Waiting for Connected Transmittal Letter

First City National Bank of Beaumont

505 Orleans
P.O. Box 3391
Beaumont, Texas 77704
(409) 838-9258

J Larry Porter, III Vice President

RECORDATION NO. 15210 Filed & Recorded

APR 16 1987 2-45 PM

INTERSTATE COMMERCE COMMISSION

FIRSTCITY

Date 4/16/87
Fee $ 10.00
ICC Washington, D. C.

April 9, 1987

Interstate Commerce Commission
Twelfth Street and Constitution
Avenue, N.W.
Documents for Recordation, Rm 2303
Washington, D.C. 20423

Attn: Room 2303

Dear Secretary:

I have enclosed an original and one copy of the document described below, to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code.

This document is a security agreement, a primary document, dated March 31, 1987.

The names and addresses of the parties to the documents are as follows:

Bank: First City National Bank of Beaumont
Post Office Box 3391
Beaumont, Texas 77704
Attn: Mr. Barry Zerkle

Borrower: Texas TX TX Marine Transportation, Inc.
Post Office Box 2866
Port Arthur, Texas 77643

A description of the equipment covered by the document follows:

Type of Equipment:	Diesel Electric-Locomotives
AAR Designation:	CS-7 124 Ton 1500 Horsepower EMD Locomotive 0440, no lead wheels, 8 drive wheels, no trailing wheels

Identifying Marks:	Econo-Rail Corp. Serial #2593, 2602, 2642 & 2560
Number of Cars:	Four

A fee of $10.00 is enclosed. Please return the original and any extra copies not needed by the Commission for recordation with evidence of recordation to:

Mr. Barry Zerkle
First City National Bank of Beaumont
Post Office Box 3391
Beaumont, Texas 77704

A short summary of the document to appear in the index follows:

Security Agreement between:	First City National Bank of Beaumont Post Office Box 3391 Beaumont, Texas 77704
and	Texas TX TX Marine Transportation, Inc. Post Office Box 2866 Port Arthur, Texas 77643
Covering:	Four CS-7 124 Ton 1500 Horsepower EMD Locomotive 0440, no lead wheels, 8 drive wheels, no trailing wheels

Sincerely,

Barry L. Zerkle
Senior Vice President

BLZ/cct

Enclosures

Interstate Commerce Commission
Washington, D.C. 20423

4/16/87

OFFICE OF THE SECRETARY

Barry Zerkle
First City National Bank Of Beaumont
P.O.Box 339]
Beaumont,Texas 77704

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act,49 U.S.C. 11303, on 4/16/87 at 2:45pm , and assigned re-recordation number(s).15210

Sincerely yours,

Noreta R. McGee
Secretary

Enclosure(s)

SE-30
(7/79)

First City National Bank of Beaumont

505 Orleans
P.O. Box 3391
Beaumont, Texas 77704
(409) 838-9250

Barry L Zerkle

Senior Vice President

4/16/87
100.00

FIRSTCITY Washington, D. C.

April 16, 1987

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Beaumont, Texas 77704
Attn: Mr. Barry Zerkle

Borrower: Econo-Rail Corp.
P. O. Box 2701
Port Arthur, Texas 77643

A description of the equipment covered by the document follows:

Type of Equipment:	Diesel Electric-Locomotives
AAR Designation:	CS-7 124 Ton 1500 Horsepower EMD Locomotive 0440, no lead wheels, 8 drive wheels, no training wheels

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Covering:	Four CS-7 124 Ton 1500 Horsepower EMD Locomotive 0440, no lead wheels, 8 drive wheels, no training wheels

Sincerely,

Barry L. Zerkle
Senior Vice President

BLZ/cct

Enclosures

First City National Bank of Beaumont

505 Orleans
P.O. Box 3391
Beaumont, Texas 77704
(409) 838-9250

Barry L Zerkle — Senior Vice President

FIRSTCITY™

April 16, 1987

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Sincerely,

Barry L. Zerkle
Senior Vice President

BLZ/cct

Enclosures

FIRSTCITY™

SECURITY AGREEMENT
Equipment and Other Property

March 31, 19 87

RECORDATION NO. 15210 Filed & Recorded
APR 16 1987 2-45 PM
INTERSTATE COMMERCE COMMISSION

Section 1 **Security Interest.**

1 01 Debtor (Name and Address)

ECONO-RAIL CORP.
P. O. BOX 2701
PORT ARTHUR TEXAS 77643

Secured Party

FIRST CITY NATIONAL BANK OF BEAUMONT
505 ORLEANS
BEAUMONT, TX 77701

1 02 The Obligations secured by this Security Agreement are those of Debtor and, if of someone else, of _____.

1 03 **Collateral.** The Collateral shall include all property referred to in the definition of "Collateral" in Section 2 04, and specifically shall include, without limitation, one or more of the following items which are checked or otherwise indicated to be included

☒ (a) All of Debtor's N/A
N/A
N/A
including, without limitation, any equipment or other goods specified in subsection 1 03 (b)

☒ (b) The following equipment or other goods

INITIAL N.S.

Description	Location
FOUR (4) GENERAL MOTOR - ELECTRO-MOTIVE DIVISION MODEL CF-7 1500 HP ROAD SWITCHERS SERIAL #2593, 2602, 2642 AND 2560	
CS-7 124 Ton 1500 Horsepower EMD Locomotive 0440, no lead wheels, 8 drive wheels, no trailing wheels.	

☐ (c) Equipment used in farming operations, or farm products, or accounts or general intangibles arising from or related to the sale of farm products by a farmer

☐ (d) Goods used or bought for use primarily for personal, family or household purposes

☐ (e) Goods held by Debtor for sale or lease or furnished or to be furnished under contracts of service, or, if such goods are raw materials, work in progress or materials used or consumed in a business

☐ (f) Goods which are mobile and which are of a type normally used in more than one jurisdiction

☐ (g) Goods which may be affixed to other real or personal property

☐ (h) Goods which are covered by or subject to any certificate of title, document of title, warehouse receipt or other document Such certificates, documents or receipts are a part of the Collateral and include, without limitation, the following N/A
N/A
N/A

1 04 With respect to any Collateral which is not covered by a certificate of title or other document evidencing ownership thereof, such Collateral is located or shall be located only in the following states or foreign countries N/A
N/A
N/A
N/A

1 05 If any Collateral is or will become attached or affixed to any real or personal property not subject to this Security Agreement, such other real or personal property is owned and described as follows _____
Owner N/A
Description N/A
N/A
N/A

1.06 Debtor hereby grants to Secured Party a security interest in, general lien upon, and right of set-off against the Collateral to secure the Obligations, and the performance by Debtor of all the terms and agreements of Debtor pursuant to this Security Agreement or of any Obligor in connection with the transaction giving rise to this Security Agreement

Section 2 **Definitions**

2 01 "Debtor" shall mean the party described as Debtor in Section 1 01, and "Secured Party" shall mean the party described as Secured Party in Section 1.01

2 02 "Obligations" shall mean all present and future loans, advances, liabilities, obligations, covenants, duties and indebtedness of Debtor and/or any other person or entity described in Section 1 02 to Secured Party, and any and all renewals, extensions for any period, rearrangements or enlargements thereof, whether evidenced by any note or other instrument or agreement, whether arising by an extension of credit, letter of credit, overdraft, endorsement, loan, guaranty, indemnification or otherwise, whether direct or indirect, including, without limitation, any of the foregoing acquired by assignment or participation, absolute or contingent, due or to become due The Obligations shall also include all interest, charges, expenses, attorneys' or other fees and any other sums incurred by Secured Party in connection with the execution, administration or enforcement of Secured Party's rights and remedies hereunder, or under any other agreement with Debtor and/or with any other person or entity described in Section 1 02

2 03 "General Intangibles" shall mean all personal property other than goods, accounts, chattel paper, documents, instruments and money. Such personal property (excluding the other property referred to in the preceding sentence) shall include, without limitation, all (i) contractual rights, rights to performance, and claims for damages, refunds (including tax refunds) or other monies due or to become due, (ii) orders, franchises, permits, certificates, licenses, consents, exemptions, variances, authorizations or other approvals by any governmental agency or court, (iii) consulting, engineering and technological information and specifications, design data, patent rights, trade secrets, literary rights, copyrights, trademarks, labels, trade names and other intellectual property, (iv) business records, computer tapes and computer software, (v) goodwill and (vi) all other intangible personal property, whether similar or dissimilar to the foregoing

2 04 "Collateral" shall mean (i) all property, wherever located, referred to in Section 1 03 (by checking or writing in any blank space provided therein), (ii) in the event that subsection 1 03(b) has not been checked or otherwise marked in the blank space provided therein, all Debtor's equipment as well as any other items which are checked or otherwise indicated to be included in the Collateral, (iii) all General Intangibles related to any property referred to in Section 1 03 or this Section 2 04, (iv) any related or additional property from time to time delivered to or deposited with Secured Party by or for the account of Debtor, (v) all certificates of title or other documents evidencing ownership or possession of or otherwise relating to any property referred to

THIS SECURITY AGREEMENT INCLUDES PROVISIONS ON THE REVERSE SIDE OF THIS PAGE AND ON ADDITIONAL PAGES, ALL OF WHICH ARE PART OF THIS SECURITY AGREEMENT

DEBTOR

✓ECONO-RAIL CORP.
By Nita Scott
Name NITA SCOTT PRESIDENT
Title _____

Judith M. Pietz
JUDITH M. PIETZ, Notary Public in and for Jefferson County, TEXAS

C1101
Rev 9/84

in Section 1.03 or this Section 2.04; (vi) all property in any state or condition used or usable in connection with any property referred to in Section 1.03 or this Section 2.04; (vii) all policies of insurance (whether or not required by Secured Party) covering any property referred to in Section 1.03 or this Section 2.04; (viii) all proceeds, products, replacements, additions to, substitutions for, accessions of, and property necessary for the operation of any of the foregoing, including, without limitation, insurance payable as a result of loss or damage to the foregoing property and any proceeds thereunder, refunds of unearned premiums of any such insurance policy, and claims against third parties; (ix) all books and records related to any of the foregoing; and (x) any of the aforementioned Collateral hereafter acquired by Debtor as well as Collateral which Debtor now owns or in which Debtor otherwise has rights. As may be applicable, the security interest hereunder shall attach to after-acquired consumer goods only to the extent permitted by Section 9.204(b) of the Code.

2.05 "Event of Default" shall mean any event specified in Section 5.

2.06 "Obligor" shall mean any party other than Debtor (whether or not described in Section 1.02) liable to Secured Party for the payment or performance of any of the Obligations or of any obligations or undertakings included in the Collateral, whether as an account debtor, obligor on an instrument, issuer of securities, guarantor or otherwise. In the event that Debtor is not the party receiving funds pursuant to loan advances or other extensions of credit which comprise all or part of the Obligations, "Obligor" as used in this Security Agreement includes, without limitation, the party receiving such funds.

2.07 "Highest Lawful Rate" shall mean the maximum rate of nonusurious interest allowed from time to time by applicable law.

2.08 "Code" shall mean the Uniform Commercial Code as presently in effect in the State of Texas, Texas Business and Commerce Code, Chapters 1 through 9. Except as otherwise defined or indicated by the context herein, all terms which are defined in the Code shall have their respective meanings as used in Chapter 9 of the Code.

Section 3. **Debtor's Representations, Warranties and Agreements.**

3.01 Unless otherwise agreed to in writing by Secured Party, Debtor owns the Collateral free and clear of any interest of any other party and has full right, power and authority to grant a security interest in the Collateral. No dispute, right of set-off, counterclaim or defense exists with respect to any part of the Collateral. Debtor shall defend the Collateral against all claims and demands of all persons at any time claiming the same or any interest therein adverse to Secured Party. The execution, delivery and performance of this Security Agreement will not violate the terms of any contract, agreement, law, regulation, order, injunction, judgment, decree or writ to which Debtor is subject and does not require the consent or approval of any other party. Debtor is not in default with respect to any agreement to which Debtor is a party or is bound.

3.02 Debtor is in compliance with all necessary governmental requirements, laws, regulations, orders, injunctions, judgments, decrees and writs, and Debtor possesses adequate assets, capital, licenses, patents, patent applications, copyrights, trademarks and/or trade names for the conduct of Debtor's business and the use of the Collateral and the enforcement of Debtor's rights with respect thereto (including, without limitation, any requirements for qualification to do business in any jurisdiction). Debtor is in full compliance with any requirements of the Employee Retirement Security Act of 1974 ("ERISA").

3.03 No financing statement or other public notice or recording covering the Collateral is on file in any public office (other than any financing statement or other public notice or recording naming Secured Party as the secured party therein), and Debtor will not execute any such financing statement or other public notice or recording so long as any of the Obligations are outstanding. No security interest other than the one herein created has attached or been perfected in the Collateral or in any part thereof.

3.04 Debtor has not, during the preceding five (5) years, entered into any contract, agreement, security instrument or other document using a name other than, or been known by or otherwise used any name other than, the name used by Debtor herein.

3.05 Debtor's chief executive office or residence (as applicable) and Debtor's records concerning the Collateral are located at the address or location(s) set forth in Section 1.

3.06 Any information supplied or statement made by Debtor to Secured Party in connection with the Obligations or the Collateral (either prior or subsequent to the execution of this Security Agreement) is or (in the case of subsequently furnished information) shall be true, correct, complete, valid and genuine. There has been no material adverse change in any such information since the time it was supplied by Debtor to Secured Party, except such changes which have been disclosed in writing to Secured Party. The delivery at any time by Debtor to Secured Party of Collateral or of additional specific descriptions of certain Collateral shall constitute a representation and warranty by Debtor or Secured Party hereunder that the representations and warranties of this Section 3 are true and correct with respect to each item of Collateral.

3.07 There is no pending or threatened litigation, arbitration, or other action or proceeding which would materially and adversely affect any aspect of Debtor's business or the Collateral. Debtor is not subject to any labor dispute, and no labor contract to which Debtor is a party is scheduled to expire during the term of this Security Agreement.

3.08 Except for Collateral consisting of mobile goods, any Collateral not located at Debtor's address set forth in Section 1.01 is at the location(s) specified in Sections 1.03, 1.04 and 1.05. Any Collateral not at such location(s) nevertheless remains subject to Secured Party's security interest.

3.09 With respect to Collateral covered by one or more certificates of title or other documents evidencing ownership or possession thereof, each of such certificates or documents has been delivered to Secured Party.

Section 4. **Covenants and Agreements.**

4.01 Debtor will notify Secured Party on or before the date of any change in location of the Collateral. Debtor will give Secured Party thirty (30) days' prior written notice of (a) the opening or closing of any place of Debtor's business or (b) any change in the location of Debtor's residence, chief executive office or address.

4.02 Debtor will not change its name, identity or structure without notifying Secured Party of such change in writing at least thirty (30) days prior to the effective date of such change. Without the express written consent of Secured Party, however, Debtor will not engage in any other business or transaction under any name other than Debtor's name hereunder.

4.03 If certificates of title or other documents evidencing ownership or possession of the Collateral are issued or outstanding, Debtor will cause the interest of Secured Party to be properly noted thereon and will, forthwith upon receipt, deliver same to Secured Party. If any Collateral is at any time in the possession or control of any warehouseman, bailee, agent or independent contractor, Debtor shall notify such person of Secured Party's security interest in such Collateral. Upon Secured Party's request, Debtor shall instruct any such person to hold all such Collateral for Secured Party's account subject to Debtor's instructions, or, if an Event of Default shall have occurred, subject to Secured Party's instructions.

4.04 If Debtor is a corporation, Debtor will maintain Debtor's corporate existence and remain in good standing and qualified to do business in all jurisdictions pursuant to the laws of which it is so required. If Debtor is a partnership, Debtor will maintain its existence as a partnership in its form as of the date hereof.

4.05 Except as may be elsewhere expressly permitted by this Security Agreement or by Secured Party's prior written consent, Debtor will not in any way encumber any of the Collateral (or permit or suffer any of the Collateral to be encumbered) or sell, assign, lend, rent, lease or otherwise dispose of or transfer any of the Collateral to or in favor of any party other than Secured Party.

4.06 Debtor will deliver to Secured Party promptly upon receipt all proceeds delivered to Debtor from the sale or disposition of the Collateral. If chattel paper, documents or instruments are received as proceeds, they will be properly endorsed or assigned and delivered to Secured Party as Collateral. This subsection shall not be construed to permit sales or dispositions of Collateral except as may be elsewhere expressly permitted by this Security Agreement.

4.07 Debtor agrees that if Secured Party should at any time be of the opinion that the Collateral is no longer sufficient to collateralize the Obligations (including, without limitation, a determination based upon such ratio of the cost or value of Collateral to the amount of Obligations as may be established by Secured Party), or if Secured Party anticipates such insufficiency, then Secured Party may request and Debtor promises to furnish forthwith such additional security as may be necessary to cure Secured Party's insecurity regarding the Obligations.

4.08 Debtor agrees to pay prior to delinquency all taxes, charges, liens and assessments against the Collateral, and upon the failure of Debtor to do so, Secured Party at its option may pay any of them and shall be the sole judge of the legality or validity thereof and the amount necessary to discharge the same. Any such payment by Secured Party shall become part of the Obligations secured hereunder and shall be paid to Secured Party by Debtor immediately and without demand, with interest thereon at the Highest Lawful Rate.

4.09 Debtor shall keep accurate and complete records of the Collateral (including proceeds). Secured Party may at any time have access to, examine, audit, make extracts from and inspect without hindrance or delay Debtor's records, files and the Collateral. Debtor will transmit to Secured Party promptly all information which in any way relates to or affects (a) the filing of any financing statements or other public notices or recordings or the delivery and possession of items of Collateral for the purpose of perfecting a security interest in the Collateral; or (b) the business, affairs or financial condition of Debtor in a material and adverse manner; or (c) as Secured Party may reasonably request, the Collateral or Secured Party's rights or remedies with respect thereto, or any aspect of Debtor's business. Any balance sheets or financial statements requested by Secured Party pursuant to this Section 4.09 shall conform to generally accepted accounting principles, except for changes in accounting principles or practices with which independent public accountants concur.

4.10 Debtor will promptly and properly perform all obligations under any other agreement or contract of any kind now or hereafter existing as security for or in connection with the payment of the Obligations.

4.11 Debtor agrees to pay to Secured Party all advances, charges, costs and expenses (including, without limitation, all costs and expenses of retaking, holding, preparing for sale and selling or otherwise realizing upon Collateral in the event of any default by Debtor and all attorneys' fees, legal expenses and court costs) incurred by Secured Party in connection with the transaction which gives rise to this Security Agreement or the exercise of Secured Party's rights and remedies hereunder. Debtor hereby assumes all liability for the Collateral, the security interest, and for any use, possession, maintenance and management of any or all of the Collateral and agrees to assume liability for, and to indemnify and hold Secured Party harmless in that connection from and against any and all claims, causes of action, or liabilities for injuries to or deaths of persons and for damage to property. Debtor agrees to indemnify and hold Secured Party harmless from and against and covenants to defend Secured Party against, any and all losses, damages, claims, costs, penalties, liabilities and expenses, including, without limitation, court costs and attorneys' fees incurred because of, incident to, or with respect to the Collateral or any use, possession, maintenance or management thereof. All amounts for which Debtor is liable pursuant to this Section 4.11 shall be due and payable by Debtor to Secured Party upon demand. If Debtor fails to make such payment upon demand, Secured Party may pay such amount and the same shall be due and payable by Debtor to Secured Party, together with interest accruing thereon at the Highest Lawful Rate.

4.12 Debtor agrees that upon the request of Secured Party, Debtor shall (at Debtor's expense) execute and deliver all such assignments, certificates, financing statements or other documents and give further assurances and do all other acts and things as Secured Party may reasonably request to perfect Secured Party's interest in the Collateral or to protect, enforce, or otherwise affect Secured Party's rights and remedies hereunder. If Debtor is unable or unwilling to sign such other assignments, certificates, financing statements or other documents and to file financing statements or other public notices or recordings with the appropriate authorities, as and when reasonably requested by Secured Party, Debtor hereby authorizes Secured Party to sign as Debtor's true and lawful agent and attorney-in-fact, any such assignment, certificate, financing statement or other document and to make any such filing.

4.13 Debtor shall maintain with financially sound and reputable insurers, insurance satisfactory in all respects to Secured Party covering all insurable risks to the Collateral, including standard extended coverage, in an amount at least equal to the value of the Collateral. Policies evidencing any such insurance shall contain a standard mortgagee's endorsement providing for payment of any loss to Secured Party, and such policies shall further provide for thirty (30) days written minimum cancellation notice to Secured Party. Debtor shall furnish evidence satisfactory to Secured Party of compliance with these insurance provisions.

4.14 Debtor agrees to notify Secured Party in writing prior to any termination, partial termination or merger of a Plan (as defined in ERISA), or a transfer of a Plan's assets, or upon the occurrence of any event described in Section 4.03 of ERISA.

4.15 Debtor agrees to notify Secured Party in writing within five (5) business days of Debtor's default under any note, indenture, loan agreement, mortgage, lease or other agreement to which Debtor is a party or is bound.

4.16 Debtor will promptly notify Secured Party in writing of any claim, proceeding or litigation affecting Debtor, whether or not the claim is covered by insurance, and of any suit or administrative proceeding which may materially and adversely affect the Collateral or Debtor's business, assets, operations or condition, financial or otherwise.

4.17 Except for temporary removal in connection with its ordinary use, Debtor shall not remove the Collateral from its present address or location without obtaining prior written consent from Secured Party.

4.18 Debtor will maintain all the Collateral in good condition, repair and working order, and in accordance with any manufacturer's manual. Debtor will not misuse, abuse, waste, destroy or endanger the Collateral or allow it to deteriorate, except for ordinary wear and tear from its intended use. Debtor will repair, replace or otherwise improve the Collateral as may be necessary. Debtor will not use any Collateral in violation of any law, statute, ordinance, regulation or administrative order, or suffer it to be so used.

4.19 In the event that the Collateral is to be attached or affixed to any real property (as described in Section 1.05 or otherwise), Debtor hereby agrees that this Security Agreement may be filed for record in any appropriate real estate records as a financing statement. If Debtor is not the record owner of such real property, Debtor will provide Secured Party with any additional security agreements and/or financing statements necessary for the perfection of Secured Party's security interest in the Collateral. If the Collateral is wholly or partly affixed to real estate or installed in or affixed to other goods, Debtor will, on demand of Secured Party, furnish Secured Party with a disclaimer, signed by all persons having an interest in the real estate or other goods to which the Collateral may have become affixed, of any prior interest to Secured Party's interest in the Collateral.

4.20 Debtor shall at all times keep the Collateral, including proceeds, or cause it to be kept (when in the possession of warehousemen, bailees, agents, independent contractors or other third persons), separate and distinct from other property (except as to the attachment of fixtures to real estate).

Section 5. **Defaults.** Any of the following events shall be considered an Event of Default under this Security Agreement:

5.01 Debtor or any Obligor defaults in any payment due and owing pursuant to the Obligations.

5.02 Any representation or warranty made by Debtor or any Obligor to Secured Party proves to have been incorrect in any material respect as of the date thereof.

5.03 Default is made by Debtor or any Obligor in the performance of any covenants or agreements contained in this Security Agreement or in any other document now or hereafter executed in connection with or as security for the Obligations.

5.04 The sale, assignment, distribution, transfer or granting of a lien on any of the Collateral to or in favor of any party other than Secured Party, unless otherwise expressly permitted by this Security Agreement or in writing by Secured Party.

5.05 The violation by Debtor or any Obligor of, or the failure of the Collateral to comply with, any applicable law, statute, ordinance, regulation or administrative order.

5.06 The loss, theft, substantial damage to or destruction of the Collateral or of any material portion thereof (whether or not covered by insurance).

5.07 The entry of a judgment, issuance of an injunction, order of attachment, or any other process against Debtor or any Obligor or the Collateral which in the sole opinion of Secured Party impairs Debtor's (or any such Obligor's) ability to pay or perform the Obligations.

5.08 Debtor or any Obligor shall respectively:
(a) die, dissolve or otherwise terminate its existence in its form as of the date hereof;
(b) become insolvent or suffer a business failure;
(c) have a custodian, receiver or agent appointed or authorized to take charge of its properties;
(d) make an assignment for the benefit of creditors or call a meeting of creditors for the composition of debts; or
(e) be subject to the commencement of any proceeding in bankruptcy or under other insolvency laws.

5.09 In the sole opinion of Secured Party, there is any deterioration, impairment, decline in character or value, or material adverse change (whether actual or reasonably anticipated) in either:
(a) the assets, operations or conditions of Debtor or any Obligor; or
(b) any part of the Collateral or any other property subject to a lien in favor of Secured Party as security for the Obligations that causes the Collateral or such other property in the judgment of Secured Party to become unsatisfactory as to character or value.

5.10 Any guaranty or surety executed in connection with the Obligations shall be terminated or revoked, or payment shall be refused under any letter of credit securing any or all of the Obligations or any such letter of credit shall expire without the written consent of Secured Party, or any event occurs which in the sole opinion of Secured Party would materially and adversely affect Debtor's or any Obligor's ability to pay or perform the Obligations.

5.11 Default by Debtor or any Obligor in any payment of principal of or interest on any other indebtedness, guaranty or other obligation (whether to Secured Party or others) beyond any period of grace provided with respect thereto, or in the performance of any other agreement, term or condition if the effect of such default is to cause such obligation to become due on demand or before its stated maturity or to permit the holder(s) of such obligation or the trustee(s) under any such agreement or instrument to cause such obligation to become due on demand or prior to its stated maturity, whether or not such default or failure to perform should be waived by the holder(s) of such obligation or such trustee(s).

Section 6. **Rights, Duties and Powers of Secured Party.**

6.01 Secured Party may enforce its rights hereunder without prior judicial process or judicial hearing, and to the extent permitted by law, Debtor expressly waives any and all legal rights which might otherwise require Secured Party to enforce its rights by judicial process. Debtor recognizes and concedes that such non-judicial remedies are consistent with usage of trade, are responsive to commercial necessity, and are the result of bargain at arms' length.

6.02 Debtor hereby grants to Secured Party, in connection with the protection, exercising or assuring of Secured Party's rights, interests and remedies hereunder, the right to receive, change the address for delivery, open and dispose of mail addressed to Debtor, and to execute, assign and endorse negotiable and other instruments for the payment of money, documents of title or other evidences of payment, shipment or storage for any form of Collateral on behalf of and in the name of Debtor.

6.03 Secured Party may, at its option, discharge any taxes, liens or security interests or other encumbrances at any time levied or placed on the Collateral, may pay for insurance on the Collateral and may pay for the maintenance and preservation of the Collateral. Debtor agrees to reimburse Secured Party immediately and without demand for any payment so made, plus interest thereon at the Highest Lawful Rate.

6.04 Debtor hereby irrevocably appoints Secured Party as Debtor's true and lawful agent and attorney-in-fact, with full power of substitution, in Secured Party's name or Debtor's name or otherwise, but at Debtor's cost and expense and without notice to Debtor, to obtain, adjust, sell and cancel any insurance with respect to the Collateral, and endorse any draft drawn by insurers of the Collateral. Secured Party may apply any proceeds of such insurance to the Obligations (whether or not due).

6.05 Secured Party may transfer any or all of the indebtedness evidenced by the Obligations, and upon any such transfer Secured Party may transfer any or all of the Collateral and shall be fully discharged thereafter from all liability therefor. Any transferee of the Collateral shall be vested with all rights, powers and remedies of Secured Party hereunder. With respect to any partial transfer of Collateral, Secured Party shall retain all rights, powers and remedies hereby given with respect to the retained Collateral. Secured Party may at any time deliver any or all of the Collateral to Debtor whose receipt shall be a complete and full acquittance for the Collateral so delivered, and Secured Party shall thereafter be discharged from any liability with respect to such Collateral.

6.06 In connection with any transfer or sale (to Secured Party or any other person or entity) of the Collateral, Secured Party is hereby granted a transferable license or other right to use, without any charge, any of Debtor's labels, patents, copyrights, trade names, trade secrets, trademarks or other similar property in completing production, advertising or selling such Collateral, and Debtor's rights under all licenses and franchise agreements shall inure to the benefit of Secured Party and any transferee of all or any part of the Collateral.

6.07 The rights, powers and remedies of Secured Party hereunder shall be in addition to all rights, powers and remedies given by law or in equity. The exercise by Secured Party of any one or more of the rights, powers and remedies herein shall not be construed as a waiver of any other rights, powers and remedies. Regardless of whether or not the Uniform Commercial Code is in effect in the jurisdiction where such rights, powers and remedies are asserted, Secured Party shall have the rights, powers and remedies of a secured party under the Code. If any of the Obligations are given in renewal, extension for any period or rearrangement, or applied toward the payment of debt secured by any lien, Secured Party shall be, and is hereby, subrogated to all the rights, titles, interests and liens securing the debt so renewed, extended, rearranged or paid.

6.08 Secured Party at any time may forward to Debtor a statement of accounts showing the outstanding indebtedness pursuant to the Obligations, including all charges, expenses and items chargeable to Debtor in connection therewith, and any payment by Debtor against the loans (including proceeds collected by Secured Party and applied on the Obligations), and the total of Debtor's indebtedness as of the date thereof, and such statement of account shall be deemed correct in all respects and shall be conclusively binding upon Debtor, unless Debtor makes specified objections to the same in writing within five (5) days from the date such statement is sent to Debtor.

6.09 To the extent that Secured Party has advanced or will advance funds to or for the account of Debtor to enable Debtor to purchase or otherwise acquire specific types or items of Collateral, Secured Party may at its option pay such funds (i) directly to the person from whom Debtor will make such purchase or acquire such rights or (ii) to Debtor, in which case Debtor covenants promptly to pay the same to such person and forthwith furnish to Secured Party, on request, evidence satisfactory to Secured Party that such payment has been made from the funds so provided by Secured Party for such payment.

6.10 The powers conferred upon Secured Party by this Security Agreement are to protect its interest in the Collateral and shall not impose any duty upon Secured Party to exercise any such powers. Debtor hereby agrees that Secured Party shall not be liable for, nor shall the indebtedness evidenced by the Obligations be diminished by, Secured Party's failure to collect upon, foreclose, sell, seize or otherwise obtain value for the Collateral, or any part thereof, or for any delay in so doing, and Secured Party shall not be under any obligation to take any action in connection therewith (except as may be expressly required by Section 9.505 of the Code, if applicable). Secured Party shall use reasonable care in the custody and preservation of any Collateral in its possession but need not take any steps to keep the Collateral identifiable. Secured Party shall have no duty to comply with any recording, filing or other legal requirements necessary to establish or maintain the validity, priority or enforceability of Secured Party's rights in or to any of the Collateral.

6.11 Time shall be of the essence for the performance of any act under this Security Agreement or the Obligations, but Secured Party's acceptance of partial or delinquent payments or any forbearance, failure or delay by Secured Party in exercising any right, power or remedy hereunder shall not be deemed a waiver of any obligation of Debtor or any Obligor, or of any right, power or remedy of Secured Party; and no partial exercise of any right, power or remedy shall preclude any other or further exercise thereof. Secured Party may remedy any default hereunder or in connection with the Obligations without waiving the default so remedied, or waive any default hereunder or in connection with the Obligations without waiving any other default including, without limitation, other occurrences of the same default, nor shall such action by Secured Party waive any prior or subsequent default.

6.12 If Debtor is not the only party liable on the Obligations or granting security therefor, Debtor (a) waives (i) any and all notice of acceptance, creation, modification, rearrangement, renewal or extension for any period of any instrument executed by such other party in connection with the Obligations, and (ii) any defense of such other party by reason of disability, lack of authorization, cessation of the liability of such other party or for any other reason and (b) authorizes Secured Party, without notice or demand and without any reservation of rights against Debtor and without affecting Debtor's liability hereunder or on the Obligations, from time to time to (x) take and hold other property, other than the Collateral, as security for the Obligations, and exchange, enforce, waive and release any or all of the Collateral, (y) apply the Collateral in the manner permitted by this Security Agreement, and (z) renew, extend for any period, accelerate, amend or modify, supplement, enforce, compromise, settle, waive or release the obligations of any Obligor or any instrument or agreement of such other party with respect to any or all of the Obligations or Collateral.

6.13 Secured Party shall be under no duty whatsoever to make or give any presentment, notice of dishonor, protest, demand for performance, notice of non-performance or other notice or demand in connection with any Collateral or the Obligations, or to take any steps necessary to preserve any rights against any Obligor or other person or entity. Debtor waives any right of marshaling in respect of any and all Collateral, and waives any right to require Secured Party to proceed against any Obligor or other person or entity, exhaust any Collateral or enforce any other remedy which Secured Party now has or may hereafter have against any other person or entity. Debtor hereby agrees that if Secured Party agrees to a waiver of any provision hereunder, or an exchange of or release of the Collateral, or the addition to or release of any Obligor or other person or entity, any such action shall not constitute a waiver of any of Secured Party's other rights or of Debtor's obligations hereunder.

6.14 Debtor hereby waives any demand, notice of default, notice of acceleration of the maturity of the Obligations, notice of intention to accelerate the maturity of the Obligations, presentment, protest and notice of dishonor as to any action taken by Secured Party in connection with this Security Agreement, any note or other document.

Section 7. **Remedies.** Upon the happening and during the occurrence of any Event of Default specified in Section 5, Secured Party may take any of the following actions without notice or demand to Debtor:

7.01 Declare all or part of the indebtedness pursuant to the Obligations immediately due and payable and enforce payment of the same by either Debtor or any Obligor (provided however, that any partial payments by either Debtor or any Obligor pursuant to the Obligations shall not be deemed to be a payment in full of such indebtedness, or an accord and satisfaction of such indebtedness, or a waiver by Secured Party of any of its rights or remedies hereunder).

7.02 Exercise any rights or remedies under the Code or as may otherwise be available to Secured Party under any applicable laws or in equity.

7.03 Take possession of the Collateral, or at Secured Party's request, Debtor shall, at Debtor's cost, assemble the Collateral and make it available at a location to be specified by Secured Party which is reasonably convenient to Debtor and Secured Party. Secured Party may, at its option, render any equipment unusable that may be included in the Collateral, or, at Secured Party's request, Debtor will render it unusable. In any event, the risk of accidental loss or damage to, or diminution in value of Collateral shall be on Debtor, and Secured Party shall have no liability whatsoever for failure to obtain or maintain insurance, nor to determine whether any insurance ever in force is adequate as to amount or as to risk insured.

7.04 As may be applicable, sell or lease, in one or more sales or leases, apply, set-off, collect or otherwise dispose of any or all of the Collateral in its then condition or in any commercially reasonable manner as Secured Party may elect, in a public or private transaction, at any location as deemed reasonable by Secured Party (including, without limitation, Debtor's premises), either for cash or credit or for future delivery at such price as Secured Party may deem fair, and (unless prohibited by the Uniform Commercial Code, as adopted in any applicable jurisdiction) Secured Party may be the purchaser of any or all Colltaeral so sold. Any such sale or transfer by Secured Party either to itself or to any other person shall be absolutely free from any claim or right by Debtor, including any equity or right of redemption, stay or appraisal which Debtor has or may have under any rule of law, regulation or statute now existing or hereafter adopted. It shall not be necessary that the Collateral or any part thereof be present at the location of any such sale or transfer. In the event Secured Party deems it advisable to do so, it may restrict the bidders or purchasers of any such sale or transfer to persons who will represent and agree that they are purchasing the Collateral for their own account and not with the view to the distribution or resale of any of the Collateral. Secured Party may, at its discretion, provide for a public sale, and any such public sale shall be held at such time to times within ordinary business hours and at such place or places as Secured Party may fix in the notice of such sale. Secured Party shall not be obligated to make any sale pursuant to any such notice.

Secured Party may, without notice or publication, adjourn any public or private sale by announcement at any time and place fixed for such sale, and such sale may be made at any time or place to which the same may be so adjourned. In the event that any of the Collateral is sold or transferred on credit, or to be held by Secured Party for future delivery to a purchaser, the Collateral so sold may be retained by Secured Party, in connection therewith, but in the event that such purchaser fails to pay for the Collateral so sold or to take delivery thereof, Secured Party shall incur no liability in connection therewith. If only part of the Collateral is sold or transferred such that the Obligations remain outstanding (in whole or in part) Secured Party's rights and remedies hereunder shall not be exhausted, waived or modified, and Secured Party is specifically empowered to make one or more successive sales or transfers until all the Collateral shall be sold or transferred and all the Obligations are paid. In the event that Secured Party elects not to sell or transfer the Collateral, it retains its rights to lease or otherwise dispose of or utilize the Collateral or any part or parts thereof in any manner authorized or permitted by law, and to apply the proceeds of the same towards payment of the Obligations.

7.05 Seize all books and records of Debtor pertaining to the Collateral. Secured Party shall have the authority to enter upon any real property or improvements thereon in order to seize any such books or records, or any Collateral located thereon, and remove the same therefrom without liability.

7.06 Apply proceeds of the disposition of Collateral to the Obligations in any manner elected by Secured Party and permitted by the Code. Such application may include, without limitation, the reasonable expenses of retaking, holding, preparing for sale or other disposition, and the reasonable attorneys' fees and legal expenses incurred by Secured Party.

7.07 Appoint any party as agent to perform any act or acts necessary or incident to any sale or transfer by Secured Party of the Collateral. Additionally, any sale or transfer hereunder may be conducted by an auctioneer or any officer or agent of Secured Party.

7.08 Make a written record as to the non-payment of the Obligations, the occurrence of any Event of Default, acceleration of the indebtedness evidenced by the Obligations, or as to notice of the time, place and terms of any sale or transfer permitted hereunder having been duly given, or as to any other act or thing having been duly done by Secured Party in any bill of sale, assignment or other instrument executed by Secured Party in connection with the foreclosure upon the Collateral, and such written record of facts by Secured Party shall be taken as prima facie evidence of the truth of the facts so stated and recited.

7.09 Apply and set-off (a) any deposits of Debtor held by Secured Party; (b) all claims of Debtor against Secured Party, now or hereafter existing; (c) any other property, rights or interest of Debtor which come into the possession or custody or under the control of Secured Party; and (d) the proceeds of any of the foregoing as if the same were included in the Collateral. Secured Party agrees to notify Debtor promptly after any such set-off or application; provided, however, the failure of Secured Party to give any such notice shall not affect the validity of such set-off or application. The rights of Secured Party under this Section 7.09 are in addition to any other rights and remedies, including, without limitation, any other rights of set-off.

7.10 If any action of Secured Party hereunder results in a partial reduction of the Obligations, such action will not release Debtor from its liability to Secured Party for any unpaid Obligations, including costs, charges and expenses incurred in the liquidation of Collateral, together with interest thereon, and the same shall be immediately due and payable to Secured Party at Secured Party's address recited above.

7.11 Notwithstanding anything to the contrary in this Security Agreement, if any applicable provision of any law requires Secured Party to give reasonable notice of any sale or disposition or other action, Debtor hereby agrees that five (5) days' prior written notice shall constitute reasonable notice thereof.

Section 8. **Miscellaneous Provisions.**

8.01 Any notice required or permitted to be given under or in connection with this Security Agreement shall be in writing and shall be mailed by first class or express mail, postage prepaid, or sent by telex, telegram, telecopy or other similar form of rapid transmission confirmed by mailing (by first class or express mail, postage prepaid) written confirmation at substantially the same time as such rapid transmission, or personally delivered to the receiving party. All such communications shall be mailed, sent or delivered at the address respectively indicated in Section 1.01 or at such other address as either party may have furnished the other party in writing. Any communication so addressed and mailed shall be deemed to be given when so mailed, and any notice so sent by rapid transmission shall be deemed to be given when receipt of such transmission is acknowledged by the receiving operator or equipment, and any communication so delivered in person shall be deemed to be given when receipted for by Debtor or Secured Party, as the case may be.

8.02 A photocopy or other reproduction of this Security Agreement or any financing statement covering the Collateral shall be sufficient as a financing statement, and the same may be filed with any appropriate filing authority for the purpose of perfecting Secured Party's security interest in the Collateral.

8.03 Secured Party shall be deemed to have possession of any Collateral in transit to it or set apart for it or any of its agents, affiliates or correspondents.

8.04 If any sale or transfer of Collateral by Secured Party results in full satisfaction of the Obligations, and after such sale or transfer and discharge there remains a surplus of proceeds, Secured Party will deliver to Debtor such excess proceeds in a commercially reasonable time; provided however, that Secured Party shall not be liable for any interest, cost or expense in connection with any delay in delivering such proceeds to Debtor. No action taken pursuant to this Security Agreement, nor the execution hereof shall be construed as relieving any party liable for the Obligations from any liability or deficiency thereon.

8.05 The execution and delivery of this Security Agreement shall not in any manner affect any other security for the Obligations, nor shall any security taken hereafter as security for the Obligations impair or affect this Security Agreement.

8.06 It is the intention of the parties hereto to conform strictly to usury laws applicable to Secured Party. Accordingly, if the transactions contemplated hereby would be usurious under applicable state or federal law, then, in that event, notwithstanding anything to the contrary in this Security Agreement or in any other agreement entered into in connection with or as security for the Obligations, it is agreed as follows: (i) the aggregate of all consideration which constitutes interest under law applicable to Secured Party that is contracted for, taken, reserved, charged or received under the Obligations, this Security Agreement or under any of such other agreements or otherwise in connection with the Obligations shall under no circumstances exceed the maximum amount allowed by such applicable law, and any excess shall be credited by Secured Party on the principal amount of the Obligations (or, to the extent that the principal amount of the Obligations shall have been or would thereby be paid in full, refunded by Secured Party to Debtor or the other person or entity described in Section 1.02, as the case may be); and (ii) in the event that the maturity of the Obligations is accelerated by reason of an election of Secured Party resulting from any Event of Default under this Security Agreement or otherwise, or in the event of any required or permitted prepayment, then such consideration that constitutes interest under law applicable to Secured Party may never include more than the maximum amount allowed by such applicable law, and excess interest, if any, provided for in this Security Agreement or otherwise shall be cancelled automatically as of the date of such acceleration or prepayment and, if theretofore paid, shall be credited by Secured Party on the principal amount of the Obligations (or, to the extent that the principal amount of the Obligations shall have been or would thereby be paid in full, refunded by Secured Party to the Debtor or the other person or entity described in Section 1.02, as the case may be). To the extent that Article 5069-1.04 of the Texas Revised Civil Statutes is relevant to Secured Party for the purpose of determining the Highest Lawful Rate, Secured Party hereby elects to determine the applicable rate ceiling under such Article by the indicated (weekly) rate ceiling from time to time in effect, subject to Secured Party's right subsequently to change such method in accordance with applicable law.

8.07 This Security Agreement and the security interest granted hereby shall be construed in accordance with and governed by the laws of the State of Texas (except to the extent that the laws of any other jurisdiction govern the perfection and priority of the security interests granted hereby). Debtor consents to and submits to in personam jurisdiction and venue in the state district and county courts of the county wherein Secured Party's offices are located at the address specified in Section 1.01, and in the federal district courts of the district wherein such offices of Secured Party are located. The Obligations are payable in the county wherein Secured Party's offices are located at the address specified in Section 1.01. Debtor asserts that it has purposefully availed itself of the benefits of the laws of the State of Texas, and Debtor waives any objection to in personam jurisdiction on the grounds of insufficient minimum contacts, waives any objection to venue, and waives any plea of forum non conveniens. This consent to and submission to jurisdiction is with regard to any action related to this Security Agreement, regardless of whether Debtor's actions took place in Texas, elsewhere in the United States, or abroad. Debtor waives service of process, both inside and outside Texas and abroad, provided, however, that Secured Party shall attempt to notify Debtor of any action by certified or registered mail. If Debtor cannot be reached by certified or registered mail, or if the state or nation in which Debtor resides or is domiciled does not permit service under its own rules by registered or certified mail, or if such notice is otherwise impracticable, Secured Party will employ whatever method is reasonably calculated to give notice under the circumstances. This submission to jurisdiction is non-exclusive, and does not preclude Secured Party from obtaining jurisdiction over Debtor or the Collateral in any court otherwise having jurisdiction.

8.08 The failure to check or otherwise mark in the appropriate blank space any subsection of Section 1.03 shall not be construed to limit or diminish in any way the Collateral in which Secured Party is granted a security interest pursuant to the terms of this Security Agreement. In the event that appropriate blank spaces in Section 1.03 have not been checked or otherwise marked, the Collateral shall nevertheless include, without limitation, any property which is otherwise described, referred to or indicated to be included. In addition, the execution, delivery, or filing from time to time of supplements, amendments or financing statements containing more specific descriptions of now existing or hereafter acquired Collateral shall in no way limit or diminish the security interest herein granted.

8.09 If any provision of this Security Agreement is or becomes unenforceable for any reason, Debtor and Secured Party shall promptly meet and negotiate a substitute provision thereof, but all of the remaining provisions of this Security Agreement shall remain in full force and effect.

8.10 The Obligations shall conclusively be presumed to have been entered into in reliance upon this Security Agreement. All dealings between Debtor and Secured Party, whether or not resulting in the creation of the Obligations, shall be conclusively presumed to have been had or consummated in reliance upon this Security Agreement. Until all indebtedness in connection with the Obligations shall have been paid in full, Debtor shall have no right to subrogation or to enforce any remedy or participate in any Collateral or security whatsoever now or hereafter held by Secured Party.

8.11 Without the prior written consent of Secured Party, Debtor may not assign any rights, duties or obligations hereunder. In the event of an assignment of all or part of the Obligations, the assignee shall be entitled to all the rights, privileges and remedies granted in this Security Agreement to Secured Party. The covenants and agreements herein contained by or on behalf of Debtor shall bind Debtor, and Debtor's heirs, legal representatives, successors or assigns and shall inure to the benefit of Secured Party, its successors and assigns.

8.12 This Security Agreement shall constitute a continuing security agreement, and all representations and warranties, covenants and agreements shall, as applicable, apply to all future as well as existing transactions. Provisions of this Security Agreement, unless by their terms exclusive, shall be in addition to other agreements between the parties.

8.13 Except as may be applicable pursuant to Section 9.505 of the Code, no action taken or omission to act by Secured Party hereunder, including, without limitation, any action taken or inaction pursuant to Section 7 (Remedies), shall be deemed to be in full satisfaction of the Obligations, and the Obligations shall remain in full force and effect, until Secured Party shall have applied payments (including, without limitation, collections from Collateral) towards the Obligations in the full amount then outstanding or until such subsequent time as is hereinafter provided in this Section 8.13. To the extent that any payments on the Obligations or proceeds of the Collateral are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, debtor in possession, receiver or other party under any bankruptcy law, common law or equitable cause, then to such extent, the Obligations so satisfied shall be revived and continue as if such payment or proceeds had not been received by Secured Party, and Secured Party's security interest, rights, powers and remedies hereunder shall continue in full force and effect. In the event that the Obligations are structured such that there are times when no indebtedness is owing thereunder, this Security Agreement shall remain valid and in full force and effect as to the subsequent indebtedness thereto, provided Secured Party has not in the interim period executed a written termination statement or returned possession or reassigned the Collateral to Debtor.

8.14 This Security Agreement will remain in full force and effect regardless of whether the liability of any other Obligor may have ceased, or irrespective of the validity or enforceability of any other instrument executed in connection with the Obligations, and notwithstanding the reorganization, death, incapacity or bankruptcy of any Obligor, or the reorganization, death or bankruptcy of Debtor, or any other event or proceeding affecting Debtor or any Obligor. The grant of a security interest hereunder in all of Secured Party's rights, powers and remedies in connection therewith shall remain in full force and effect until Secured Party has executed a written termination statement and reassigned to Debtor without recourse, the Collateral and all rights conveyed hereby.

8.15 Where appropriate, the use of any singular number or noun in this Security Agreement shall be construed to include the plural, and vice versa. Use of the neuter gender to describe Debtor shall be construed to refer to the masculine, feminine or neuter gender, as appropriate.

8.16 Debtor hereby authorizes and directs Secured Party to disburse the proceeds of any loans made by Secured Party to Debtor to any agent designated by Debtor, or if Debtor is a corporation, to any officer, director or any party to whom such officer or director may direct; and any such designation or directive may be made by either oral or written instructions to Secured Party.

8.17 If more than one party executes this Security Agreement as Debtor, unless otherwise agreed in writing by Secured Party, each such party executing this Security Agreement shall be jointly and severally liable hereunder and the Collateral shall consist of the property of such parties described in Sections 1.03 and 2.04 whether owned individually or collectively.

8.18 Any section titles contained in this Security Agreement are for convenience only, and are without substantive meaning and are not a part of this Security Agreement.

8.19 This Security Agreement may be executed in two or more counterparts, and it shall not be necessary that the signatures of all parties hereto be contained on any one counterpart hereof. Each counterpart shall be deemed an original, but all such counterparts taken together shall constitute one and the same instrument. This Security Agreement shall become effective upon the execution hereof by Debtor and delivery of the same to Secured Party, and it shall not be necessary for Secured Party to execute any acceptance hereof or otherwise signify or express its acceptance hereof. This Security Agreement may be amended only by an instrument in writing executed jointly by Debtor and Secured Party and may be supplemented only by documents delivered or to be delivered in accordance with the express terms hereof.