

02-08-2000

Docket No.: 0063945-0017

FORM PTO-1594

TRADEMARKS ONLY

(Rev. 6-93)

REC



U.S. DEPARTMENT OF COMMERCE

To the Honorable Commissioner of Patents and Trademarks

101261373

Original documents or copy thereof.

1. Name of conveying party(ies)
 Nora Beverages Inc.

Individual(s)
 General Partnership
 Corporation - of Canada
 Association
 Limited Partnership
 Other

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

2. Name and address of receiving party(ies)
 Name: Bank of Montreal

Street Address: 129 St. Jacques Street
 Montreal, Quebec
 H27 1L6, Canada

Individual(s) citizenship
 Association
 General Partnership
 Limited Partnership
 Corporation of Mexico
 Other (Canadian Chartered Bank)

3. Nature of conveyance:
 Assignment
 Security Agreement
 Merger
 Change of Name
 Other

Execution Date: April 2, 1998

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No - the recorded conveyance is a Security Agreement - the owner has filed a Domestic Representative Designation

(Designations must be a separate document from Assignment)
 Additional name(s) & address(es) attached? Yes No

4. Application number(s) or registration number(s):
 A. Trademark Application No.
 B. Trademark Registration No.(s) **2,217,371 for BEBELA Y VIVE**

Additional numbers attached? Yes No

5. Name and address of party to whom correspondence concerning document should be mailed:
 Name: William J. Spatz, Esq.
 Internal Address: Whitman Breed Abbott & Morgan LLP
 Street Address: 200 Park Avenue
 City: New York State: NY Zip: 10166

6. Total number of applications and registrations involved 1

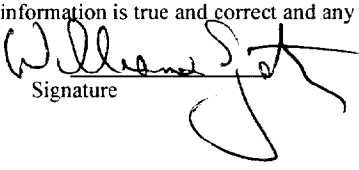
7. Total fee (37 CFR 3.41) \$ 40.00
 Check #2677 Enclosed
 Please charge any additional fee to Deposit Account #50-0297

8. Deposit account number: 50-0297
 (Attach duplicate copy of this page if paying by deposit account)

Do not use this space

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

William J. Spatz, Esq. _____
 Name of Person Signing


 Signature

December 30, 1999 _____
 Date

Total number of pages including cover sheet, attachments, and document: 29

Do not detach this portion

Mail documents to be recorded with required cover sheet information to:

02/07/2000 TTM11 00000127 2217371
 FC:481 40.00 DP

Commissioner of Patents and Trademarks
 Box Assignments
 Washington, D.C. 20231

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MOVABLE HYPOTHEC

Dated as of April 2, 1998

among

**NORA BEVERAGES INC./
LES BREUVAGES NORA INC.**

as Debtor

- and -

BANK OF MONTREAL

as Creditor

MOVABLE HYPOTHEC

BETWEEN:

BANK OF MONTREAL, a Canadian chartered bank, having its head office at 129 St. Jacques Street, in the City of Montreal, Province of Quebec, H2Y 1L6, herein acting and represented by Serge Lapointe, its Senior Account Manager, hereunto duly authorized for the purposes hereof as he so declares;

Notice of Address has been published in the register of Personal and Movable Real Rights under the number 000998;

(hereinafter called the "Creditor");

AND:

NORA BEVERAGES INC./LES BREUVAGES NORA INC., a company duly incorporated in virtue of the *Canada Business Corporations Act*, having its head office at 2550 Daniel Johnson Boulevard, in the City of Laval, Province of Quebec, H7T 2L1, herein acting and represented by Guy Blanchette, its Vice-President, Chief Financial Officer, and by Anthony Casola, its Vice-President - Corporate Development, duly authorized for the purposes hereof in virtue of a resolution of the Board of Directors of the said company adopted on the twenty-seventh (27th) day of March, nineteen hundred and ninety-eight (1998), and of its Borrowing By-Law No. 4, certified copies of which By-Law and resolution being annexed hereto;

(hereinafter called the "Debtor").

WHEREAS the Creditor and the Debtor have executed a credit agreement (the "**Credit Agreement**") on the Second (2nd) day of April, nineteen hundred and ninety-eight (1998) in virtue of which the Creditor agreed to provide the Debtor with a Credit Facility of up to a maximum aggregate amount of Sixty-Five Million Canadian Dollars (Cdn \$65,000,000.) or the equivalent amount thereof in US dollars (the "**Credit Facility**"), comprised of (i) a revolving credit facility of up to a maximum aggregate amount of Fifteen Million Canadian Dollars (Cdn \$15,000,000.) or the equivalent amount thereof in US dollars and (ii) a revolving term credit facility of up to a maximum aggregate amount of Fifty Million Canadian Dollars (Cdn \$50,000,000) or the equivalent amount thereof in US dollars, the whole under the terms and conditions more fully set out in the Credit Agreement;

WHEREAS as additional collateral security for the fulfilment of all of the obligations of the Debtor under the Credit Agreement and the Credit Documents (as defined in the Credit Agreement) and, in particular, the repayment of the Credit Facility and the fulfilment of any other obligations of the Debtor, present and future, towards the Creditor, the Debtor has agreed to hypothecate all of its right, title and interest in and to the universalities of property and the specific property more fully described herein.

NOW THEREFORE, THE PARTIES HERETO HAVE AGREED AS FOLLOWS:

1. MOVABLE HYPOTHEC

1.1 As general and continuing security for the performance of all of the obligations of the Debtor towards the Creditor under the terms of the Credit Agreement and the Credit Documents and, in particular, the repayment of the Credit Facility and the payment of all interest thereon, fees and accessories under the terms and conditions set forth in the Credit Agreement and the Credit Documents and as general and continuing security for the performance of all of the obligations of the Debtor towards the Creditor hereunder, the Debtor hereby hypothecates in favour of the Creditor with effect as and from this date, to the extent of the principal amount of Seventy-Five Million Dollars (\$75,000,000.), with interest at the rate of twenty-five percent (25%) per annum for the purposes of this hypothecation, the universality of the Debtor's present and future movable property, corporeal or incorporeal, relating to the enterprise of the Debtor, including, without limitation, specific property and present and future property forming part of the universalities hereinafter described, as well as those acquired in replacement thereof and the fruits and revenues therefrom (all of which being hereinafter collectively called the "**Secured Property**"), namely:

DESCRIPTION

1.1.1 Universalities of Property

The following universalities of property, namely:

1.1.1.1 Debts, Rights and Claims

The universality of all existing and future debts, book debts, accounts, book accounts, claims, judgments, demands, and moneys whatsoever (including, without limitation, claims against the Crown and claims under insurance policies of whatsoever nature for the purposes

of this hypothecation and moneys deposited by or on behalf of the Debtor in any account maintained at a bank or a financial institution or with any other person) which now are or which may at any time hereafter be due, owing or accruing to or by the Debtor, as well as all fruits and revenues therefrom, those acquired in replacement thereof and the proceeds from the sale thereof or any part thereof, pertaining or relating, directly or indirectly, to the business operated by the Debtor and also all judgments, hypothecs, suretyships and other rights in connection thereto and also all contracts, securities, bills, notes, policies and other documents now held or owned or which may be hereafter taken, held or owned by the Debtor or anyone on behalf of the Debtor in respect of the said debts, book debts, accounts, book accounts, claims, judgments, demands, and moneys, or any part thereof and also all books, documents, records, electronic or otherwise, and papers recording, evidencing or relating to the said debts, book debts, accounts, book accounts, claims, judgments, demands, and moneys or any part thereof (all of the foregoing being hereinafter collectively called the "Claims").

1.1.1.2 Equipment

The universality of all existing and future machinery, equipment, professional equipment, tools, materials and vehicles owned by the Debtor or held on its behalf, and their accessories, additions and spare parts, present and future.

1.1.1.3 Goods in Stock

The universality of all existing and future goods in stock owned by the Debtor or held on its behalf, including movable property held for the purpose of being sold, rented or altered by means of transformation or manufacturing process of a good destined for sale or for rent or with respect to services offered, or goods held by third parties with respect to a rental agreement, leasing contract, franchise contract or licence or other agreement executed with the Debtor, regarding raw materials, manufactured or semi-manufactured or treated materials

or products, or goods used for packaging. Goods that were part of any goods in stock which, pursuant to an alienation contract executed with respect thereto for the benefit of a third party, shall remain the property of the Debtor pursuant to a reservation of ownership in its favour, and shall be deemed to be goods in stock as long as the ownership thereof is not transferred to such third parties; are also deemed to be goods in stock, goods which, after having been alienated, have again become the property of the Debtor as a result of a resolution, termination or repossession.

1.1.1.4 Securities

The universality of all existing and future notes, titles of claims, obligations, shares and any other securities held by the Debtor or on its behalf, including any renewal, substitution and addition or other property or securities issued or received upon the purchase, repurchase, conversion or cancellation or upon any other transformation of the said securities.

1.1.1.5 Intellectual Property

The universality of all existing and future intellectual property rights of whatsoever nature, kind or description including:

- (a) all trade marks, service marks, trade mark and service mark registrations, trade mark and service mark applications, trade names and the trade mark and service mark rights;
- (b) all copyrights and industrial designs and registrations thereof and applications therefor;
- (c) all inventions, patents, patent applications and patent rights (including any patents issuing on such applications or rights);
- (d) all licences, sub-licences and franchises;
- (e) all trade secrets and proprietary and confidential information;

- (f) all computer software and rights related thereto;
- (g) all renewals, modifications and extensions of any of the items listed in sub-paragraphs (a) through (f) (inclusively) hereof; and
- (h) all patterns, plans, designs, research data, other proprietary know-how, processes, drawings, technology, inventions, formulae, specifications, performance data, quality control information, unpatented blue prints, flow sheets, equipment and part lists, instructions, manuals, records and procedures, and all licences, agreements and other contracts and commitments relating to any of the foregoing.

as well as any permits or any other right which the Debtor possesses or later acquires, relating directly or indirectly to the Secured Property, including without limitation the intellectual property rights described in Schedule "A" attached hereto.

1.1.1.6 Contractual Rights

All rights, title and interest, present or future, of the Debtor in all contracts, leases, agreements and in all other documents relating to the business and operations of the Debtor.

1.1.1.7 Life Insurance Policy

All rights, title and interest, present or future, of the Debtor in the life insurance policy issued by The Mutual Life Assurance Company of Canada on the life of Mr. Ahmad Hbouss for an amount of Five Million Canadian Dollars (\$CDN \$5,000,000.), bearing policy number LI-4030-967-8 and dated August 16, 1995 and expiring on August 16, 2016, as it may be annulled, restated and renewed from time to time.

1.1.1.8 Other Property

Without limiting the generality of the foregoing, the following existing and future property, to the extent that

they are not already included in the foregoing descriptions, and which are also affected by the hypothec and the other rights constituted hereunder:

- (a) all Claims, effects or sums of money from the rental, assignment, sale or other disposition of the Secured Property, as the case may be, as well as any property acquired in replacement thereof (it being understood that this provision shall not be interpreted as allowing the Debtor to dispose of or charge the Secured Property in violation of the other provisions hereof);
- (b) all insurance and expropriation rights or indemnities pertaining directly or indirectly to the Secured Property;
- (c) all other rights relating directly or indirectly to the Secured Property as well as the fruits and revenues generated thereby;
- (d) all conditional rights or rights which are likely to be declared null regarding a corporeal or incorporeal movable property owned or held by the Debtor or on its behalf;
- (e) all titles, registers, invoices, contracts, securities and other documents which the Debtor shall receive or have the right to receive evidencing or relating directly or indirectly to the Secured Property, whatever the nature of their support or medium and whatever their form;
- (f) the Claims, effects or sums of money from the sale or other alienation of permits, franchises, quotas or other similar authorizations which the Debtor now possesses or may possess in the future.

1.2 Extent of the Hypothec

If numbers or quantities are mentioned in the foregoing descriptions, they must be considered as indicative of the property owned by the Debtor on the date hereof and must not be interpreted as limiting the extent of the hypothec. If one or more addresses are mentioned, they must be

considered as indicative of the place where the assets are located as of the date hereof, and this indication must not be interpreted such that the Creditor loses any rights if the property is relocated, nor as restricting the extent of the hypothec in respect of the universality or universalities of property mentioned in the said descriptions, the hypothec charging all the present and future property forming part of that or those universalities, whether they are situated at such addresses or elsewhere.

1.3 Additional Hypothec

Should the Creditor so require, the Debtor undertakes to grant to the Creditor any additional hypothec which the Creditor deems reasonable to specifically charge the future property or property acquired in replacement of the Secured Property or to maintain the value of the security granted hereunder.

1.4 Continuous Security

The hypothec and other charges created in virtue of these presents shall take effect as of the date hereof, in order to guarantee all the obligations of the Debtor towards the Creditor hereunder, under the Credit Agreement and under the Credit Documents and, in particular, the repayment of all the sums which may have been advanced or which may be advanced by the Creditor to the Debtor according to the Credit Agreement and the Credit Documents and in order to guarantee any other obligations of the Debtor, present or future, towards the Creditor, until total and final cancellation of the hypothec and other rights granted hereunder.

The Debtor further agrees with the Creditor that the hypothec and the other security created hereunder shall subsist for the entire duration of the Credit Facility of the Credit Agreement and of the Credit Documents and any renewal, replacement, modification, addition or substitution thereof.

1.5 Renewal and Conservation

The Debtor undertakes to execute without delay, at the request of the Creditor, any notice of renewal or conservation of the present hypothec as well as any other deed or document in order that the hypothec and the other rights constituted in virtue of these presents have full effect and remain at all times opposable to third persons.

2. ADDITIONAL HYPOTHEC

To secure the payment of all sums payable to the Creditor under any provisions of the Credit Agreement and the Credit Documents and these presents and which are not secured by the other hypothecs created herein, including without limitation, the interest, cost, expenses and accessories relating to the Credit Facility, all expenses and fees incurred by the Creditor in order to protect or realize upon its rights and the performance of all obligations set forth herein in the Credit Agreement and in the Credit Documents, with interest on all such amounts from the date of disbursement at the annual rate herein stipulated, the Debtor hypothecates the Secured Property in favour of the Creditor for a further additional sum equal to Fifteen Million Dollars (\$15,000,000.) with interest thereon at the rate mentioned above in Section 1.1 hereof.

3. SPECIAL PROVISIONS WITH RESPECT TO THE CLAIMS

- 3.1 Until notice to the contrary as provided in Section 3.2 hereof, the Creditor hereby authorizes the Debtor to collect the Claims and the Debtor undertakes to act with diligence and in accordance, as the case may be, with the instructions of the Creditor.
- 3.2 Upon the occurrence of an Event of Default (as hereinafter defined) by the Debtor, the Creditor may withdraw its authorization for the Debtor to collect the Claims. The Creditor shall inform the Debtor and the debtors of such withdrawal by means of a notice required by law and duly registered. The Creditor may then, but shall not be obliged to, collect the Claims in capital and interest. The Debtor shall remit to the Creditor all titles, documents or effects evidencing the Claims or which might be necessary or useful for the collection thereof, shall sign all documents necessary or useful for such purpose and collaborate, as the case may be, in the collection of the Claims.
- 3.3 Without limiting the generality of the foregoing, the Creditor is irrevocably authorized, as the Debtor's mandatary, to:
- 3.3.1 grant delays, take or abandon securities;
 - 3.3.2 grant acquittances, mainlevées, with or without consideration, and other cancellations;
 - 3.3.3 endorse all cheques, drafts, notes and other negotiable instruments issued in payment of the Claims;

- 3.3.4 take conservatory measures and appropriate proceedings to obtain payment of the Claims;
 - 3.3.5 negotiate and settle out of Court with the debtors of the Claims, their trustee if there is a bankruptcy or insolvency, or any other legal representative, the whole as it deems appropriate; and
 - 3.3.6 deal with any other matter relating to the Claims, in its discretion, without the intervention or the consent of the Debtor, the Creditor not being liable for any material damages or prejudice which may result from its fault or from the fault of one of its representatives, other than their gross negligence or intentional or gross fault, in the collection or recovery of the Claims.
- 3.4 If, despite the withdrawal of authorization by the Creditor, amounts payable in virtue of the Claims are paid to the Debtor, the Debtor shall receive such amounts as mandatary or depository and shall deliver them to the Creditor upon receipt.
- 3.5 If the Creditor collects all or part of the Claims, it may, in its absolute discretion, impute the sums it collects in the manner stipulated herein, notwithstanding any legal provisions on imputation of payments.
- 3.6 If, following the failure of the debtor of a Claim to perform its obligations, the Debtor does not promptly exercise the recourses and guarantees available to it by law or the rights relating to the Claim, the Creditor may then, in its discretion, choose to exercise such recourses and guarantees. The Creditor may require that the sums collected be remitted to it in order to be imputed in accordance with this Agreement.
- 3.7 The Creditor may appoint an agent or agents to act on its behalf in connection with the collection of the Claims including, without limitation, any demand, mise en demeure, procedure, alienation or other transaction relating to the Claims, and may pay to such agent or agents reasonable fees (including legal fees), such fees to be added to and to be considered as forming part of the Credit Facility.
- 3.8 If certain Claims, according to the legal provisions applicable to them, cannot be hypothecated without putting the Debtor in default of such provisions or without complying with certain formalities, the hypothecs created hereunder are created subject to the suspensive condition of obtaining the consent or approval required or the accomplishment of the formalities required in respect of such Claims, and the hypothec shall take effect retroactive to the date hereof, at the time such consents or

authorizations are obtained or the formalities are accomplished. The Debtor undertakes to diligently obtain the required consents and authorizations and to complete the necessary formalities for the purposes of this Section.

- 3.9 The Debtor shall ensure that all the formalities required for the publication provided for by law have been fulfilled in order to render the hypothecs or other rights present and future, of the Debtor, opposable towards third persons. The Debtor undertakes, subject to the provisions of the Credit Agreement: (i) to inform the Creditor without delay of any delay out of the ordinary course of business in the payment of one or another of the Claims; (ii) to provide the Creditor with any information required regarding the hypothecs, prior claims or other rights which may benefit the Claims after the signature hereof.

4. CHARGES AND ACQUITTANCES

- 4.1 The Debtor undertakes to maintain at all times the Secured Property free of all prior claims, hypothecs or charges whatsoever with the exception, as the case may be, of Permitted Encumbrances (as this expression is defined in the Credit Agreement). If, at any time during the term of the Credit Facility, a prior claim, a hypothec or an action is registered against the Secured Property or if an action is instituted in order to conserve any prior claim or hypothec whatsoever, the Debtor shall, within a delay of ten (10) days following such registration or action, have the Secured Property released from such charge; however, same may be contested in good faith by the Debtor within the said delay of ten (10) days, provided that the Creditor is of the opinion that the said prior claim, hypothec or action does not compromise or diminish the guarantees created hereunder and on the condition that the Debtor furnish the Creditor with additional security in an amount satisfactory to the Creditor, but in any event, in an amount at least equal to one hundred and fifty percent (150%) of the amount of the prior claim, hypothec or action; any omission on the part of the Debtor to this effect will constitute a default under the terms hereof; notwithstanding such default, the Creditor may itself pay the claim or release the Secured Property from such charge.
- 4.2 All acquittances and other deeds to which the Creditor may become a party shall be approved by the legal counsel of the Creditor and shall be signed before counsel approved by the Creditor, the whole at the Debtor's expense, and the Debtor shall furnish, at its expense, certified copies of such deeds to the Creditor.

5. EVENTS OF DEFAULT

- 5.1 Each of the following events shall constitute events of default (hereinafter referred to as "Event of Default") hereunder:
- 5.1.1 the occurrence of an Event of Default (as defined in the Credit Agreement); or
 - 5.1.2 the failure of the Debtor to comply with any of its obligations or undertakings as provided for hereunder.
- 5.2 Upon the occurrence of an Event of Default, the Creditor may exercise, at its discretion, without restriction or other prior notice except those provided by law, all rights and recourses to which it is entitled in virtue of the Credit Agreement, the present Agreement and by law.
- 5.3 Upon the occurrence of an Event of Default, the Debtor undertakes to voluntarily surrender the Secured Property to the Creditor at the request of the Creditor, in all cases where the Creditor has a right to such surrender, unless such surrender denies the Debtor the right to exercise any of its rights under the *Civil Code of Quebec*. The Debtor undertakes not to interfere in any way with the Creditor in connection with its taking possession of the Secured Property surrendered by the Debtor. Moreover, the Debtor shall diligently execute all deeds and documents necessary for the surrender of the Secured Property to the Creditor.
- 5.4 The representations and warranties, the undertakings and the performance of all the conditions and obligations provided for hereunder constitute considerations in virtue of which the benefit of the term has been granted by the Creditor to the Debtor and, as a result, the Creditor may, upon the occurrence of an Event of Default, deprive the Debtor of the benefit of the term.

6. RIGHTS OF THE CREDITOR

- 6.1 Upon the occurrence of an Event of Default, the Debtor shall be deemed to have appointed the Creditor as its irrevocable mandatary, with power of substitution, for the purposes of performing, at all times, all acts and to sign all deeds or documents necessary or useful in order to maintain and preserve the Secured Property and for the exercise of its rights hereunder.
- 6.2 Without limiting the generality of Section 6.1 hereof, the Debtor agrees that the Creditor may, but is not obliged to, at the expense of the Debtor,

for the purposes of protecting or realizing upon the value of the Secured Property and following the occurrence of an Event of Default:

- 6.2.1 continue the use and operation of the Secured Property; cease or continue, in its discretion, the operation of the business of the Debtor; the Creditor may use any equipment or furnishings relating to the operation of the business of the Debtor, as well as its name or head office, its trade marks and any other intellectual property right and incorporeal property of the Debtor;
 - 6.2.2 dispose of any of the Secured Property likely to rapidly depreciate or decrease in value;
 - 6.2.3 use the information it has concerning the Debtor and information obtained during the exercise of its rights;
 - 6.2.4 fulfil any of the undertakings of the Debtor;
 - 6.2.5 use, administer and exercise any right pertaining to the Secured Property;
 - 6.2.6 use the premises where the Secured Property is located or any other place where the Debtor operates its business or any other place it deems appropriate;
 - 6.2.7 appoint any representative to exercise its rights or perform its obligations hereunder and provide such person with all information it has regarding the Debtor or the Secured Property;
 - 6.2.8 when the Secured Property includes securities, have registered, without being required, the Creditor or its mandatary, as registered holder of said securities and exercise all the rights accessory thereto, including any right to vote, of conversion or redemption, and proceed with the transfer or endorsement of the securities;
 - 6.2.9 when the Secured Property includes stock, the Creditor may complete the manufacturing of such stock and do anything necessary or useful for its sale.
- 6.3 The Creditor shall only be accountable to the Debtor to the extent of commercial practice and within the delays normally observed by the Creditor and the Creditor shall not be obliged to make inventory, take out insurance or furnish any other security.

- 6.4 The Creditor may itself, directly or indirectly, become owner of the Secured Property.
- 6.5 The Creditor may, at the time it exercises its rights, renounce to a right belonging to the Debtor, transact and grant acquittances or mainlevées, even without consideration.
- 6.6 The Creditor shall not be liable to maintain the use for which the Secured Property is ordinarily destined, to make it productive or to continue its use or destination. Any sum of money or effect remitted or held by the Creditor may be invested, at its discretion, without the Creditor being bound by the legislative provisions relating to the investment of property of others.
- 6.7 In the event of a waiver by the Creditor of its recourses, hypothecary or otherwise, against the Secured Property, the Creditor may, in its discretion, if the Secured Property has been surrendered to it, return the remaining Secured Property to the Debtor, without any warranty or representation, express or tacit on its part, but without prejudice to its other rights and recourses.
- 6.8 In the event the Creditor exercises its hypothecary recourse of taking-in-payment and the Debtor requires the Creditor to sell the Secured Property, the Debtor acknowledges that the Creditor shall not be required to renounce to its recourse of taking-in-payment unless, before the expiration of the time limit to surrender, the Creditor: (i) shall have received security which the Creditor deems satisfactory to the effect that the sale will be made at a price high enough for the Creditor to be paid in full, all principal amount and interest thereon and all other outstanding amounts under the Credit Agreement and under the Credit Documents, (ii) shall have been reimbursed the costs incurred, and (iii) shall have advanced all amounts necessary for the sale of the Secured Property.
- 6.9 In the event that the Creditor sells the Secured Property on its own, it will not be required to obtain a prior appraisal from a third party.
- 6.10 The sale of the Secured Property may be made with legal warranty on the part of the Debtor or, at the option of the Creditor, with total or partial exclusion of warranty.
- 6.11 The Creditor shall not be liable or accountable for any failure or delay to exercise one or another of its rights and recourses, nor for any act or omission committed in good faith by any agent, mandatary, employee or servant of the Creditor, and such failure or delay shall not be interpreted

as a waiver of the rights and recourses of the Creditor. The Creditor is only required to exercise reasonable diligence in the exercise of its rights or the performance of its obligations and shall only be liable for its gross negligence or its gross or intentional fault.

7. CUMULATIVE RECOURSES AND WAIVER

- 7.1 The acceptance by the Creditor of any sum owing to the Creditor or the exercise by the Creditor, following any default by the Debtor, of any right or recourse, shall not preclude the Creditor from exercising any other right or recourse which it may have, nor replace or reduce any of its other rights and recourses, all rights and recourses of the Creditor being cumulative and not alternative.
- 7.2 Any waiver by the Creditor to invoke a breach of any provision, obligation or condition hereunder shall not be construed as a waiver of such provision, obligation or condition, nor a waiver of any subsequent breach or any other provision, obligation or condition provided for herein. The subsequent acceptance of all amounts owing hereunder by the Creditor or the payment of such sums by the Debtor shall not be construed as a waiver to invoke any prior breach by the Debtor of any provision, obligation or condition hereunder, even if the Creditor was aware of a prior breach at the time of acceptance or payment of said sums. The Creditor shall not be deemed to have waived any provision, obligation or condition hereunder unless such waiver has been made in writing.

8. REPRESENTATION AND WARRANTIES OF THE DEBTOR

- 8.1 The Debtor represents and warrants to the Creditor that:
- 8.1.1 the Secured Property is located in the Province of Quebec save and except as provided in the Credit Agreement;
 - 8.1.2 the Secured Property is not to be used outside of the Province of Quebec save and except as provided in the Credit Agreement;
 - 8.1.3 the head office is located at:

2550 Daniel Johnson Boulevard
Suite 400
Laval (Quebec)
H7T 2L1

and the places of business of the Debtor are located at the addresses set forth in the Credit Agreement;

- 8.1.4 there are no hypothecs, charges, security or other encumbrances on the Secured Property save and except for those constituting the Permitted Encumbrances.

9. SCOPE OF THE SECURITY

The hypothecs and the security created hereunder are in addition to and not in substitution of any other hypothec or security held by the Creditor and shall not constitute novation of any such hypothec or security. The hypothecs and security created hereunder are continuous security which shall subsist despite the partial acquittance of the obligations secured by these presents. Subject to the terms and conditions of the Credit Agreement with respect to notices, the mere lapse of time for the performance of any obligation in favour of the Creditor, if such obligation shall not have been performed, shall constitute a default of the Debtor under the terms hereof without the necessity of any notice on the part of the Creditor. The rights granted to the Creditor may be exercised by the Creditor after a default on the part of the Debtor under the terms hereof.

10. IMPUTATION OF AMOUNTS COLLECTED

After having deducted the costs and fees incurred to exercise the hypothecary recourses, as the case may be, the Creditor may retain the sums collected as Secured Property or impute such sums, whatever their source, to one or another of the obligations secured by the hypothec, in its absolute discretion, whether such obligations are outstanding or not.

11. SOLIDARY LIABILITY

In the event that several persons are now or in the future designated as the Debtor, each of such persons is solidarily liable for the obligations set out herein.

12. INDIVISIBILITY

Every divisible obligation in favour of the Creditor arising out of this Agreement must be performed in its entirety by each heir or legal representative of any person who is liable to the same extent as if it were indivisible.

13. OTHER PROVISIONS

Any taxes or other rights which may be imposed on this Credit Facility or on any interest payable in virtue of these presents or on any claim of the Creditor in virtue of these presents, with the exception of the general tax on the profits and the revenue, shall be borne by the Debtor such that the Creditor shall continue to receive the interest and principal, without any reduction.

14. NOTICES

Any notice, request or motion which may or must be done under this Agreement shall be given, signified or delivered in accordance with the terms and conditions of the Credit Agreement to that effect.

15. INTERPRETATION

- 15.1 The intention of the parties hereto is that this Agreement create valid hypothecs and in the event a provision of this Agreement or a part of such provision or the application of such provision to a person or a particular circumstance has been declared or rendered invalid, inapplicable or illegal, or if it has been declared incompatible with the creation of a valid hypothec, then, such provision or such part of such provision or particular application of such provision, as the case may be, shall be considered distinct and separable from the remainder of this Agreement and this Agreement shall continue to remain in force and executory and bind the parties hereto as if this provision or part of this provision or the particular application of this provision was never included.
- 15.2 The rights conferred on the Creditor hereunder shall enure to the benefit of the successors and assigns of the Creditor including any entity resulting from the amalgamation of the Creditor with another person.
- 15.3 Any place where the context requires it in this Agreement, the singular number herein set forth shall be interpreted as plural and the masculine gender as either feminine or neuter and vice versa.
- 15.4 The headings included in this Agreement have been included for reference purposes only and shall not have the effect of restricting or broadening the scope or meaning of this Agreement and its provisions.
- 15.5 In any place where the context requires it, the word "Debtor" shall include any authorized purchaser of the Secured Property.

- 15.6 This Agreement shall be governed and interpreted by the law in force in the Province of Quebec.
- 15.7 The hypothecs created under this Agreement are not floating hypothecs under the *Civil Code of Quebec* nor do they have the floating character of such hypothecs.
- 15.8 In case of conflict between the provisions of this Agreement and those of the Credit Agreement, the provisions of the Credit Agreement shall prevail.
- 15.9 This Agreement has been prepared in the English Language at the express request of the parties hereto. Cette convention a été rédigée en langue anglaise conformément à la volonté expresse des parties aux présentes.

SIGNED at the City of Montreal, Province of Quebec, this second (2nd) day of April, nineteen hundred and ninety-eight (1998).

BANK OF MONTREAL

Per: 

**NORA BEVERAGES INC./
LES BREUVAGES NORA INC.**

Per: 

Per: 

SCHEDULE "A"
INTELLECTUAL PROPERTY RIGHTS

1. CANADA

1.1 TRADEMARK REGISTRATIONS

<u>Country</u>	<u>Trade-mark</u>	<u>Reg. No.</u>	<u>Registration Date</u>	<u>Renewa</u>
Canada	GLOBAL COOLING	478,625	July 17, 1997	July 17,
Canada	HERITAGE	409,733	March 19, 1993	March 19
Canada	L'EAU...NUE!	454,645	Feb. 23, 1996	Feb. 23.
Canada	LA GARDIENNE DE L'EAU DE SOURCE	360,220	Sept. 8, 1989	Sept. 8.
Canada	NAYA	330,280	July 17, 1987	July 17
Canada	NAYA "LA PURE"	407,579	Jan. 29, 1993	Jan. 29
Canada	NAYA & Design (1986 version)	395,783	March 20, 1992	March 20
Canada	NAYA & Design (1991 version)	450,284	Nov. 17, 1995	Nov. 17
Canada	NAYA LA SOURCE DU GOÛT	441,808	April 14, 1995	April 14
Canada	NAYA THE SOURCE OF TASTE	441,809	April 14, 1995	April 14
Canada	THE GODDESS OF SPRING WATER	392,632	Jan. 10, 1992	Jan. 10
Canada	THE GUARDIAN OF NATURAL SPRING WATER	361,444	Oct. 27, 1989	Oct. 27
Canada	TO THE COMMON WEALTH OF EARTH	445,240	July 14, 1995	July 14

<u>Country</u>	<u>Trade-mark</u>	<u>Reg. No.</u>	<u>Registration Date</u>	<u>Renew</u>
Canada	Woman's Head Design	361,443	Oct. 27, 1989	Oct. 2

1.2 TRADEMARK APPLICATIONS

<u>Country</u>	<u>Trade-Mark</u>	<u>App. No.</u>	<u>Filing d</u>
Canada	HUNGRY FOR LIFE. THIRSTY FOR NAYA.	815,037	June 11, 1
Canada	RAFRAÎCHISSEMENT DE LA PLANÈTE	811,477	May 1, 1
Canada	Bottle design (distinguishing guise)	825,524	Oct. 9, 1
Canada	NAYA (classes 3 and 25)	858,662	Oct. 14, 1

2. UNITED STATES

2.1 TRADEMARK REGISTRATIONS

<u>Country</u>	<u>Trade-mark</u>	<u>Reg. No.</u>	<u>Registration Date</u>	<u>Renew</u>
United States	CANADA'S HERITAGE	1,763,786	April 6, 1993	Apri
United States	Woman's Head Design	1,472,560	Jan. 12, 1988	Jan.
United States	LAVAL	1,772,525	May 18, 1993	May
United States	NAYA	1,471,586	Jan. 5, 1988	Jan.
United States	NAYA & Design (1991 version)	1,948,602	Jan. 16, 1996	Jan.
United States	THE GODDESS OF SPRING WATER	1,738,561	Dec. 8, 1992	Dec
United States	HUNGRY FOR LIFE. THIRSTY FOR NAYA.	2,102,237	Sept. 30, 1997	Sept.

<u>Country</u>	<u>Trade-mark</u>	<u>Reg. No.</u>	<u>Registration Date</u>	<u>Renew</u>
United States	TIMBERLINE SPRINGS	2,116,824	Nov. 25, 1997	Nov.

2.2 TRADEMARK APPLICATIONS

<u>Country</u>	<u>Trade-Mark</u>	<u>App. No.</u>	<u>Filing d</u>
United States	NAYA (class 25)	75/354389	Sept. 10,
United States	UNDENAYABLE	75/099959	May 7, 1
United States	UNDENAYABLY	75/099958	May 7, 1
United States	GLOBAL COOLING	75/102465	May 10,
United States	NAYA (class 3)		Nov. 4, 1
United States	SED DEVIDA SED DE NAYA)	75/355,916	Sept. 10,

3. OTHER COUNTRIES

3.1 TRADEMARK REGISTRATIONS

<u>Country</u>	<u>Trade-mark</u>	<u>Reg. No.</u>	<u>Registration Date</u>	<u>Renew</u>
Andorra	NAYA & Design (1991 version)	338	Dec. 9, 1996	Dec.
Aruba	NAYA & Design (1991 version)	18184	Nov. 8, 1996	June
Australia	NAYA	A545681	Nov. 13, 1990	Nov.
Australia	NAYA & Design (1991 version)	A545682	Nov. 13, 1990	Nov.
Austria	NAYA & Design (1991 version)	161.197	Nov. 29, 1995	Nov.
Bahamas	NAYA & Design	18480	Sept. 24, 1997	May

<u>Country</u>	<u>Trade-mark</u>	<u>Reg. No.</u>	<u>Registration Date</u>	<u>Renewal</u>
Benelux	NAYA & Design (1991 version)	557,059	Aug. 8, 1995	Aug. 8.
Bermuda	NAYA & Design (1991 version)	27859	May 7, 1996	May 7.
Brunei	NAYA & Design (1991 version)	21,457	June 11, 1995	June 1.
Czech Republic	NAYA & Design (1991 version)	193959	Sept. 26, 1996	Aug.
Columbia	NAYA	162694	July 29, 1994	July 2.
Columbia	NAYA & Design (1991 version)	162693	July 29, 1994	July 2.
Costa Rica	NAYA & Design (1991 version)	96.742	Aug. 28, 1996	Aug.
Denmark	NAYA & Design (1991 version)	VR 06.121 1996	Nov. 1, 1996	Nov.
Dominican Republic	NAYA & Design (1991 version)	82,656	March 15, 1996	March
Finland	NAYA & Design (1991 version)	144,209	June 5, 1996	June
France	NAYA	1 565 425	Dec. 14, 1989	Dec.
Germany	NAYA & Design (1991 version)	395 33 474	Feb. 15, 1996	Aug.
Italy	NAYA & Design (1991 version)	00737403	Oct. 23, 1997	Oct.
Iran	NAYA	80002	Sept. 15, 1996	Sept.

<u>Country</u>	<u>Trade-mark</u>	<u>Reg. No.</u>	<u>Registration Date</u>	<u>Renewa</u>
Ireland	NAYA & Design (1991 version)	167210	Aug. 8, 1995	Aug. 7
Jamaica	NAYA & Design (1991 version)	29,240	April 30, 1996	April 3
Japan	Woman's Head Design	2659925	May 31, 1994	May 3
Japan	NAYA (class 3)	3228784	Nov. 19, 1996	Nov. 2
Japan	NAYA (class 5)	3325777	June 27, 1997	June 2
Japan	NAYA (class 9)	3276647	April 11, 1997	April 1
Japan	NAYA (class 14)	3251705	Jan. 31, 1997	Jan. 3
Japan	NAYA (class 15)	3246989	Jan. 31, 1997	Jan. 3
Japan	NAYA (class 18)	3251706	Jan. 31, 1997	Jan. 3
Japan	NAYA (class 20)	3284074	April 18, 1997	April
Japan	NAYA (class 21)	3300283	May 2, 1997	May
Japan	NAYA (class 22)	3236200	Dec. 25, 1996	Dec. 2
Lebanon	NAYA & Design (1991 version)	6804	Feb. 3, 1996	Nov. 1
Mexico	Woman's Head Design	483845	Sept. 20, 1994	Sept.
Mexico	NAYA & Design (1991 version)	483846	Sept. 20, 1994	Sept.
New Zealand	NAYA & Design (1991 version)	252020	Aug. 7, 1995	Aug.
North Korea	NAYA & Design (1991 version)	8984	Dec. 27, 1996	Dec.

<u>Country</u>	<u>Trade-mark</u>	<u>Reg. No.</u>	<u>Registration Date</u>	<u>Renewal</u>
Norway	NAYA & Design (1991 version)	176981	Sept. 19, 1996	Sept. 19, 1996
Puerto Rico	NAYA & Design (1991 version)	38,211	April 2, 1996	April 2, 1996
Russia	NAYA & Design (1991 version)	149690	Jan. 31, 1997	Oct. 31, 1997
South Korea	NAYA & Design (1991 version)	350761	Nov. 29, 1996	Nov. 29, 1996
Spain	NAYA & Design (1991 version)	1981614	Aug. 14, 1995	Aug. 14, 1995
Sweden	NAYA & Design (1991 version)	310558	March 22, 1996	March 22, 1996
Switzerland	NAYA & Design (1991 version)	436199	Feb. 4, 1997	July 4, 1997
Taiwan	NAYA & chinese characters	509694	Dec. 31, 1990	Dec. 31, 1990
Taiwan	Chinese characters for NAYA	509693	Dec. 31, 1990	Dec. 31, 1990
United Arab Emirates	NAYA & Design (1991 version)	9422	March 9, 1997	March 9, 1997
United Kingdom	RAFRAÎCHISSEMENT DE LA PLANÈTE	2061171	March 14, 1996	March 14, 1996
United Kingdom	HUNGRY FOR LIFE. THIRSTY FOR NAYA	2103002	June 18, 1996	June 18, 1996
United Kingdom	NAYA & Design (1991 version)	2109986	May 10, 1995	May 10, 1995

<u>Country</u>	<u>Trade-mark</u>	<u>Reg. No.</u>	<u>Registration Date</u>	<u>Renewa</u>
United Kingdom	THE GODDESS OF SPRING WATER	2103001	June 18, 1996	June 1

3.2 TRADEMARK APPLICATIONS

<u>Country</u>	<u>Trade-Mark</u>	<u>App. No.</u>	<u>Filing date</u>
Anguilla	NAYA & Design (1997 version)		
Antigua and Barbuda	NAYA & Design (1997 version)		
Argentina	NAYA & Design (1991 version)	1.996.517	Aug. 23, 19
Barbados	NAYA & Design (1991 version)	3586	June 7, 19
Brazil	NAYA & Design (1991 version)	818849363	Oct. 25, 19
Chile	NAYA & Design (1991 version)	322.536	Oct. 11, 19
P.R. China	NAYA & Design (1991 version)	950134486	Oct. 27, 19
Costa Rica	NAYA & Design (1997 version)	106-98	Jan. 8, 19
Czech Republic	NAYA & Design (1997 version)	129549	Jan. 27, 19
Dominican Republic	NAYA & Design (1991 version)		
Egypt	NAYA & Design (1997 version)	96905	Aug. 6, 19
Ghana	NAYA & Design (1991 version) - (amendment to the word mark in progress)	(To be assigned only when the application is accepted for registration)	Aug. 10, 19
Greece	NAYA & Design (1991 version)	126.416	Oct. 4, 19
Haiti	NAYA & Design (1991 version)	602-R	May 24, 19

<u>Country</u>	<u>Trade-Mark</u>	<u>App. No.</u>	<u>Filing date</u>
Hong Kong	NAYA & Design (1997 version)	97/09203	July 3, 1997
Hong Kong	NAYA in Chinese characters	97/05753	April 29, 1997
India	NAYA & Design (1991 version)	676613	Aug. 14, 1997
Indonesia	NAYA	D97-8476	May 6, 1997
Jordan	NAYA & design (1997 version)	47689	Nov. 16, 1997
Kuwait	NAYA & Design (1991 version)	33463	April 22, 1997
Malaysia	NAYA & Design (1991 version)	96/01605	Feb. 9, 1997
Mexico	NAYA		
Nepal	NAYA	(To be assigned only when the application is accepted for registration)	May 14, 1997
Netherland Antilles	NAYA & Design (1997 version)		Dec. 2, 1997
Norway	NAYA & Design (1997 version)	9710461	Dec. 12, 1997
Panama	NAYA	086956	April 14, 1997
Peru	NAYA & Design (1997 version)	33271	Feb. 11, 1997
Philippines	NAYA & Design (1991 version)	106,747	March 14, 1997
Puerto Rico	NAYA & Design (1997 version)	(not assigned until issuance of publication order)	Nov. 17, 1997
Saudi Arabia	NAYA	34689	July 2, 1997
Singapore	NAYA & Design (1991 version) (amendment to the 1997 version in progress)	S/7564/95	Aug. 16, 1997

<u>Country</u>	<u>Trade-Mark</u>	<u>App. No.</u>	<u>Filing date</u>
St. Kitts and Nevis	NAYA & Design (1997 version)		
South Africa	NAYA & Design (1997 version)	95102852	Aug. 8, 1995
Thailand	NAYA & Design (1991 version)	296324	Oct. 27, 1991
Trinidad and Tobago	NAYA & Design (1997 version)	27856	Dec. 12, 1997
Ukraine	NAYA & Design (1997 version)	95082452/T	Aug. 8, 1995
United Kingdom	GLOBAL COOLING	2061172	March 14, 1995
Venezuela	NAYA & Design (1991 version)	16.757-95	Oct. 24, 1995

WHITMAN BREED ABBOTT & MORGAN LLP

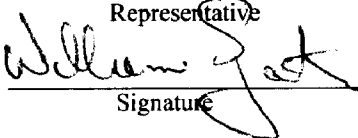
LONDON
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200 PARK AVENUE
NEW YORK, N.Y. 10166
212-351-3000
TELECOPIER: 212-351-3131
TELEX: RCA 238436
WRITER'S DIRECT NUMBER
(212) 351-3115

GREENWICH
NEWARK
LOS ANGELES
PALM BEACH

December 30, 1999

I hereby certify that this correspondence
is being deposited with the United States
Postal Service as first-class mail in an
envelope addressed to:
BOX ASSIGNMENTS
Commissioner of Patents and Trademarks,
Washington, D.C. 20231, on December 30, 1999

William J. Spatz
Name of Applicant, Assignee or Registered
Representative

Signature
December 30, 1999
Date of Signature

BOX ASSIGNMENTS
Commissioner of Patents and Trademarks
Washington, D.C. 20231

Re: Recordation of Security Interest Agreement
in favor of Bank of Montreal
Our Ref. No.: 0063945-0017

Dear Sir:

Enclosed for recordation is a security interest agreement in the form of a Movable Hypothec.

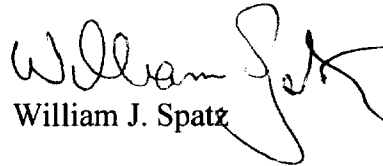
The conveying party in the security agreement is Nora Beverages Inc., a Corporation of Canada. Although record title to the Trademark Registration against which the Movable Hypothec is being recorded is currently with Naya Inc., when the Movable Hypothec was granted, on April 2, 1998, legal and record title to the assigned Trademark Registration (then a pending application) was with Nora Beverages, Inc. Accordingly, Nora Beverages, Inc., is properly named as the conveying party in the attached trademark recordation cover sheet.

December 30, 1999

Page - 2 -

If there are any questions regarding the recordation of the enclosed document, the undersigned would be pleased to address them by telephone. Please direct any such inquiries to William J. Spatz at (212) 351-3115.

Very truly yours,


William J. Spatz

Encl.