

RECOR

04-08-1999



U.S. DEPARTMENT OF COMMERCE  
Patent and Trademark Office

Tab settings == MO 3 101005637

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies): MO 30 MAR 2 50  
NTSC Florida, Inc. OPREMIANCE

Individual(s)                       Association  
 General Partnership               Limited Partnership  
 Corporation-State  
 Other \_\_\_\_\_

Additional name(s) of conveying party(ies) attached?  Yes  No

2. Name and address of receiving party(ies)

Name: Heller Financial, Inc. as agent  
Internal Address: \_\_\_\_\_  
Street Address: 500 West Monroe  
City: Chicago State: IL ZIP: 60661

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

If assignee is not domiciled in the United States, a domestic representative designator is attached:  Yes  No  
(Designations must be a separate document from assignment)  
Additional name(s) & address(es) attached?  Yes  No

3. Nature of conveyance:

Assignment                               Merger  
 Security Agreement                       Change of Name  
 Other \_\_\_\_\_

Execution Date: March 12, 1999

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

A. Trademark Application No.(s)  
B. Trademark Registration No.(s)  
1,876,659

Additional numbers attached?  Yes  No

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

Name: Laura Konrath  
Internal Address: Winston & Strawn  
33rd Floor  
Street Address: 35 West Wacker Drive  
City: Chicago State: IL ZIP: 60601

6. Total number of applications and registrations involved: 1

7. Total fee (C.F.P. fee).....\$ 40.00

Enclosed  
 Authorized to be charged to deposit account

8. Deposit account number:  
N/A

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

04/07/1999 JSWBAZZ 00000142 187659  
01 FC:481

DO NOT USE THIS SPACE

(40.00 DP)

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

Laura Konrath                              Laura Konrath                              3/22/99  
Name of Person Signing                              Signature                              Date

Total number of pages including cover sheet, attachments, and document: 1

Mail documents to be recorded with required cover sheet information to:  
Commissioner of Patents and Trademarks

TRADEMARK  
REEL: 1879 FRAME: 0790

Continuation Item 1

NTSC North Carolina, Inc., a Delaware Corp.

TILE MART, INC., a Florida Corp.

NATIONAL TILE  $\dagger$  Stone Corporation, a Delaware Corp.

**ASSIGNMENT FOR SECURITY OF  
PATENTS, TRADEMARKS AND COPYRIGHTS**

**THIS ASSIGNMENT FOR SECURITY OF PATENTS, TRADEMARKS AND COPYRIGHTS** (this "**Assignment**") is made as of the 12th day of March, 1999 by and among:

**NTSC FLORIDA, INC.**, a Delaware corporation ("**NTSC Florida**"), **NTSC NORTH CAROLINA, INC.**, a Delaware corporation ("**NTSC North Carolina**"), and **TILE MART, INC.**, a Florida corporation ("**Tile Mart**") (NTSC Florida, NTSC North Carolina and Tile Mart are hereinafter sometimes referred to individually as a "**Borrower**" and collectively as "**Borrowers**"), **NATIONAL TILE + STONE CORPORATION**, a Delaware corporation ("**Guarantor**") (each of the Borrowers and the Guarantor is hereinafter sometimes referred to individually as an "**Assignor**" and collectively "**Assignors**"), and

**HELLER FINANCIAL, INC.**, a Delaware corporation, in its capacity as Agent for the benefit of the Lenders defined below (in such capacity, "**Agent**").

**W I T N E S S E T H**

**WHEREAS**, pursuant to a certain Loan and Security Agreement of even date herewith among Assignors, Agent and certain financial institutions from time to time party thereto (collectively, "**Lenders**") (as the same may hereafter be amended, restated, supplemented or otherwise modified from time to time, the "**Loan Agreement**"), Lenders have agreed to make certain loans and extend certain other financial accommodations to Borrowers; and

**WHEREAS**, pursuant to the Loan Agreement, Assignors have, *inter alia*, granted to Agent for the benefit of Lenders a continuing security interest in certain assets of Assignors, including, without limitation, all of each Assignor's patents, patent rights and applications therefor, trademarks and applications therefor, copyrights and all applications and registrations therefor, license rights and goodwill, as security for its indebtedness and other obligations under the Loan Agreement;

**NOW, THEREFORE**, in consideration of the premises set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each Assignor agrees as follows:

**Section 1. Incorporation of Loan Agreement Definitions.** The Loan Agreement and the provisions thereof are hereby incorporated herein in their entirety by this reference thereto. Capitalized terms used but not defined herein shall have the respective meanings given thereto in the Loan Agreement.

**Section 2. Assignment for Security.**

(a) To secure the complete and timely payment and satisfaction of the Obligations, each Assignor hereby grants to Agent, for the benefit of Agent and Lenders, a

continuing security interest in its entire right, title and interest in and to all of its now owned or existing and hereafter acquired or arising:

(i) patents, patent applications and patent licenses, including, without limitation, the inventions and improvements described and claimed therein, all patentable inventions and those patents, patent applications and patent licenses listed on Schedule A attached hereto and made a part hereof and the reissues, divisions, continuations, renewals, extensions and continuations-in-part of any of the foregoing, and all income, royalties, damages and payments now or hereafter due and/or payable under or with respect to any of the foregoing, including, without limitation, damages and payments for past, present and future infringements of any of the foregoing and the right to sue for past, present and future infringements of any of the foregoing (all of the foregoing are sometimes hereinafter individually and/or collectively referred to as the "**Patents**");

(ii) copyrights, rights and interests in copyrights, works protectable by copyrights, copyright registrations, copyright applications and copyright licenses, including, without limitation, the copyright registrations, applications and licenses listed on Schedule B attached hereto and made a part hereof and all renewals of any of the foregoing, all income, royalties, damages and payments now and hereafter due and/or payable under or with respect to any of the foregoing, including, without limitation, damages and payments for past, present and future infringements of any of the foregoing and the right to sue for past, present and future infringements of any of the foregoing (all of the foregoing are sometimes hereinafter individually and/or collectively referred to as the "**Copyrights**");

(iii) trademarks, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, logos, other business identifiers, prints and labels on which any of the foregoing have appeared or appear, all registrations and recordings thereof, all applications and licenses in connection therewith, including, without limitation, the trademarks, applications and licenses listed on Schedule C attached hereto and made a part hereof and renewals thereof, and all income, royalties, damages and payments now or hereafter due and/or payable under or with respect to any of the foregoing, including, without limitation, damages and payments for past, present and future infringements of any of the foregoing and the right to sue for past, present and future infringements of any of the foregoing (all of the foregoing are sometimes hereinafter individually and/or collectively referred to as the "**Trademarks**"); and

(iv) all rights corresponding to any of the foregoing throughout the world and the goodwill of each Assignor's business connected with the use of and symbolized by the Trademarks.

(b) In addition to, and not by way of limitation of, all other rights granted to Agent for the benefit of Lenders under the Loan Agreement, this Assignment and all other Loan Documents, as collateral security for the complete payment when due of all Obligations under the Loan Agreement and the other Loan Documents, each Assignor hereby sells, assigns, grants, conveys, transfers and sets over to Agent, for the use and benefit of Lenders, upon the occurrence of an Event of Default, any and all rights of such Assignor under any license and any license agreement with any other party, whether such Assignor is a licensor or licensee under such license

agreement and the right to prepare for sale, sell and advertise for sale, all Patents, Copyrights and Trademarks now or hereafter owned by such Assignor and now or hereafter covered by such license and agrees that it will not take any unreasonable action, or permit any unreasonable action to be taken by others subject to its control, including licensees, or fail to take any reasonable action, which could affect the validity or enforcement of the rights transferred to Agent under this Assignment which rights are material to the conduct of such Assignor's business. Each Assignor hereby covenants that it will promptly notify Agent if any Patent, Copyright or Trademark shall at any time hereafter become subject to such license agreement and that it will promptly provide Agent with full identification thereof and with such further documentation as Agent may reasonably request to accomplish or assure the accomplishment of the purpose of this subsection.

**Section 3. Licenses.** Each Assignor hereby agrees that the use by Agent, on behalf of Lenders, of all Patents, Copyrights and Trademarks as described above shall be worldwide, to the extent possessed by Assignors, and is granted free of charge, without requirement that any monetary payment whatsoever (including, without limitation, any royalty, license fee or other related charges) be made to any Assignor or any other Person by Agent or any Lender (except that if Agent or any Lender shall receive proceeds from the disposition of any such property, such proceeds shall be applied to the Obligations). The term of the assignments and grant of security interest granted herein shall extend until the earlier of: (x) expiration of each of the respective Patents, Copyrights and Trademarks assigned hereunder, or (y) the Obligations have been finally paid in full in cash and the Loan Agreement and the Commitments terminated.

**Section 4. Reports of Applications.** The Patents, Copyrights and Trademarks constitute all of the federally registered patents, copyrights and trademarks, and applications therefor now owned by each Assignor. Each Assignor shall provide Agent on a quarterly basis with a list of all new federally registered patents, copyrights and trademarks and federal applications for letters patent, copyright registrations and trademark registrations and licences, if any, which new patents, copyrights, trademarks, licenses and applications shall be subject to the terms and conditions of the Loan Agreement and this Assignment.

**Section 5. Effect on Loan Agreement; Cumulative Remedies.** Each Assignor acknowledges and agrees that this Assignment is not intended to limit or restrict in any way the rights and remedies of Agent under the Loan Agreement but rather is intended to supplement and facilitate the exercise of such rights and remedies. All of the rights and remedies of Agent with respect to the Patents, Copyrights and Trademarks, whether established hereby, by the Loan Agreement, by any other agreements, or by law, shall be cumulative and may be exercised singularly or concurrently. Notwithstanding any provision herein contained to the contrary, Agent shall not have the right to use and enforce the Patents, Copyrights and Trademarks unless and until the occurrence of an Event of Default, and until the occurrence of an Event of Default, Assignors shall have all of such rights.

**Section 6. Binding Effect; Benefits.** This Assignment shall be binding upon each Assignor and its respective successors and assigns, and shall inure to the benefit of Agent for the benefit of Lenders and its successors and assigns whether by voluntary conveyance, operation of law, assignment, transfer, foreclosure, deed in lieu of foreclosure or otherwise.

**Section 7. Applicable Law; Severability. THIS ASSIGNMENT SHALL BE GOVERNED BY AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH ALL OF THE PROVISIONS OF THE UNIFORM COMMERCIAL CODE AS ADOPTED IN NEW YORK AND BY THE OTHER INTERNAL LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES, EXCEPT FOR THE PERFECTION AND ENDORSEMENT OF SECURITY INTERESTS AND LIENS IN OTHER JURISDICTIONS, WHICH SHALL BE GOVERNED BY THE LAWS OF THOSE JURISDICTIONS OR, AS APPLICABLE, BY THE LAWS OF THE UNITED STATES OF AMERICA. WHENEVER POSSIBLE, EACH PROVISION OF THIS ASSIGNMENT SHALL BE INTERPRETED IN SUCH A MANNER AS TO BE EFFECTIVE AND VALID UNDER APPLICABLE LAW, BUT IF ANY PROVISION OF THIS ASSIGNMENT SHALL BE PROHIBITED BY OR INVALID UNDER APPLICABLE LAW, SUCH PROVISION SHALL BE INEFFECTIVE ONLY TO THE EXTENT OF SUCH PROHIBITION OR INVALIDITY, WITHOUT INVALIDATING THE REMAINDER OF SUCH PROVISIONS OR THE REMAINING PROVISIONS OF THIS ASSIGNMENT.**

**Section 8. Consent to Jurisdiction. ASSIGNOR HEREBY CONSENTS TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED WITHIN THE COUNTY OF NEW YORK, STATE OF NEW YORK AND IRREVOCABLY AGREES THAT, SUBJECT TO AGENT'S ELECTION, ALL ACTIONS OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE LOAN AGREEMENT SHALL BE LITIGATED IN SUCH COURTS. EACH ASSIGNOR EXPRESSLY SUBMITS AND CONSENTS TO THE JURISDICTION OF THE AFORESAID COURTS AND WAIVES ANY DEFENSE OF FORUM NON CONVENIENS. EACH ASSIGNOR HEREBY WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE UPON SUCH ASSIGNOR BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, ADDRESSED TO SUCH ASSIGNOR AT THE ADDRESS SET FORTH IN THIS AGREEMENT AND SERVICE SO MADE SHALL BE COMPLETED WITHIN TEN (10) DAYS AFTER THE SAME HAS BEEN POSTED.**

**Section 9. Jury Trial Waiver. EACH ASSIGNOR AND AGENT HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT OR THE LOAN AGREEMENT. EACH ASSIGNOR AND AGENT ACKNOWLEDGE THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS RELIED ON THIS WAIVER IN ENTERING INTO A BUSINESS RELATIONSHIP, THAT EACH HAS RELIED ON THIS WAIVER IN ENTERING INTO THIS AGREEMENT AND THE LOAN AGREEMENT AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN THEIR RELATED FUTURE DEALINGS. EACH ASSIGNOR AND AGENT HEREBY WARRANT AND REPRESENT THAT EACH HAS HAD THE OPPORTUNITY OF REVIEWING THIS JURY WAIVER WITH LEGAL COUNSEL, AND THAT EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS.**

IN WITNESS WHEREOF, the parties hereto have duly executed this Assignment as of the date first above written.

**NTSC FLORIDA, INC.**

By: C A Gregg, Jr.  
Name: C R Gregg, Jr.  
Title: Vice President  
Address: 5208 Airport Freeway, Suite 210  
Fort Worth, Texas 76117

**NTSC NORTH CAROLINA, INC.**

By: C A Gregg, Jr.  
Name: C R Gregg, Jr.  
Title: Vice President  
Address: 5208 Airport Freeway, Suite 210  
Fort Worth, Texas 76117

**TILE MART, INC.**

By: C A Gregg, Jr.  
Name: C R Gregg, Jr.  
Title: Vice President  
Address: 5208 Airport Freeway, Suite 210  
Fort Worth, Texas 76117

**NATIONAL TILE + STONE  
CORPORATION**

By: C A Gregg, Jr.  
Name: C R Gregg, Jr.  
Title: V.P. Business Development & General Counsel  
Address: 5208 Airport Freeway, Suite 210  
Fort Worth, Texas 76117

**HELLER FINANCIAL, INC., as  
Agent for Lenders**

By: [Signature]  
Name: ANDREW S. TAKUBEK  
Title: VICE PRESIDENT  
Address: 500 West Monroe Street  
Chicago, Illinois 60661

STATE OF NEW YORK )

SS

COUNTY OF NEW YORK)

I, Danielle Holland a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that C. R. Gregg, Jr. personally known to me to be a [Vice President] of each of NTSC FLORIDA, INC., NTSC NORTH CAROLINA, INC., TILE MART INC., and NATIONAL TILE + STONE CORPORATION, the person who executed the foregoing Assignment for Security of Patents, Trademarks and Copyrights, who being by me duly sworn, did depose and say [he is a Vice President] of each such corporation described in and which executed the foregoing instrument; that said instrument is signed on behalf of each such corporation by order its respective Board of Directors; and that [he] acknowledged said instrument to be the free act and deed of each such corporation.

GIVEN under my hand and notarial seal this 12<sup>th</sup> day of March, 1999.

Danielle Holland

Notary Public

DANIELLE HOLLAND  
Notary Public, State of New York  
No. 41-4944537  
Qualified in Queens County 2000  
Commission Expires November 21, 19

My commission expires:



STATE OF NEW YORK )  
 ) SS  
COUNTY OF NEW YORK )

I, Danielle Holland, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Andrew G. Serok personally known to me to be the Vice President of Heller Financial, Inc., the person who executed the foregoing Assignment for Security of Patents, Trademarks and Copyrights, who being by me duly sworn, did depose and say he is the officer of such corporation described in and which executed the foregoing instrument; that said instrument is signed on behalf of such corporation by order of its Board of Directors; and that he acknowledged said instrument to be the free act and deed of such corporation.

GIVEN under my hand and notarial seal this 12<sup>th</sup> day of March, 1999.

Danielle Holland

Notary Public DANIELLE HOLLAND  
Notary Public, State of New York  
No. 41-4944537

My commission expires:

Qualified in Queens County 2000  
Commission Expires November 21, 1999

**SCHEDULE A**

**PATENTS**

U.S. Patent No.

Date Issued

Related Foreign Patents

None

**PATENT APPLICATIONS**

U.S. Patent Application No.

Date Applied

None

**PATENT LICENSES**

None

**SCHEDULE B**

**COPYRIGHT REGISTRATIONS**

Registration No.

Date

None

**COPYRIGHT APPLICATIONS**

Copyright Description

Copyright Application No.

Date Applied

None

**COPYRIGHT LICENSES**

None

**SCHEDULE C**

**TRADEMARK REGISTRATIONS**

<u>Mark</u>	<u>Registration No.</u>	<u>Date</u>
Miles of Tiles	1,876,659	1/31/95

**TRADEMARK APPLICATIONS**

<u>Mark</u>	<u>Trademark Application No.</u>	<u>Date Applied</u>
	None	

**TRADEMARK LICENSES**

None

# WINSTON & STRAWN

200 PARK AVENUE  
NEW YORK, NY 10166-4193

1400 L STREET, N.W.  
WASHINGTON, D.C. 20005-3502

35 WEST WACKER DRIVE  
CHICAGO, ILLINOIS 60601-9703

(312) 558-5600

FACSIMILE (312) 558-5700

6, RUE DU CIRQUE  
75008 PARIS, FRANCE

43, RUE DU RHONE  
1204 GENEVA, SWITZERLAND

WRITER'S DIRECT DIAL NUMBER  
(312) 558-6352

March 22, 1999

**CERTIFIED MAIL/R.R.R.**

Commissioner of Patent and Trademarks  
U.S. Patent and Trademark Office  
Washington D.C. 20231  
Attn: Trademark Assignment Department

Re: Heller Financial, Inc./National Tile

Dear Commissioner:

Enclosed is an Assignment for Security of Patents, Trademarks and Copyrights together with a check in the amount of \$40.00 payable to the Commissioner of Patents and Trademarks for the assignment recordation fees.

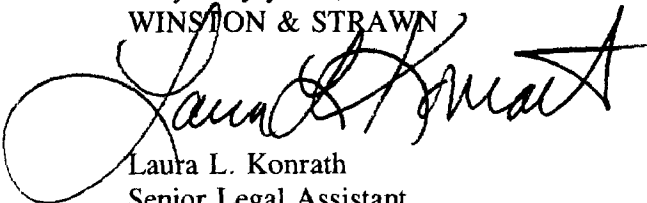
Please file the enclosed with the Trademark Assignment Department of the U.S. Patent and Trademark Office. When the filing process is completed, please send the file-stamped document to the following address:

Laura L. Konrath  
WINSTON & STRAWN  
35 W. Wacker Drive  
Chicago, IL 60601

Should you require any additional information, please do not hesitate to call.

Thank you for your attention to this matter.

Very truly yours,  
WINSTON & STRAWN



Laura L. Konrath  
Senior Legal Assistant

LLK/nak  
Enclosures

RECORDED: 03/22/1999

TRADEMARK  
REEL: 1879 FRAME: 0802