section 2.3 hereof, (iv) to maintain and keep in force the workers' compensation coverage required by Section 2.4 hereof, (v) to maintain the Collateral as required by Section 3.2 hereof, (vi) to pay for the defense of claims against the Director as required by Section 3.5 hereof, or (vii) to take any action described in Section 5.1 hereof, the Director may, but shall not be obligated to, advance funds to pay any such required charges or items. Any funds so advanced shall be paid by the Borrower to the Director on demand, together with interest thereon at the Interest Rate for Advances from the date thereof in addition to all other payments to be made by the Borrower pursuant to the Loan Documents, and shall be subject to and secured by this Security Agreement as additional indebtedness in accordance with the provisions of Section 1.8 hereof.

### **Section 3. Maintenance and Use of Collateral**

**3.1 Compliance with Legal and Insurance Requirements.** The Borrower, at the Borrower's expense, shall promptly comply with all Legal Requirements and Insurance Requirements, and shall procure, maintain and comply with all permits, licenses and other authorizations required for any use of the Collateral or any part thereof then being made or anticipated to be made, and for the proper construction, installation, operation and maintenance of the Collateral or any part thereof; and the Borrower shall comply with any instruments of record at the time in force burdening the Collateral or any part thereof. The Borrower may, at the Borrower's expense and after written notice to the Director, by any appropriate proceedings diligently prosecuted, contest in good faith any Legal Requirement and postpone compliance therewith pending the resolution or settlement of such contest provided that such postponement does not, in the opinion of Independent Counsel, materially affect the lien, pledge or security interest created by this Security Agreement as to any part of the Collateral or subject the Collateral, or any part thereof, to imminent loss or forfeiture.

**3.2 Maintenance and Use of Collateral.** The Borrower, at the Borrower's expense, shall keep the portion of the Collateral consisting of tangible personal property, or cause the

Collateral to be kept, in good order and condition and shall make all necessary or appropriate repairs, replacements and renewals thereof, so that the business carried on in connection therewith may be legally and properly conducted at all times in the manner that it is presently conducted. The Borrower shall not do, or permit to be done, any act or thing which might materially impair the value or usefulness of the Collateral or any part thereof, shall not commit or permit any waste of the Collateral or any part thereof, and shall not permit any unlawful occupation, business or trade involving the Collateral to be conducted.

**3.3 Documents to be Provided.** The Borrower shall file with the Director during the first two weeks of the calendar month succeeding each anniversary of the Completion Date, commencing with the month succeeding the first anniversary of the Completion Date, a certificate of the Borrower's chief executive officer or chief financial officer setting forth the description of each item of personal property or fixtures which has become a part of the Collateral and of any other additions, modification or improvements to the Collateral which have been made during the 12 calendar months preceding the first of the month in which such certificate is filed, if such additions, modifications or improvements made during such 12 months have an aggregate cost in excess of \$10,000.00.

The Director shall execute and deliver such documents, if any, as the Borrower may properly request in connection with any action taken by the Borrower in conformity with Sections 3.2 or 3.4 hereof. Any action taken by the Borrower pursuant to Sections 3.2 or 3.4 of this Security Agreement shall not entitle the Borrower to any abatement or diminution of the payments payable under the Loan Documents.

**3.4 Substitutions and Removals.** In any instance where the Borrower, in the Borrower's reasonable discretion, determines that any item of personal property or Fixtures constituting part of the Collateral shall have become inadequate, obsolete, worn-out, unsuitable, undesirable or unnecessary or should be replaced, the Borrower may remove, abandon, sell or otherwise dispose of such property provided that the Borrower shall substitute and install other property as part of the Collateral having equal or greater value, but not necessarily the same function in the operation of the Collateral, which substituted property shall be free from all Liens other than Permitted Encumbrances, and shall become part of the Collateral subject to this Security Agreement, or the Borrower shall obtain a waiver of this provision from the Director in writing. In any event, the Borrower shall provide to the Director prior written notice of such substitution or removal, which notice shall include evidence satisfactory to the Director of the fair market value of portions of the Collateral to be removed and of the substituted property and that such removal and substitution is not inconsistent with the Project Purposes.

**3.5 Indemnification.** The Borrower shall protect, indemnify and save harmless the Director from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses except as may be limited by law or judicial order or decision entered in any action brought to recover moneys under this Section) imposed upon, incurred by or asserted against the Director by reason of (a) ownership of any interest in the Collateral; (b) any accident or injury to or death of persons, or loss of or damage to property occurring on or

about the Project Site or any part thereof or adjacent real property, sidewalks, curbs, vaults and vault space, if any, streets or ways or with respect to the operation of the Borrower's business including but not limited to the Borrower's ownership of or interest in the Project Site or the Collateral or any part thereof; (c) any use, disuse, non-use or condition of the Collateral or any part thereof or the Project Site or adjacent real property, sidewalks, curbs, vaults and vault space, if any, streets or ways; (d) any failure on the part of the Borrower to perform or comply with any of the terms hereof or of any of the Loan Documents or any other instrument or document executed in connection with the transactions contemplated herein and therein; (e) any necessity to defend any right, title or interest conveyed by this Security Agreement or to defend any action arising from the creation or perfection of any such right, title or interest; (f) the performance of any labor or services or the furnishing of any materials or other property in respect to the Collateral or any part thereof; (g) any loss of or damage to property, or injury to or death of any person, that may be occasioned by any cause pertaining to the provision of any part of the Collateral; (h) any breach or default arising from any act or failure to act by the Borrower or any of its agents, lessees, contractors, servants, employees or licensees or arising from any accident, injury or damage caused to any Person and occurring with respect to the operation of the Borrower's business including the Borrower's ownership of or interest in any of the Collateral; or (i) any such claim, action, or proceeding brought thereon except to the extent that any such claim against the Director is proximately caused by the Director's gross negligence or willful misconduct. If any action or proceeding is made or brought against the Director in respect of which indemnity may be sought hereunder, the Director shall give notice to the Borrower of the action or proceeding and upon such notice, at the option of the Director, (1) the Borrower shall assume the defense of the action or proceeding with legal counsel satisfactory to the Director, (2) the Borrower shall assume the defense of the action or proceeding with the participation of the Director, at the Borrower's expense, or (3) the Director shall assume the defense of the action or proceeding with legal counsel satisfactory to the Director, at the Borrower's expense; provided that failure of the Director to give such notice shall not relieve the Borrower from any of the Borrower's obligations under this Section except to the extent, if any, any failure prejudices the defense by the Borrower of the action or proceeding. Any amounts payable to the Director under this Section shall be paid by the Borrower on demand together with interest thereon at the Interest Rate for Advances from the date thereof in addition to all other payments to be made by the Borrower pursuant to the Loan Documents and shall be subject to and secured by this Security Agreement as additional indebtedness in accordance with the provisions of Section 1.8 hereof. The obligations of the Borrower under this Section shall survive any defeasance of this Security Agreement. The indemnification provided by this Section to the Director includes officers, employees, agents and representatives of the Director and the State.

#### **Section 4. Damage, Destruction and Eminent Domain**

**4.1 Damage to or Destruction of Collateral.** The terms of this Section 4.1 shall be subject to the terms of the Lender Security Agreement. In case of any damage to or destruction of the Collateral or any part thereof, there shall be no abatement or reduction of any payment payable by the Borrower under the Note and the Loan Documents and the Borrower shall

promptly give written notice thereof to the Director generally describing the nature and extent of such damage or destruction. The Director may elect to collect, retain and apply upon the Obligations the Net Proceeds after deduction of all expenses of collection and settlement, including attorneys' and adjusters' fees and charges. Any Net Proceeds remaining after repayment of the indebtedness under the Loan Documents shall be paid by the Director to Borrower. Notwithstanding the foregoing, in the event that the Director does not elect to apply the Net Proceeds to the indebtedness of Borrower under the Note, or any of the other Loan Documents, unless in lieu thereof the Borrower exercises the Borrower's option to prepay the entire unpaid principal balance of the Note, plus interest accrued to the date thereof, any monthly service fees then due and unpaid and any other fees and charges due with respect to the Loan Documents, the Borrower shall, whether or not the Net Proceeds of insurance, if any, received on account of such damage or destruction shall be sufficient for such purpose, promptly commence and complete, or cause to be commenced and completed, the repair or restoration of the Collateral as nearly as practicable to the value, condition and character thereof existing immediately prior to such damage or destruction with such changes or alterations, however, as the Borrower may deem necessary for proper operation of the Collateral so long as such changes or alterations are consistent with the Project Purposes.

**4.2 Use of Insurance Proceeds.** The terms of this Section 4.2 shall be subject to the terms of the Lender Security Agreement. In connection with the repair or restoration of the Collateral pursuant to Section 4.1 hereof, any Net Proceeds of Required Property Insurance Coverage not in excess of \$10,000 shall be paid to the Borrower for application of as much of such Net Proceeds as may be necessary for such repair and restoration. If such Net Proceeds exceed \$10,000, all of such Net Proceeds shall be paid to and held by, or at the direction of, the Director in a separate account, for application of as much as may be necessary of such Net Proceeds to the payment of the costs of repair or restoration, either on completion thereof or as the work progresses, as directed by the Borrower. In the event that such Net Proceeds are insufficient to pay in full the costs of such repair or restoration, the Borrower shall complete such repair or restoration and shall provide for the payment of the costs of such completion. The Director may, prior to making payment from such account, require the Borrower to provide evidence that, or deposit with the Director moneys to be placed in such account so that, there will be sufficient moneys available for such repair and restoration. The Director shall not be obligated to make or authorize any payment from such account if there exists an Event of Default hereunder. Any balance of the Net Proceeds held by the Director remaining after payment of all costs of such repair or restoration shall be paid at the direction of the Borrower. Notwithstanding the foregoing, nothing contained herein shall cause the Director to be deemed a trustee of the Net Proceeds or any other moneys deposited with the Net Proceeds or to be obligated to allow or pay any amounts in excess of the Net Proceeds and any other moneys deposited with the Net Proceeds.

If, in lieu of repair or restoration, the Borrower has exercised the Borrower's option to prepay the entire unpaid principal balance of the Note, plus interest accrued to the date thereof, any monthly service fees then due and unpaid and any other fees and charges due with respect to the Loan Documents, an amount equal to any Net Proceeds received by the

Director prior to such prepayment shall be credited against the amount payable by the Borrower under the Note to effect such prepayment.

Within 90 days from the date of any damage to or destruction of the Collateral, or within 30 days of the receipt of any insurance proceeds, whichever first occurs, the Borrower shall determine and notify the Director in writing of which of the ways specified in this Section such Net Proceeds shall be applied. In the event that the Borrower fails to make such a determination or to give such notice within the applicable period, such Net Proceeds shall be applied as determined by the Director, in the Director's sole discretion.

**4.3 Eminent Domain.** The terms of this Section 4.3 shall be subject to the terms of the Lender Security Agreement. If title to, possession or ownership of, or the temporary use of the Collateral or any part thereof, shall be taken under the exercise of the power of eminent domain by any governmental body or by any Person acting under governmental authority or shall be transferred in lieu of such taking, there shall be no abatement or reduction in any payments payable by the Borrower under the Note and the Loan Documents. The Borrower shall promptly give written notice thereof to the Director describing the nature and extent of such taking; and any Net Proceeds received from any award made in such eminent domain proceedings or for a transfer in lieu thereof shall be paid to and held by, or at the direction of, the Director in a separate account for application, at the Director's option, to one or more of the following purposes:

- (a) The repair or restoration of the Collateral as nearly as practicable to the same condition or character thereof existing immediately prior to the exercise of the power of eminent domain with such changes or alterations, however, as the Borrower may deem reasonably necessary for proper operation of the Collateral so long as such changes or alterations are not inconsistent with the Project Purposes;
- (b) The acquisition, installation or construction by the Borrower of other improvements suitable for the Borrower's operations, which improvements shall be deemed a part of the Collateral; provided, that such improvements shall be subject to no Liens other than Permitted Encumbrances; and/or
- (c) The prepayment of the Note.

Within 30 days from the date of entry of a final order in any eminent domain proceeding granting the taking of the Collateral or any part thereof or from the date of any transfer in lieu thereof, the Director shall notify the Borrower in writing to which purpose or combination of purposes above specified the Net Proceeds of the condemnation award, together with any investment income therefrom, shall be applied. Notwithstanding the foregoing, nothing contained herein shall cause the Director to be deemed a trustee of the Net Proceeds or to be obligated to allow or pay any amounts in excess of the Net Proceeds, nor shall the Director be obligated to make or authorize any payment of the Net Proceeds to the Borrower if there exists an Event of Default hereunder.

**4.4 Investment and Disbursement of Net Proceeds.** All moneys received by the Director or the Director's designee constituting Net Proceeds shall, pending application, be invested at the direction of the Borrower, in the exercise of the Borrower's reasonable business judgment, for the account of and at the risk of the Borrower.

**Section 5. Events of Default and Remedies**

**5.1 Right to Perform Covenants.** If the Borrower shall fail to make any payment or perform any act required to be made or performed hereunder or under the Loan Agreement, the Note or any of the other Loan Documents and such failure continues beyond any applicable grace or cure period, the Director, without demand upon the Borrower and without waiving or releasing any obligation or default, may, but shall be under no obligation to, upon 10 days' written notice to the Borrower (unless a shorter period is elsewhere provided in the Loan Documents), make such payment or perform such act for the account and at the expense of the Borrower and may enter upon the location of the Collateral or any part thereof for such purpose and take all such action thereon as, in the Director's opinion, may be necessary or appropriate for the protection of the Collateral. Under emergency conditions as determined in the sole discretion of the Director, no notice shall be required. All payments so made by the Director and all costs, fees and expenses, including without limitation reasonable attorneys' fees, incurred in connection therewith or in connection with the performance by the Director of any such act, together with interest thereon at the Interest Rate for Advances from the date of payment or incurrence, shall be subject to and secured by this Security Agreement as additional indebtedness in accordance with the provisions of Section 1.8 hereof and shall be paid by the Company to the Director on demand. In any action brought to collect such indebtedness or to otherwise pursue the remedies of the Director under this Security Agreement, the Director shall be entitled to the recovery of such expenses in such action except as limited by law or judicial order or decision entered in such action.

**5.2 Events of Default.** Any one or more of the following events shall be an "Event of Default" under this Security Agreement:

- (a) The Borrower shall fail to observe and perform any agreement, term or condition contained in this Security Agreement and such failure continues for a period of 30 days after the Borrower has knowledge thereof; *provided*, however, that such 30 day cure period shall not apply to (i) any failure which in the good faith opinion of the Director is incapable of cure, (ii) any failure which has previously occurred, or (iii) any failure to maintain and keep in effect any insurance required by the Loan Documents;
- (b) The occurrence of an Event of Default under any of the other Loan Documents or under the terms of the Lender Loan Documents or Lender Security Agreement;
- (c) The Collateral shall be placed under control or custody of any court; or

- (d) An attachment, levy or restraining order shall be issued for any portion of the Collateral.

**5.3 Remedies.** If an Event of Default shall have occurred and be continuing, the Director, at any time, at the Director's election, may exercise any or all or any combination of the remedies conferred upon or reserved to the Director under this Security Agreement, the Loan Agreement, the Note, any other Loan Document or any instrument or document collateral thereto, or now or hereafter existing at law, or in equity or by statute. Subject to the foregoing, any or all of the following remedies may be exercised:

- (a) Declaration that the entire unpaid balance of all indebtedness owed to the Director and secured hereby is immediately due and payable, without notice or demand, such notice or demand being expressly waived by the Borrower;
- (b) Use of any available judicial proceeding to collect or recover all indebtedness secured by this Security Agreement and due hereunder whether at maturity or by acceleration, to enforce this Security Agreement or to foreclose or otherwise collect or realize upon the lien, pledge and security interest on all or any part of the Collateral;
- (c) Demand for prompt delivery of any portion of the Collateral capable of being delivered to the Director or demand that the Borrower promptly assemble any portion of the Collateral capable of being assembled and promptly make such portion available to the Director by any method which is reasonably convenient to the Director, and taking prompt possession of the Collateral or any part thereof and for that purpose pursuing the Collateral or any part thereof wherever it may be found and removing, to the extent possible, the same to any place whatsoever;
- (d) Sell, lease or make other disposition of the Collateral, at either public or private sale, at such time as the Director, in the Director's sole discretion, may decide, in a commercially reasonable manner. In connection with any such sale, the Borrower acknowledges and agrees that 10 days' prior written notice to the Borrower shall constitute reasonable notification of the time and place of any public sale or reasonable notification of the time after which any private sale or other intended disposition is to be made. At any such sale the Collateral may be sold in one or more lots or as an entirety or separately, as the Director may determine. The Director shall not be obligated to complete any such sale pursuant to any such notice. The Director may, without notice or publication, except for written notice to the Borrower, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for the sale, and such sale may be made at any time or place to which the same may be so adjourned. In case of the sale of all or any part of the Collateral on credit or for future delivery, the property so sold may be retained by the Director until the selling price is paid by the purchaser thereof, but the Director shall not be

required to sell all or any part of the Collateral on credit or future delivery and shall not incur any liability in case of the failure of such purchaser to take and pay for the property so sold and, in case of any such failure, such property may again be sold upon like notice;

- (e) Exercise of all or any rights and remedies as the Director may have under the Loan Documents; and
- (f) Exercise of any rights, remedies and powers the Director may have at law or in equity, including, without limitation, as a secured party under the Commercial Code or other similar laws in effect, including, without limitation, the option of proceeding as to both personal property and fixtures in accordance with any rights of the Director with respect to any real property secured hereby.

Any moneys received by the Director pursuant to the exercise of remedies this Security Agreement shall be applied as provided in Section 5.5 hereof.

The Director may comply with any applicable state or federal law requirements in connection with any sale or disposition of the Collateral and such compliance will not be considered to adversely affect the commercial reasonableness of any sale or disposition of the Collateral. The Director may disclaim any warranties that might arise in connection with the sale, lease or other disposition of the Collateral and has no obligation to provide any warranties at such time.

Upon the occurrence of an Event of Default, subject to the rights of owners, lessors and occupants of such premises, the Director shall be entitled to occupy and use any premises owned or leased by the Borrower where any of the Collateral or any records relating to the Collateral are located until all obligations secured hereby are paid or the Collateral is removed therefrom, whichever first occurs, without any obligation to pay the Borrower for such use and occupancy.

The Director is hereby granted a license or other right to use, following the occurrence and during the continuance of an Event of Default, without charge, the Borrower's labels, patents, copyrights, rights of use of any name, trade secrets, trade names, trademarks, service marks, customer lists and advertising matter, or any property of a similar nature, as it pertains to the Collateral, in completing production of, advertising for sale, and selling any Collateral, and, following the occurrence and during the continuance of an Event of Default, the Borrower's rights under all licenses and all franchise agreements shall inure to the Director's benefit to the extent permitted pursuant to such licenses and agreements.

In any foreclosure action or other sale hereunder, the Director or his nominee may, to the extent permitted by law, bid and become the purchaser of all or any part of the Collateral and the amount of the Director's successful bid shall be credited to payment of the indebtedness secured hereby. Without limiting the foregoing, the Director may proceed by a suit or suits in law or equity, whether for specific performance of any covenant or



agreement herein contained or in aid of the execution of any power herein granted, or for any foreclosure under the judgment or decree of any court of competent jurisdiction.

**5.4 Waiver of Appraisal, Valuation, Redemption and Marshalling of Assets.** The Borrower does hereby, to the full extent the Borrower may lawfully do so, waive the benefit of any appraisal, valuation, stay, extension or redemption laws now or hereafter in force and agrees not to set up, claim or seek to take advantage of any such law in order to prevent or hinder the enforcement or foreclosure of this Security Agreement, or the final and absolute sale of the Collateral or any part thereof or interest therein, or the final and absolute putting into possession, promptly after such sale, of the purchaser or purchasers thereof. The Borrower also waives, to the full extent it may lawfully do so, all rights of marshalling of assets in the event of any foreclosure or sale of the Collateral or any part thereof or any interest therein and agrees that any court having jurisdiction to foreclose the lien, pledge and security interest of this Security Agreement or sell the Collateral may foreclose the lien, pledge and security interest of this Security Agreement and sell the Collateral as an entirety, or in such parcels or portions as may be ordered by the court.

**5.5 Application of Proceeds.** Any moneys, including without limitation the proceeds of any sale, by foreclosure or otherwise, of the Collateral or any part thereof or any interest therein received by the Director pursuant to the exercise of any remedies provided in this Security Agreement or by law, in equity, or by statute shall be applied, subject to the terms of the Lender Security Agreement, as follows:

- First: To the payment of all costs incurred in the collection thereof, including, without limitation, reasonable attorneys' fees and expenses, except as may have been limited by law or by judicial order or decision entered in any action for the collection thereof;
- Second: To the discharge of any Lien which the Director may consider necessary or desirable to discharge;
- Third: To the payment of indebtedness secured by this Security Agreement owing to the Director other than indebtedness with respect to the Note at the time outstanding;
- Fourth: To the payment of all principal, interest, monthly service fees due and payable under the Note and the other Loan Documents, whether due at maturity or as an installment of principal, interest, monthly service fee or by prepayment or acceleration or otherwise; and
- Fifth: Unless a court of competent jurisdiction may otherwise direct by final order not subject to appeal, any balance to or at the direction of the Borrower.

**5.6 Appointment of Receiver.** If an Event of Default shall have occurred and be continuing, the Director shall, as a matter of right without giving bond to the Borrower or anyone claiming by, under or through the Borrower, and without regard for the solvency or insolvency of the Borrower and to the extent permitted by applicable law and without regard to the adequacy of the Collateral as security, be entitled to the appointment of a receiver for all or any part of the Collateral, whether such receivership is incidental to a proposed sale of the Collateral or otherwise, and the Borrower hereby consents to the appointment of such a receiver with the rights and powers referenced below and such other rights and powers as the court making such appointment shall confer and covenants not to oppose any such appointment. Such receiver shall have all powers and duties prescribed by applicable law, all other powers which are necessary or usual in such cases for the protection, possession, control, management and operation of the Collateral, and such rights and powers as the Director would have, upon taking possession of the Collateral under Section 5.7 below.

**5.7 Receiver.** The Director, in person, by agent or by court-appointed receiver, may, subject to the rights of owners, lessors and occupants of such premises, enter onto the Project Site, take possession of, manage and operate all or any part of the Collateral, and may also do any and all other things in connection with those actions that the Director may in his sole discretion consider necessary and appropriate to protect the security of this Security Agreement. Such other things may include: taking and possessing all of the Borrower's or the then owner's books and records; collecting and receiving any payment of money owing to the Borrower; and/or contracting for and making repairs and alterations to the Collateral. If the Director so requests, the Borrower shall assemble all of the Collateral that has been removed from the Project Site and make all of it available to the Director at the Project Site. The Borrower hereby irrevocably constitutes and appoints the Director as the Borrower's attorney-in-fact to perform such acts and execute such documents as the Director in [his/her] sole discretion may consider to be appropriate in connection with taking these measures, including endorsement of the Borrower's name on any instruments.

**5.8 Possession, Management and Income: Assignment.** If an Event of Default shall have occurred and be continuing, the Director may, to the extent permitted under applicable law, ex parte and without notice, enter upon any location where the Collateral is located and take possession of the Collateral or any part thereof by force, summary proceedings, ejectment or otherwise, and may remove the Borrower and all other Persons and any and all property therefrom and may hold, operate and manage the same and receive all revenues, income or profits accruing with respect thereto or any part thereof. The Director shall not have any liability for or by reason of any such taking of possession, entry, removal or holding, operation or management.

**5.9 Remedies Cumulative.** If an Event of Default shall have occurred and be continuing, the Director, in addition to each right, power and remedy of the Director provided in this Security Agreement, may undertake appropriate judicial proceedings or may proceed with any other right or remedy existing at law or in equity or by statute or otherwise, independent of or in aid of the rights, powers and remedies conferred in this Security

Agreement, as the Director may deem best for the protection and enforcement of the Director's rights under this Security Agreement. Each right, power and remedy of the Director provided for in this Security Agreement, the Loan Agreement or any other Loan Document or 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 Security Agreement, the Loan Agreement or any other Loan Document, or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise or partial exercise by the Director of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by the Director of any or all such other rights, powers or remedies.

**5.10 Provisions Subject to Applicable Law.** All rights, powers and remedies provided herein may be exercised only to the extent that the exercise thereof does not violate any applicable law, and are intended to be limited to the extent necessary so that they will not render this Security Agreement invalid, unenforceable or not entitled to be recorded, registered or filed under any applicable law.

**5.11 No Waiver by the Director.** No failure by the Director to insist upon the strict performance of any term hereof, or to exercise any right, power or remedy consequent upon a breach thereof, shall constitute a waiver of any such term or of any such breach. No waiver of any breach shall affect or alter this Security Agreement, which shall continue in full force and effect with respect to any other then existing or subsequent breach.

**5.12 Discontinuance of Proceedings and Restoration of Status Quo.** In case the Director shall have proceeded to enforce any right, power or remedy under this Security Agreement by sale, foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Director, then and in every case the Borrower and the Director shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of the Director shall continue as if no such proceeding had been taken.

**5.13 No Liability.** The Director shall have no liability for any loss, damage, injury, cost or expense resulting from any act or omission to act by the Director or officers, employees, agents or representatives of the Director or the State whether or not negligent, which has been taken or omitted in good faith pursuant to this Article, except that this Section 5.13 shall not apply to loss, damage, injury, cost or expense proximately caused by the Director's gross negligence or willful misconduct.

## **Section 6. Miscellaneous Provisions**

**6.1 Additional Security.** Without notice to or consent of the Borrower and without impairment of the pledge, lien and security interest and rights created or granted by this Security Agreement, the Director may accept from the Borrower or from any other Person additional security for the indebtedness secured by this Security Agreement. Neither the giving of this Security Agreement nor the acceptance of any such additional security shall prevent the Director from resorting, first, to such additional security, or first, to the

security created or granted by this Security Agreement, in either case without affecting the pledge, lien or security interest hereof and the rights conferred hereunder.

**6.2 Partial Release.** At the request of the Borrower, the Director may, at any time and from time to time, consent to, join in or permit a release of any part of the Collateral, subject to the provisions of Section 3.4 hereof. No such release shall impair in any manner the validity or, except as specifically provided in such release or grant, the priority of this Security Agreement, and no notice to other parties in interest, if any, shall be required.

**6.3 Release and Discharge.** If all sums payable by the Borrower under the Loan Documents shall have been irrevocably paid and the Borrower shall have complied with all the terms, conditions and requirements hereof and of the Note, the Loan Agreement and all other Loan Documents, then this Security Agreement shall be null and void and of no further force and effect. Upon the written request, and at the expense, of the Borrower, the Director will authorize, execute and deliver to the Borrower such proper instruments of release and discharge as may reasonably be requested to evidence such defeasance, release and discharge.

**6.4 Inspection.** Upon reasonable notice, the Director and the Director's officers, employees, agents and representatives are hereby authorized to enter upon the location of the Collateral and inspect the Collateral at any reasonable time during the term of this Security Agreement.

**6.5 Expenses.** The Borrower shall, to the extent permitted by law, promptly, upon demand, pay or reimburse the Director for all reasonable attorneys' fees, costs and expenses incurred by the Director in any proceedings involving the estate of a decedent, an insolvent or a debtor under federal bankruptcy law, or in any action, proceeding or dispute of any kind in which the Director is made a party, or appears as an intervenor or party plaintiff or defendant, affecting or relating to the Note, this Security Agreement, the Loan Agreement or any other Loan Document, the Borrower or any of the Collateral, including, but not limited to, foreclosure of or collection under this Security Agreement, any condemnation action involving the Collateral, or any action to protect the security hereof, and any such amounts paid by the Director shall, except as may be limited by law or judicial order or decision entered in any such action be added to the indebtedness secured hereby, be subject to the provisions of Section 1.8 hereof and bear interest at the Interest Rate for Advances from demand until paid.

**6.6 Estoppel Affidavits.** The Borrower, within 10 days after written request from the Director, shall furnish a written statement, duly acknowledged, setting forth the unpaid principal of, and interest and monthly service fee on, the indebtedness secured hereby and whether any credits or defenses exist against such principal and interest.

**6.7 No Merger.** It being the desire and intention of the parties hereto that the Security Agreement and the lien, pledge and security interest hereof do not merge in title to the Collateral, it is hereby understood and agreed that should the Director acquire any additional or other interests in or to the Collateral or the ownership thereof, then, unless a

contrary interest is manifested by the Director as evidenced by an appropriate document duly filed or recorded, this Security Agreement and the lien, pledge and security interest thereof shall not merge in the title of the Collateral, toward the end that this Security Agreement may be foreclosed as if owned by a stranger to the title to the Collateral.

**6.8 General Provisions.** This Security Agreement shall be deemed to be made under the laws of the State and for all purposes shall be governed by and construed in accordance with the laws of the State and shall inure to the benefit of and be binding upon the Borrower, the Director and their respective permitted successors and assigns. If any provision hereof is determined by a court to be invalid or unenforceable, such determination shall not affect any other provision, which shall be construed and enforced as if such invalid or unenforceable provision were not contained herein. Such invalidity or unenforceability shall not affect any valid and enforceable application thereof, and each such provision shall be deemed effective, operative, made, entered into or taken in the manner and to the full extent permitted by law. The captions or headings herein shall be solely for convenience of reference and in no way define, limit or describe the scope or intent of any provisions or sections of this Security Agreement or affect the meaning hereof. This Security Agreement may be executed in any number of counterparts (including by means of facsimile and pdf), each of which shall be deemed an original and each of which shall constitute but one and the same instrument; it shall not be necessary in proving this Security Agreement to produce or account for more than one such counterpart. This Security Agreement shall be deemed to have been prepared jointly by the parties hereto and any uncertainty or ambiguity existing herein shall not be interpreted against any party but shall be interpreted according to the rules for the interpretation of arm's length agreements.

**6.9 Amendments, Changes and Modifications.** Except as otherwise provided in this Security Agreement, this Security Agreement may not be amended, supplemented or terminated without the written consent of the Director.

**6.10 Waiver of Setoff.** All sums payable by the Borrower hereunder or under the Note and the other Loan Documents shall be paid without notice, demand, counterclaim, setoff, deduction or defense, and without abatement, suspension, deferment, diminution or reduction, and the obligations and liabilities of the Borrower hereunder shall in no way be released, discharged or otherwise affected, except as expressly provided herein, by reason of (a) any damage to or destruction of or any condemnation or similar taking, or transfer in lieu thereof, of the Collateral or any part thereof; (b) any restriction or prevention of or interference with any use of the Collateral or any part thereof; (c) any title defect or encumbrance or any eviction from the location of the Collateral or any part thereof by title paramount or otherwise; (d) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to the Borrower or any action taken with respect to this Security Agreement by any trustee or receiver of the Borrower, or by any court in such proceeding; (e) any claim which the Borrower has or might have against the Director; (f) any default or failure on the part of the Director to perform or comply with any of the terms hereof or of any other agreements pertaining to the lien, pledge and security interest on the Collateral with the Borrower; or (g) any other

occurrence whatsoever, whether similar or dissimilar to the foregoing, whether or not the Borrower shall have notice or knowledge of any of the foregoing. Except as expressly provided herein, the Borrower waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction of any sum secured hereby and payable by the Borrower.

**6.11 Brundage Clause.** In the event of the passage or enactment of any law, order, rule or regulation subsequent to the date hereof in any manner changing or modifying the laws now in force governing the taxation of mortgages or security agreements or debts secured by mortgages or security agreements or the manner of collecting taxes so as to affect adversely the Director, the Director may, at the Director's option, declare an Event of Default hereunder unless promptly upon such passage or enactment the Borrower assumes, in a manner satisfactory to the Director, the obligation to pay any taxes or other financial burdens imposed upon the Director.

**6.12 Notices.** All notices, certificates, requests or other communications hereunder shall be given in accordance with the Loan Agreement.

**6.13 Personalty.** The personal property which is part of Collateral shall be and remain personal property notwithstanding the manner in which it may be attached or affixed to real estate.

**6.14. Extent of Covenants of the Director: No Personal Liability.** All covenants, obligations and agreements of the Director contained in this Security Agreement and all other Loan Documents shall be effective to the extent authorized and permitted by applicable law. No such covenant, obligation or agreement shall be deemed to be a covenant, obligation or agreement of any present or future Director in other than such Director's official capacity acting pursuant to the Act. The powers conferred on the Director hereunder are solely to protect his interests in the Collateral and shall not impose any duty upon him to exercise any such powers. The Director shall be accountable only for amounts that he actually receives as a result of the exercise of such powers, and neither he nor any of his officers, directors, employees or agents shall be responsible to the Borrower for any act or failure to act, except for his own gross negligence or willful misconduct, as determined in a final judgment by a court of competent jurisdiction. Except as otherwise provided in this Security Agreement, THE BORROWER HEREBY WAIVES, TO THE EXTENT PERMITTED BY APPLICABLE LAW, NOTICE AND JUDICIAL HEARING IN CONNECTION WITH THE DIRECTOR'S TAKING POSSESSION OR THE DIRECTOR'S DISPOSITION OF ANY OF THE COLLATERAL, INCLUDING, WITHOUT LIMITATION, ANY AND ALL PRIOR NOTICE AND HEARING FOR ANY PREJUDGMENT REMEDY OR REMEDIES AND ANY SUCH RIGHT WHICH THE BORROWER WOULD OTHERWISE HAVE UNDER THE CONSTITUTION OR ANY STATUTE OF THE UNITED STATES OR OF ANY STATE, and the Borrower hereby further waives, to the extent permitted by law:

- (a) all damages occasioned by such taking of possession except any damages which are the direct result of the Director's gross negligence or willful misconduct;

- (b) all other requirements as to the time, place and terms of sale or other requirements with respect to the enforcement of the Director's rights hereunder; and
- (c) all rights of redemption, appraisalment, valuation, stay, extension or moratorium now or hereafter in force under any applicable law in order to prevent or delay the enforcement of this Security Agreement or the absolute sale of the Collateral or any portion thereof, and the Borrower for itself and all who may claim under it, insofar as it or they now or hereafter lawfully may, hereby waives the benefit of all such laws.

Any sale of, or the grant of options to purchase, or any other realization upon, any Collateral shall operate to divest all right, title, interest, claim and demand, either at law or in equity, of the Borrower therein and thereto, and shall be a perpetual bar both at law and in equity against the Borrower and against any and all persons claiming or attempting to claim the Collateral so sold, optioned or realized upon, or any part thereof, from, through and under the Borrower.


**6.15 WAIVER OF JURY TRIAL.** THE BORROWER AND THE DIRECTOR, AFTER CONSULTING OR HAVING HAD THE OPPORTUNITY TO CONSULT WITH COUNSEL, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT EITHER OF THEM MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION BASED UPON OR ARISING OUT OF THIS SECURITY AGREEMENT, THE NOTE, THE LOAN DOCUMENTS, OR ANY RELATED INSTRUMENT OR AGREEMENT, OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREBY, OR ANY COURSE OF CONDUCT, DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN), OR ACTIONS OF ANY OF THEM. THIS WAIVER SHALL NOT IN ANY WAY AFFECT THE DIRECTOR'S ABILITY TO PURSUE REMEDIES PURSUANT TO ANY CONFESSION OF JUDGMENT OR COGNOVIT PROVISION CONTAINED IN THE NOTE, IN ANY LOAN DOCUMENT OR ANY RELATED INSTRUMENT OR AGREEMENT. NEITHER THE BORROWER NOR THE DIRECTOR SHALL SEEK TO CONSOLIDATE, BY COUNTERCLAIM OR OTHERWISE, ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. THESE PROVISIONS SHALL NOT BE DEEMED TO HAVE BEEN MODIFIED IN ANY RESPECT OR RELINQUISHED BY THE BORROWER OR THE DIRECTOR EXCEPT BY A WRITTEN INSTRUMENT EXECUTED BY BOTH OF THEM.

**6.16. Jurisdiction.** THE BORROWER IRREVOCABLY (A) SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS HAVING JURISDICTION IN THE CITY OF COLUMBUS, COUNTY OF FRANKLIN AND STATE OF OHIO, AND (B) WAIVES ANY OBJECTION WHICH IT MAY HAVE AT ANY TIME TO THE LAYING OF VENUE OF ANY PROCEEDING BROUGHT IN ANY SUCH COURT, WAIVES ANY CLAIM THAT ANY PROCEEDING HAS BEEN BROUGHT IN AN INCONVENIENT FORUM AND FURTHER WAIVES THE RIGHT TO OBJECT, WITH RESPECT TO SUCH PROCEEDING, THAT SUCH COURT DOES NOT HAVE JURISDICTION OVER SUCH PARTY. NOTHING IN THIS SECURITY

AGREEMENT SHALL PRECLUDE THE DIRECTOR FROM BRINGING A PROCEEDING IN ANY OTHER JURISDICTION NOR WILL THE BRINGING OF A PROCEEDING IN ANY ONE OR MORE JURISDICTIONS PRECLUDE THE BRINGING OF A PROCEEDING IN ANY OTHER JURISDICTION. THE BORROWER FURTHER AGREES AND CONSENTS THAT, IN ADDITION TO ANY METHODS OF SERVICE OF PROCESS PROVIDED FOR UNDER APPLICABLE LAW, ALL SERVICE OF PROCESS IN ANY PROCEEDING IN ANY OHIO STATE OR UNITED STATES COURT SITTING IN THE CITY OF COLUMBUS AND COUNTY OF FRANKLIN MAY BE MADE BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, DIRECTED TO THE BORROWER AT ITS NOTICE ADDRESS, AND SERVICE SO MADE SHALL BE COMPLETE UPON RECEIPT; EXCEPT THAT IF THE BORROWER SHALL REFUSE TO ACCEPT DELIVERY, SERVICE SHALL BE DEEMED COMPLETE FIVE (5) DAYS AFTER THE SAME SHALL HAVE BEEN SO MAILED.

The Director and the Borrower have executed this Security Agreement as of the date first above written.

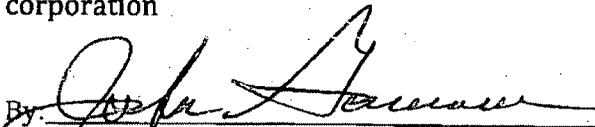
Director of the Ohio Development Services  
Agency, acting on behalf of the State of Ohio

By: 

Name: Ryan D. Burgess

Title: Assistant Director

Blue Spark Technologies, Inc., an Ohio  
corporation

By: 

Name: John Gannon

Title: CEO



**SCHEDULE A**

(to Security Agreement between the Director of the Ohio Development Services Agency  
and Blue Spark Technologies, Inc. dated October \_\_, 2013)

**Blue Spark Technologies Patents and Patent Applications as of August 9, 2013**

Title	Country	Application No.	Filing Date	Status
Thin Printable Flexible Electrochemical Cell and Method of Making Same	Europe	05738396.0	April 21, 2005	Pending
Thin Printable Flexible Electrochemical Cell and Method of Making Same	Hong Kong	07108448.4	April 21, 2005	Pending
Thin Printable Flexible Electrochemical Cell and Method of Making Same	Japan	2007-509672	April 21, 2005	Issued as Pat. No. 4996456 on May 18, 2012
Thin Printable Flexible Electrochemical Cell and Method of Making Same	South Korea	10-2006-7021980	April 21, 2005	Issued as Pat. No. 10-1220575 on January 3, 2013
Thin Printable Electrochemical Cell and Methods of Making the Same	South Korea	10-2012-7013117	May 21, 2012	Allowed
Thin Printable Flexible Electrochemical Cell and Method of Making Same	US	11/110,202	April 20, 2005	Pending
Thin Printable Electrochemical Cell Utilizing a "Picture Frame" and Methods of Making the Same	Europe	06739079.9	March 21, 2006	Pending
Thin Printable Electrochemical Cell Utilizing a "Picture Frame" and Methods of Making the Same	Japan	2008-503084	March 21, 2006	Issued as Pat. No. 5255432 on April 26, 2013
Thin Printable Electrochemical Cell Utilizing a "Picture Frame" and Methods of Making the Same	South Korea	10-2007-7024295	March 21, 2006	Issued as Pat. No. 10-1238939 on 2/25/2013
Thin Printable Electrochemical Cell and Methods of Making the Same	South Korea	10-2012-7024947	September 24, 2012	Issued as Pat. No. 10-1239054 on 2/25/2013
Thin Printable Electrochemical Cell Utilizing a "Picture Frame" and Methods of Making the Same	US	11/378,520	March 17, 2006	Issued as U.S. Pat. No. 8,029,927 on October 4, 2011
Thin Printable Electrochemical Cell and Methods of Making the Same	US	13/223,845	September 1, 2011	Issued as U.S. Pat. No. 8,268,475 on 9/18/2012
RFID Antenna-Battery Assembly and the Method to Make the Same	US	11/379,816	April 24, 2006	Pending
Electrical Device-Battery Assembly and the Method to	US	13/455,308	April 25, 2012	Pending



Title	Country	Application No.	Filing Date	Status
Make the Same				
Integrated Electronic Device and Methods of Making the Same	Europe	08762079.1	July 18, 2008	Pending
Integrated Electronic Device and Methods of Making the Same	US	12/669,067	January 14, 2010	Issued as U.S. Pat. No. 8,441,411 on 5/14/2013
High Current Thin Electrochemical Cell and Methods of Making the Same	Germany	08868145.7	December 18, 2008	Issued as Patent No. 2235773 on 5/8/2013
High Current Thin Electrochemical Cell and Methods of Making the Same	Finland	08868145.7	December 18, 2008	Issued as Patent No. 2235773 on 5/8/2013
High Current Thin Electrochemical Cell and Methods of Making the Same	United Kingdom	08868145.7	December 18, 2008	Issued as Patent No. 2235773 on 5/8/2013
High Current Thin Electrochemical Cell and Methods of Making the Same	Japan	2010-539800	December 18, 2008	Pending
High Current Thin Electrochemical Cell and Methods of Making the Same	South Korea	10-2010-7015828	December 18, 2008	Pending
High Current Thin Electrochemical Cell and Methods of Making the Same	US	12/809,844	June 21, 2010	Allowed
Irreversible Circuit Activation Switch	US	13/075,620	March 30, 2011	Pending
Cell Attachment Method	US	13/625,366	September 24, 2012	Pending
Cell Attachment Method	WO	PCT/US12/56899	September 24, 2012	Pending
Multi-Cell Battery	US	13/899,291	May 21, 2013	Pending
Multi-Cell Battery	WO	PCT/US13/42079	May 21, 2013	Pending
Body Temperature Logging Patch	US	13/926,508	June 25, 2013	Pending
Body Temperature Logging Patch	WO	PCT/US13/47618	June 25, 2013	Pending
Battery Cell Construction	US	61/730,083	November 27, 2012	Pending

\*For (i) trademarks and tradenames, show the trademark or tradename itself, the registration date and the registration number; (ii) trademark and tradename applications, show the trademark and tradename applied for, the application filing date and the serial number of the application; (iii) patents, show the patent number, issue date and a brief description of the subject matter of the patent; (iv) patent applications, show the serial number of the application, the application filing date and a brief description of the subject matter of the patent applied for, and (v) domain names, show domain name and expiration date. Any licensing agreements for patents, trademarks, tradenames, or domain names should also be described.

**SCHEDULE A**

(to Security Agreement between the Director of the Ohio Development Services Agency and Blue Spark Technologies, Inc. dated October \_\_\_\_, 2013)

**Blue Spark Technologies Trademarks as of August 9, 2013**

Mark	Country	Application No.	Filed	Status
POWERING INNOVATION	US	78/760,422	February 6, 2007	Registered as Reg. No. 3,205,428 on 2/6/2007
BLUE SPARK	US	85/091,776	July 23, 2010	Registered as Reg. No. 4,043,065 on 10/18/2011
	US	85/091,788	July 23, 2010	Registered as Reg. No. 4,050,338 on 11/1/2011
 blue spark	US	85/091,842	July 23, 2010	Registered as Reg. No. 4,043,066 on 10/18/2011
CRUTAG	US	85/824,240	January 16, 2013	Allowed

**SCHEDULE A**

(to Security Agreement between the Director of the Ohio Development Services Agency and Blue Spark Technologies, Inc. dated October \_\_, 2013)

**Patents and Patent Applications Licensed by Blue Spark Technologies as of August 9, 2013**

Title	Country	Application No.	Filing Date	Status
Flexible Thin Printed Battery	Belgium	02806817.9	December 17, 2002	Issued as Pat. No. 1485960 on June 29, 2011
Flexible Thin Printed Battery with Gelled Electrolyte and Method of Manufacturing Same	Belgium	10178889.1	December 17, 2002	Issued as Pat No. 2276092 on February 13, 2013
Flexible Thin Printed Battery with Gelled Electrolyte and Method of Manufacturing Same	Canada	2513454	December 17, 2002	Pending
Flexible Thin Printed Battery and Device and Method of Manufacturing Same	China	02828739	December 17, 2002	Issued as Pat No. 100367539 on February 6, 2008
Flexible Thin Printed Battery	Finland	02806817.9	December 17, 2002	Issued as Pat. No. 1485960 on June 29, 2011
Flexible Thin Printed Battery with Gelled Electrolyte and Method of Manufacturing Same	Finland	10178889.1	December 17, 2002	Issued as Pat No. 2276092 on February 13, 2013
Flexible Thin Printed Battery	France	02806817.9	December 17, 2002	Issued as Pat. No. 1485960 on June 29, 2011
Flexible Thin Printed Battery with Gelled Electrolyte and Method of Manufacturing Same	France	10178889.1	December 17, 2002	Issued as Pat No. 2276092 on February 13, 2013
Flexible Thin Printed Battery	Germany	02806817.9	December 17, 2002	Issued as Pat. No. 1485960 on June 29, 2011
Flexible Thin Printed Battery with Gelled Electrolyte and Method of Manufacturing Same	Germany	10178889.1	December 17, 2002	Issued as Pat No. 2276092 on February 13, 2013
Flexible Thin Printed Battery	Hong Kong	05103926.8	May 10, 2005	Issued as Pat. No. HK1071231 on September 16, 2011
Flexible Thin Printed Battery with Gelled Electrolyte and Method of Manufacturing Same	Hong Kong	11103480.8	April 6, 2011	Issued as Pat. No. HK1149371 on June 28, 2013

Title	Country	Application No.	Filing Date	Status
Flexible Thin Printed Battery and Device and Method of Manufacturing Same	India	2119/DELNP/2004	July 21, 2004	Pending
Flexible Thin Printed Battery and Device and Method of Manufacturing Same	India	To be determined	To be determined	Pending
Carbon Zinc Electrode Comprising a Zinc Anode Printed on a Non-Conductive Substrate Contained in a Sealed Housing	Israel	163141	December 17, 2002	Issued as Pat. No. 163141 on May 18, 2010
Flexible Thin Printed Battery and Device and Method of Manufacturing Same	Japan	2003-568714	December 17, 2002	Issued as Pat. No. 5021889 on June 22, 2012
Flexible Thin Printed Battery and Device and Method of Manufacturing Same	Japan	2009-265074	November 20, 2009	Issued as Pat. No. 5066158 on August 17, 2012
Flexible Thin Printed Battery and Device and Method of Manufacturing Same	South Korea	10-10-7008084	December 17, 2002	Issued as Pat. No. 10-0980355 on August 31, 2010
Flexible Thin Printed Battery	United Kingdom	02806817.9	December 17, 2002	Issued as Pat. No. 1485960 on June 29, 2011
Flexible Thin Printed Battery with Gelled Electrolyte and Method of Manufacturing Same	United Kingdom	10178889.1	December 17, 2002	Issued as Pat No. 2276092 on February 13, 2013
Flexible Thin Printed Battery and Device and Method of Manufacturing Same	US	10/321,182	December 17, 2002	Issued as Pat. No. 7,348,096 on March 25, 2008
Flexible Thin Printed Battery and Device and Method of Manufacturing Same	US	11/332,635	January 12, 2006	Issued as Pat. No. 7,625,664 on December 1, 2009
Flexible Thin Printed Battery and Device and Method of Manufacturing Same	US	12/603,114	October 21, 2009	Issued as Pat. No. 7,727,290 on June 1, 2010
Flexible Thin Printed Battery and Device and Method of Manufacturing Same	US	13/185,048	July 18, 2011	Issued as Pat No. 8,119,278 on February 21, 2012
Flexible Thin Printed Battery and Device and Method of Manufacturing Same	US	13/348,080	January 11, 2012	Pending

**SCHEDULE A**  
 (to Security Agreement between the Director of the Ohio Development Services Agency  
 and Blue Spark Technologies, Inc. dated October \_\_, 2013)

**Domain Names of Blue Spark Technologies**

<u>Domain Name</u>	<u>Expiration Date</u>
bluespark.com	4/3/2014
bluespark.us.com	4/3/2014
bluesparktech.com	4/3/2014
bluesparktech.net	4/3/2014
bluesparktech.us.com	4/3/2014
bluesparktechnologies.com	4/3/2014
bluesparktechnologies.net	4/3/2014
bluesparktechnologies.us.com	4/3/2014
bluesparktechnology.com	4/3/2014
bluesparktechnology.net	4/3/2014
bluesparktechnology.us.com	4/3/2015
bluespark.com	4/3/2014
thinbattery.com	1/21/2014
thinbattery.net	1/25/2014
thinbatterytechnologies.com	1/21/2014
thinbatterytechnologies.net	1/25/2014

**SCHEDULE B**

(to Security Agreement between the Director of the Ohio Development Services Agency  
and Blue Spark Technologies, Inc., dated October \_\_, 2013)

Deposit Accounts

[TO BE SUPPLIED BY BORROWER]

**SCHEDULE C**

(to Security Agreement between the Director of the Ohio Development Services Agency  
and Blue Spark Technologies, Inc., dated October \_\_, 2013)

Commercial Tort Claims

[TO BE OBTAINED BY BORROWER]