

02-23-2000

MUD 1/19/00



101273342

U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office

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

1. Name of conveying party(ies):
International Business Machines Corporation

Individual(s) Association
 General Partnership Limited Partnership
 Corporation-State **New York**
 Other _____

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

2. Name and address of receiving party(ies)
Name: **Home Director, Inc.**
Internal Address: _____
Street Address: **991 Aviation Parkway**
City: **Suite 800** State: _____ Zip: _____
Morrisville, North Carolina 27560
 Individual(s) citizenship _____
 Association _____
 General Partnership _____
 Limited Partnership _____
 Corporation-State **Delaware**
 Other _____

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

Execution Date: **December 7, 1999**

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

4. Application number(s) or registration number(s):
A. Trademark Application No.(s)
75/091592

B. Trademark registration No.(s)
Additional numbers attached? Yes No

5. Name and address of party to whom correspondence concerning document should be mailed:
Name: **Mr. Jonathan Parks**
Kirkpatrick & Lockhart LLP
Henry W. Oliver Building
Address: **535 Smithfield Street**
City: **Pittsburgh, PA** 15222
State: _____ Zip: _____

6. Total number of applications and registrations involved: **1**

7. Total fee (37 CFR 3.41): **\$ 40.00**
 Enclosed
 Authorized to be charged to deposit account

8. Deposit account number:
DA 09-0474
(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.

Jennifer D. Goff *Jennifer D. Goff* **1/13/2000**
Name of Person Signing Signature Date

02/22/2000 TTON11
01 FC:481

00000282 090474 75091592
40.00 CH

Total number of pages comprising cover sheet: **1**

TRADEMARK
REEL: 002024 FRAME: 0694

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TRADEMARK AGREEMENT dated as of December 7, 1999, among INTERNATIONAL BUSINESS MACHINES CORPORATION, a New York corporation (hereinafter called "IBM"), and Home Director Inc., a Delaware Corporation (hereinafter called "Home Director").

IBM, Home Director and Spencer Trask Intellectual Capital Company LLC ("Spencer Trask") have entered into an Asset Purchase Agreement ("Agreement") dated as of December 7, 1999.

In conjunction with the Agreement, IBM, and Home Director also entered into an Intellectual Property Agreement (the "IP Agreement") dated as of December 7, 1999 dealing with certain intellectual property matters related to the transactions specified in such Agreement; and

In the Agreement, the parties agreed that IBM, and Home Director would enter into this trademark assignment and license agreement (the "Trademark Agreement") effective as of the Closing Date.

NOW, THEREFORE, in consideration of the premises and mutual covenants herein and in the Agreement and in the Agreement, the parties hereto agree as follows:

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ARTICLE I
Definitions

To the extent that the definitions set forth in this Article I are inconsistent with corresponding definitions in the IP Agreement, these definitions shall control in and be used for purposes of this Trademark Agreement.

SECTION 1.00. "Additional Corporate Materials" shall mean advertising and promotional materials, and advertisements, but only to the extent that such items solely relate to Home Director or generally relate to Home Director's business.

SECTION 1.01. "Advertising Breach" shall have the meaning ascribed to such term in Section 3.02(b) hereof.

SECTION 1.02. "Advertising Guidelines" shall mean the guidelines listed on Schedule F.

SECTION 1.03. "Breach Notice Date" shall have the meaning ascribed to it in Section 6.01(b).

SECTION 1.04. "Business Day" shall mean any day of the week other than Saturday, Sunday and official national holidays in a jurisdiction where notices permissible or required hereunder are received.

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SECTION 1.05. "Category of Goods" shall mean the Home Director products.

SECTION 1.06. "Closing Date" shall have the same meaning as set forth in the Agreement.

SECTION 1.07. "Composite Mark" shall mean that direct coupling of a Primary Mark and a Secondary Mark used in an associative manner to indicate that the resultant mark formed thereby denotes the source and quality of the product on which it is used simultaneously for each of its constituent marks. The term "IBM Home Director" would be an example of a Composite Mark where IBM is The Primary Mark and Home Director is the Secondary Mark. The term "The Intelligent Home Powered By IBM" used in connection with "Home Director" is not a Composite Mark.

SECTION 1.08. "Corporate Materials" shall mean (i) Internet web pages, letterhead, stationery, business cards, signage, pre-printed contracts and like materials generally used to indicate the identity of an organization and (ii) advertising and promotional materials and advertisements but only to the extent such items generally relate to Home Director's business and not to products, but (iii) shall exclude, without limitation, any products or any supporting materials therefor.

SECTION 1.09. "Foreign Subsidiaries" shall mean non-U.S. Subsidiaries of Home Director.

SECTION 1.10. "Identified Countries" shall have the meaning ascribed to such term in Section 3.03(d).

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SECTION 1.11. "Home Director Common Law Marks" shall mean all common law trademarks and service marks used exclusively in connection with the Home Director Products Business as of the Closing Date, including those trademarks and service marks scheduled on Schedule C and all trade dress rights to the Home Director Products therefor, unique to the Home Director Products Business, all to the extent legally viable as of the Closing Date.

SECTION 1.12. "Home Director Current Products" shall mean those products (including their features and accessories) which are manufactured, marketed and/or are beyond IBM Development Phase Cat 2 by the Home Director Group of IBM prior to the Closing Date.

SECTION 1.13. "Home Director Reseller" shall mean an organization or person that is authorized by Home Director at its sole discretion to sell, lease and/or install Home Director Products and that also may be permitted by Home Director pursuant to this Agreement to use the Home Director Trademarks, Home Director Common Law Marks, and/or Licensed Marks. Home Director Reseller shall only include those Home Director business assemblers and installers who are presently called Integrators or are in the future qualified as Integrators.

SECTION 1.14. "Home Director Products" shall mean Home Director Current Products, and Repair Parts.

SECTION 1.15. "Home Director Trademarks" shall mean those trademarks listed on Schedules A and C, including all registrations, applications, renewals and common law rights pertaining thereto, and all foreign equivalents thereto throughout the world.

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SECTION 1.16. "Licensed Marks" shall mean the trademarks and Product Packaging Trade Dress listed on Schedule B irrespective of whether used alone or together with any other words, numbers or symbols and/or other trademarks.

SECTION 1.17. "Licensed Materials" shall mean product literature, packaging, labels, all sales and service manuals, advertising and promotional materials, product documentation and manuals, and advertisements, for all Home Director Products on or in which the Licensed Marks appear pursuant to this Agreement.

SECTION 1.18. "Marked Products" shall have the meaning ascribed to such term in Section 6.05 hereof.

SECTION 1.19. "Material Breach" shall mean any Advertising Breach or Material Quality Breach.

SECTION 1.20. "Material Quality Breach" shall have the meaning ascribed to such term in Section 3.02(b) and (c).

SECTION 1.21. "Model Numbers" shall mean the identifying set of alphanumeric characters used for each Product marketed or sold by the Home Director Products Business.

SECTION 1.22. "New Trademark" shall mean any Secondary Mark developed by Home Director for the new Home Director Products.

SECTION 1.23. "Non-Approved Product" shall mean a product that (i) is not a Home Director Product or a product licensed to bear the Licensed Marks under this Trademark Agreement or any other agreement between IBM and Home Director or (ii) would otherwise

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Home Director Product, except that, (x) if approval by IBM is required with respect to such product, Home Director has not obtained such approval pursuant to Article III of this Agreement or any other agreement between IBM and Home Director or (y) such product has been changed by Home Director or at Home Director's direction in a manner that materially adversely affects the quality of such product as approved by IBM pursuant to Article III of this Agreement and (iii) in either case, the Licensed Materials therefor.

SECTION 1.24. "Period" shall mean the term of the license for the Licensed Marks for Home Director Products which shall commence upon the Closing Date and terminate upon the expiration of one year from the Closing Date, except as otherwise specifically permitted herein.

SECTION 1.25. "Primary Mark" shall mean a trademark which is used throughout the commercial operations of the trademark owner, including but not limited to use on stationery, business forms, advertising, marketing materials and substantially all of the products made and marketed by the trademark owner and frequently in association with a Secondary Mark. The trademark "IBM", in any form, is an example of a Primary Mark.

SECTION 1.26. "Repair Part" shall mean those repair and spare parts for Home Director Products.

SECTION 1.27. "Retail Packaging Design Guidelines" shall mean the guidelines for design and use of the product packaging trade-dress listed on Schedule E.

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SECTION 1.28. "Secondary Mark" shall mean a product trademark used to designate a single product or series of related products, but not all the products, of the trademark owner, and which may be used in conjunction with the trademark owner's Primary Mark or a licensed Primary Mark. The trademark "Home Director" is an example of a Secondary Mark.

SECTION 1.29. "Subsidiary" shall have the same meaning as set forth in the IP Agreement.

SECTION 1.30. "Terminated Marks" shall have the meaning ascribed to such term in Section 6.02 hereof.

ARTICLE II

Agreement To Assign Certain Trademarks

SECTION 2.01. IBM, on behalf of itself and its Subsidiaries, hereby sells, assigns, transfers, and conveys to Home Director, all worldwide right, title and interest, in and to each of the Home Director Trademarks and Home Director Common Law Marks together with the goodwill of the business symbolized by the Home Director Trademarks and Home Director Common Law Marks alone, apart from and not including the goodwill symbolized by the IBM Primary Mark, with the foregoing subject to: (a) all understandings, obligations and agreements entered into by IBM or its Subsidiaries prior to the effective date of the assignment of Home Director Trademarks or Home Director Common Law Marks and (b) the agreement between IBM and Electronic Engineering and Manufacturing Inc. attached hereto as Schedule H and all of IBM's rights and obligations thereunder. The assignment to be effected pursuant to this Section 2.01 shall not include or give Home Director any right with respect to any other IBM trademarks or the Li-

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called Marks or the goodwill of the business associated with any one or more of them. At the time of assignment, or within a reasonable period of time thereafter, IBM shall furnish the necessary information to Home Director to allow Home Director to prepare and record duly executed appropriate instruments of assignment for such Home Director Trademarks or Home Director Common Law Marks.

SECTION 2.02. Home Director assumes full responsibility for and IBM is relieved of all future obligations, indemnifications, representations and warranties, with respect to assigned Home Director Trademarks and Home Director Common Law Marks for any damage, in whole or in part done thereto, including but not limited to dilution, loss of rights, reduction in or loss of term, loss of or reduction in goodwill, abandonment or restriction in use as to goods or territory, that results from acts or omissions, whether direct or indirect, of Home Director, or a Home Director Subsidiary, or a Home Director Reseller.

ARTICLE III
Grant of Licenses

SECTION 3.01. (a) With effect from the Closing Date and solely during the Period, IBM grants to Home Director a license to use the Licensed Marks in the United States, and such other countries where IBM has authorized the use during the Period of the Licensed Marks (the "Licensed Territory" means where such Home Director Trademarks and Home Director Common Law Marks have been used or registered), solely in connection with the Home Director Products, and repair parts which are manufactured by or for Home Director, and which Home Director Products are marketed by Home Director itself or through Home Director Resellers subsequent to

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the Closing Date and during the Period, and in Licensed Materials therefor.

(b) IBM grants to Home Director a license in the Licensed Territory to use all Packaging Trade Dress rights created by or belonging to IBM solely for the purpose that Home Director Products and Licensed Materials therefor may continue in the same design and appearance.

(c) IBM grants to Home Director a license to use the Licensed Marks in the Licensed Territory on repair parts and only to the same extent that such Repair Parts currently bear such marks:

- (i) during the Period and thereafter, in connection with those Repair Parts, which Repair Parts exist in inventory on or before the end of the Period and bear the Licensed Marks and which do not exceed reasonable commercial levels in relation to market demand, for the continued marketing, distribution and sale, and/or other disposition of any of the foregoing;
- (ii) during the Period and thereafter, in connection with Repair Parts for Home Director Products, to the extent such Repair Parts existed in inventory and bore the Licensed Marks before the Closing Date, for the manufacture, procurement, marketing, distribution and sale, or other disposition thereof; and
- (iii) solely during the Period, in connection with Repair Parts created as a result of an engineering change to a Home Director Product, such engineering change occurring before or during the Period, to the extent that such Repair Parts are of the same type as similar Repair Parts that bore the Li-

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Licensed Marks before the Closing Date, for the manufacture, production, marketing, distribution and sale, or other disposition thereof.

SECTION 3.02. The license granted in Section 3.01 by IBM to Home Director shall be subject to the following terms and conditions:

(a) Any goodwill derived from Home Director's use of the Licensed Marks shall inure to the benefit of IBM and no other party.

(b) Home Director agrees that the nature and quality of all Home Director Products when such products are sold or distributed in connection with the Licensed Marks, shall with respect to Home Director Current Products, retain their quality levels in existence as of the Closing Date. IBM shall determine in good faith, throughout the Period, at its sole discretion consistent with the application of IBM quality standards for other IBM products in similar situations, whether the foregoing quality levels have been met by such Home Director Products.

Home Director shall submit to IBM for approval all Licensed Materials related to Home Director Products on and in which the Licensed Marks appear prior to commercial availability thereof, subject to the following sentence. The parties agree that:

(v) All Licensed Materials shall be submitted to IBM for pre approval for the Period after the Closing Date; provided, however, that (w) Licensed Materials that are the same in all material respects as Licensed Materials previously submitted hereunder shall not be subject to further IBM approval, (x) substitutions of name of the advertising entity and related identifying information

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shall be deemed to be the same in all material respects as a previously submitted advertisement, (v) such Licensed Materials that are in existence as of the Closing Date shall not be subject to further IBM Approval;

(ii) IBM may, at any time, no longer require Home Director to submit Licensed Materials for prior approval hereunder, whereupon Home Director shall be required only to submit within one (1) month of the end of each calendar quarter a reasonable sample set of Licensed Materials used by Home Director during such calendar quarter;

(iii) IBM has supplied guidelines for its review of such Licensed Materials, which are attached hereto as Schedules E and F (the Advertising and Retail Packaging Guidelines) and which shall be used by Home Director to prepare such Licensed Materials;

(iv) during any period when IBM has the right to approve Licensed Materials in advance, (x) Home Director may request review and response by IBM within ten (10) Business Days of rejected submissions and (y) if Home Director has not received a decision from IBM within ten (10) Business Days after actual receipt of Home Director's request for review, such Licensed Materials shall be deemed approved;

(v) any deliberate advertising in commerce by Home Director and/or its Subsidiaries consisting of (x) Licensed Materials that are subject to IBM pre approval but that have not been approved pursuant to IBM's review or (y) Licensed Materials that are not subject to IBM pre approval and that do not comply in all material respects with the requirements of the Advertising and Retail Packaging Guidelines attached hereto as Schedules E and F, shall

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constitute a breach of this Trademark Agreement (an Advertising Breach).

Approval by IBM of the use of the Licensed Marks for Licensed Materials shall be effective only as long as such Licensed Materials are not materially altered by Home Director. Any changes made by Home Director or at Home Director's direction to the Home Director Products or Licensed Materials, once they have been approved by IBM, that are material to the quality of the Home Director Products must be approved in advance and in writing by IBM. Home Director shall not use the Licensed Marks in connection with any product or materials that have not been approved by IBM as provided in this Section 3.02(b).

A material failure of more than a nominal number of units of a Home Director Product placed into commerce to comply with the relevant quality levels in this Section 3.02(b) shall constitute a Material Quality Breach giving IBM the right to terminate the license for such Home Director Product. The placement by Home Director or its Subsidiaries of a Licensed Mark at any time during the Period on more than a nominal number of Non-approved Products and knowingly placing such Non-approved Products into commerce shall constitute a Material Breach giving IBM the right to terminate the licenses granted under Section 3.01 in accordance with Section 6.01(b) of this Trademark Agreement.

(c) From time to time during the Period, not more than once within a six (6) month period, at the request of IBM, Home Director agrees that it will, without charge to IBM, supply to IBM a reasonable number of specimens of the Home Director Products and Product Packaging on and in which the Licensed Marks appear for the purpose of determining if Home Director is maintaining the

CONFIDENTIAL

quality of such Home Director Products and Packaging. IBM shall also be free to purchase specimens for Home Director Products in the open market for the same purpose. Failure by more than a nominal number of such specimens of Home Director Products and Packaging (in relation to such Home Director Products' usual market), whether the same are supplied to IBM by Home Director directly or purchased by IBM in the open market, to comply with the quality standards set forth in Section 3.02(b) hereof (the compliance or noncompliance by which shall be determined in good faith solely by IBM consistent with the application of IBM quality standards for other IBM products in similar situations) shall constitute a Material Quality Breach.

(d) The license granted by IBM to Home Director pursuant to Section 3.01 is not assignable and cannot be sublicensed (except to the extent provided in Article IV), pledged or otherwise encumbered by Home Director.

(e) Home Director's license to use the Licensed Marks is subject to all existing agreements that limit or offset IBM's ability to market or distribute IBM labeled products within specified territories.

(f) Integrator Quality Control during the Period, Home Director shall maintain the following practices to qualify new Home Director Resellers:

(1) Home Director shall perform a financial assessment via review of standard financial reports on the new Home Director Reseller.

CONFIDENTIAL

(ii) Home Director shall perform a technical assessment via an application that surveys the type of skills and current businesses being performed by the new Home Director Reseller.

(iii) Home Director shall make an on-site visit of the new Home Director Reseller to assess the reliability of the information provided and to assess the overall business acumen demonstrated via the new Home Director Reseller.

(iv) Home Director shall require the new Home Director Reseller to meet a technical training requirement in which the new Home Director Reseller must send its installers to a Home Director class. Such installers must pass an exam at the end of the class by correctly answering 85% of the questions on the exam.

(v) Home Director shall require the new Home Director Reseller to execute a Home Director Systems Integrator Contract.

(vi) Home Director shall require the new Home Director Reseller to meet substantially the same standards used by IBM to qualify IBM Authorized Home Systems Integrators in effect as of the Closing Date.

g) The license granted by IBM to Home Director pursuant to Section 3.01 does not include the right to use the Licensed Marks as part of a Composite Mark.

SECTION 3.03. The license granted pursuant to Section 3.01 hereof shall include the following terms and conditions which shall control and define the form of use of the Licensed Marks:

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(a) Home Director shall use the Licensed Marks only in the form and manner and with such proprietary legends and notices as prescribed from time to time by IBM; provided, however, that IBM shall give Home Director reasonable notice and a reasonable period to dispose of its inventory of Home Director Products and related Licensed Materials before requiring Home Director to change such form, manner, legends or notices. Home Director shall not (i) use any other IBM trademark unless agreed to in a separate writing, or (ii) use an unauthorized Composite Mark incorporating in whole or in part the Licensed Marks, on any product or Licensed Materials knowingly placed into commerce.

(b) Home Director shall place the symbols "TM", "tm", a circled "R", with an appertaining notice in a footnote as appropriate and/or prescribed by IBM, next to the Licensed Marks no less frequently than Home Director places such symbols next to its own trademarks, but at least once in each separate piece of Licensed Material and on each Home Director Product using such Licensed Marks.

(c) Home Director shall use the following legend not less frequently nor in smaller type than Home Director will use for similar legends for its own trademarks, but at least once in each separate piece of Licensed Material in which the Licensed Marks appear: "(Licensed Mark) is a trademark of IBM Corporation and used under license." In all Licensed Materials where the Licensed marks and the Home Director, Inc. name appear[s], Home Director shall include the following legend "Home Director, Inc. is not an IBM company" in type no smaller than that described above.

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(d) Commencing immediately after the Closing Date, neither Home Director, nor any Subsidiary of Home Director, shall use the Licensed Marks in any country outside of the United States or Canada unless and until written notice of at least forty-five (45) days has been given to IBM to enable IBM, (i) where required, to record Home Director, or the relevant Subsidiary of Home Director, as the case may be, as a registered user of any such mark in such country and/or record this Trademark Agreement or other license agreements which meet appropriate local standards with appropriate authorities or (ii) to provide Home Director with the information required to be furnished to IBM pursuant to the second sentence of Section 3.03(f). Any country with respect to which IBM is notified pursuant to the preceding sentence shall constitute an "Identified Country". In response, IBM shall notify Home Director of those Identified Countries and types of persons or entities required to be registered as users therein. Home Director shall assist IBM as appropriate in carrying out such recording process at the sole cost and expense of Home Director and/or its Subsidiaries for filing office recording fees and outside counsel fees. Home Director shall notify IBM on a quarterly basis of the identity of users of the Licensed Marks in such countries and Home Director's classification of such persons or entities into such types. Any failure by Home Director to comply in all material respects with the requirements of the preceding sentence or clause (i) of the first-sentence of this Section 3.03(d), in each case, that may reasonably be expected, if not cured, to result in the actual loss of trademark rights by IBM shall result in a Material Breach of this Trademark Agreement (a "Registered User Breach"). IBM shall provide reasonable assistance to Home Director in complying with the applicable laws and regulations in the Identified Countries but shall not be liable to Home Director for the failure to provide such assistance.

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e Home Director shall not use, during the Period or subsequent to the Period, any Licensed Mark or other designation confusingly similar to the Licensed Marks, as all or part of any corporate name, service mark, certification mark, or Composite Mark. If any application for registration of such a mark is or has been filed by or on behalf of Home Director and such mark, in the reasonable opinion of IBM, is confusingly similar, deceptive or misleading with respect to or dilutes or in any way damages the Licensed Marks at any time, then Home Director shall at IBM's request abandon all use of such mark and any application or registration thereof and shall reimburse IBM for all costs and expenses of any successful opposition or related legal proceeding, including attorneys fees, initiated by IBM or its authorized representative.

(f) Home Director shall comply with all applicable laws and regulations pertaining to the use and designation of trademarks in those countries where the Licensed Marks are licensed for use. The provisions of Section 6.01(c) shall apply to any material failure by Home Director to comply with all applicable laws and regulations pertaining to the use and designation of trademarks (i) in the Identified Countries, to the extent such laws and regulations pertaining to the use and designation of trademarks in the Identified Countries, to the extent such laws and regulations have been furnished to Home Director by IBM, or (ii) in all countries other than the Identified Countries where the Licensed Marks are licensed for use. Should Home Director become aware of any applicable laws or regulations which are inconsistent with the provisions of this Trademark Agreement, Home Director will promptly refer such inconsistency to IBM and the provisions of Section 6.01(c) shall apply; provided that to the extent that such inconsistency results from any such law or regulation in ef-

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...ect as of the Effective Date that affects the use of any mark licensed hereunder, IBM shall be responsible therefor and Home Director shall reasonably cooperate with IBM in resolving such inconsistency. Nothing in this Section 3.03(f) shall preclude IBM from exercising remedies pursuant to Section 6.03 for the breach of this Section 3.03(f).

(g) In addition to complying with all other Advertising and Retail Packaging Guidelines listed on Schedules E and F, Home Director shall place the following legend on all packaging materials on which the Licensed Marks appear: "Distributed and sold by Home Director, Inc. IBM does not manufacture this product and provides no warranty or support for this product. For questions/comments regarding service/warranty, please contact Home Director Inc. at 991 Aviation Parkway, Morrisville, NC 27560."

(h) Failure to comply with the provisions of this Section 3.03 shall be a breach of this Trademark Agreement.

SECTION 3.04(a) IBM shall promptly acknowledge receipt of all submissions of Home Director Products and Licensed Materials made to it by Home Director. Such submission shall be made by hand delivery, telecopy, electronic mail or telephone (with confirmation by certified mail or overnight mail or its equivalent).

(b) Prior to the expiration of ten (10) Business Days from receipt of any submission from Home Director, IBM shall inform Home Director in writing whether or not a submission meets the applicable standards for quality or usage applicable thereto. If IBM fails to respond in any manner to Home Director within the ten-day period for a specific submission, Home Director may assume without penalty or prejudice that such submission has been approved; provided, that Home Director produces a written receipt

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for such submission. All rejections by IBM shall be accompanied by an explanation of the basis for the rejection, and, if possible suggestions that would render the submitted material acceptable. Home Director may contest any rejection by IBM of any of the foregoing items by filing a request for review within ten(10) Business Days after such rejection by IBM. During the Period, Home Director shall notify IBM of any pending product announcement for any Home Director Product at least ten(10) Business Days prior to such announcement.

(c) During the Period, Home Director shall notify IBM at least ten(10) Business Days in advance of any manufacturing readiness review, in connection with the product announcement of a Home Director Product using the Licensed Marks. IBM shall be entitled to send a reasonable number of representatives to attend and to receive a copy of the material related to the product announcement. Such material must be sufficient to enable IBM to make a determination as to whether such Home Director Product meets the relevant quality standard set forth in Section 3.02(b). Within ten(10) Business Days after receipts of such material, IBM shall notify Home Director in writing of IBM's decision regarding whether such Home Director Product is deemed to meet the standard. If IBM's notice indicates IBM's approval, such Home Director Product shall thereupon be deemed approved by IBM. Approval by IBM of the use of the Licensed Marks on any Home Director Product approved pursuant to this Section 3.04(c) shall be effective only as long as each such Home Director Product is not materially altered by Home Director. All such materials submitted to IBM hereunder shall be held in confidence by IBM with the same degree of care IBM exercises with respect to information of its own of a like nature which it does not want disclosed, published or disseminated; provided, however, no such obligations of confidentiality shall apply to materials which are: (1) in IBM's pos-

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vention or in the public domain prior to submittal by Home Director or hereafter come into IBM's possession from an independent third party or the public domain without breach of this provision, or (ii) made public by Home Director after approval by IBM, or (iii) are disclosed more than one (1) year after receipt by IBM.

SECTION 3.05. The quality of any product supplied by Home Director to IBM, other than under this Trademark Agreement, whether or not such product is accepted by IBM, shall not be taken into account or affect quality levels acceptable under this Trademark Agreement.

SECTION 3.06. The trademark and other licenses granted in this Article III shall be and are nonexclusive for the Licensed Marks.

SECTION 3.07. No licenses granted in this Article III shall apply to any services (including but not limited to repair and maintenance services) offered by or under authorization of Home Director and its Subsidiaries except that Home Director shall have the ability during the Period to phase out current uses of the Licensed Marks.

SECTION 3.08. Home Director shall require each of the existing Home Director Resellers and any new Home Director Resellers to have their customers sign, complete and acknowledge receipt of the Complimentary Marketing Letter Of Understanding in Schedule G and return copy of said letter to IBM.

CONFIDENTIAL

ARTICLE IV

Right to Sublicense

SECTION 4.01. Home Director shall not have the right to grant sublicenses under this Trademark Agreement except that Home Director may sublicense Home Director Resellers to use the Common Law Trademark "IBM Authorized Home Systems Integrator" for the Period. Each such sublicense granted by Home Director shall be of or within the scope of the licenses and rights granted to Home Director herein and each such sublicensed Home Director Reseller shall be obligated to IBM as if it had been named in this Trademark Agreement and such sublicensed Home Director Reseller shall so agree in writing to be bound in consideration for the grant of such sublicense. Each such sublicense shall have terms and conditions which are the same as those set forth in this Trademark Agreement and such sublicensed Home Director Reseller shall agree to be bound thereby to the same extent as Home Director. If a Home Director Reseller ceases to be a Home Director Reseller prior to the end of the Period, the sublicense therefore granted to it by Home Director shall automatically terminate as of the date such Home Director Reseller ceases to be a Home Director Reseller. A Home Director Reseller shall not have the right to sublicense any third party.

SECTION 4.02. Home Director shall be responsible for the acts of its Home Director Resellers with respect to all sublicenses granted hereunder. Failure of or breach by any Home Director Reseller to meet its obligations under such sublicense shall also be deemed a failure or breach attributable to Home Director, as though Home Director itself had committed the act or omission of the Home Director Reseller committing such failure or breach and shall result in the corresponding review periods, opportunities

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to cure, penalties and sanctions set forth in this Agreement for such act or omission as to Home Director, including but not limited to loss of the licenses to Home Director under Article III hereof as well as loss of such sublicense itself.

ARTICLE V

PAYMENT

SECTION 5.01 Payment for the licenses granted in ARTICLE III for the Period are under the Asset Purchase Agreement.

ARTICLE VI

Termination and Expiration of Licenses

SECTION 6.01. Termination of any license granted in Article III shall be governed in accordance with the following:

(a) IBM shall have the right to terminate the license granted under Article III immediately without prior notice of the underlying cause thereof and without opportunity for Home Director to cure if the underlying cause thereof is the bankruptcy or insolvency or the inability of Home Director to pay its debts as they become due or an assignment, pledge or other encumbrance of the Licensed Marks by Home Director while Home Director is licensed to use the Licensed Marks.

(b) No later than ten (10) Business Days after the date of Home Director's receipt of written notice (the "Breach Notice Date") from IBM alleging that Home Director has committed a Material Breach, Home Director shall deliver to IBM a description of Home Director's understanding of relevant facts concerning such alleged Material Breach, and shall promptly after the Breach Notice

CONFIDENTIAL

Date and to the extent possible, commence commercially reasonable efforts to cure such breach. Not later than ten (10) Business Days after the Breach Notice Date (or such later date as may be set by IBM), Home Director shall deliver a report describing its efforts to cure such alleged Material Breach and a plan for further steps necessary, if any, to cure such alleged Material Breach. IBM shall, within ten (10) Business Days after receipt of such report, issue a decision accepting such efforts and plan or specifying commercially reasonable alternative actions to be carried out by Home Director.

Home Director shall: (i) abide by such decision or (ii) shall, until such Material Breach has been actually cured, (x) cease further shipping the affected Home Director Products, (y) use commercially reasonable efforts to cease all further advertising of the affected Home Director Products, and (z) use commercially reasonable efforts to recall the affected Home Director Products from all channels of marketing, distribution and sale or to remove or obliterate the relevant Licensed Marks therefrom ("Cure Actions").

If Home Director (i) refuses to abide by IBM's decision pursuant to the foregoing Procedure of Section 6.01(b) and (ii) refuses to commence or continue the Cure Actions then IBM shall, upon ten (10) Business Days' prior written notice to Home Director, have the right to terminate all licenses granted in Article III.

Any notice or decision by IBM shall describe with specificity the nature of the Material Breach complained of, the products, marks and territories affected by such Material Breach, the specific steps required to cure such Material Breach, and the date by which such cure must be effected. IBM shall fix such date by which such cure shall be effected within a commercially reason-

CONFIDENTIAL

able time commensurate with the Material Breach and Cure Action. In no event shall such time extend beyond three months. Home Director shall be deemed to have cured such breach if Home Director abides by the decision of IBM or completes the Cure Actions.

(c) IBM shall have the right to terminate this Trademark Agreement upon the occurrence of any of the following events:

(1) The withdrawal by IBM from using and authorizing use of the Licensed Mark "IBM" in any country; provided, however, that:

(A) If IBM plans to so withdraw from using and authorizing use of the Licensed Mark "IBM" in such country, IBM shall give Home Director notice as soon as commercially practicable, and such notice shall be treated as confidential when given and thereafter maintained as confidential until publicly known.

(B) On the effective date of such withdrawal, Home Director shall promptly cease using the Licensed Marks in such country and the license for Licensed Marks under Section 3.01(a) shall also thereupon be suspended in such country.

(C) If IBM thereafter, during the Period, uses or pre-authorizes the use of the Licensed Marks in such country, to the extent not limited by contractual obligations and/or governmental restrictions or prohibitions, Home Director's license to the Licensed Marks shall be reinstated to the extent possible for the duration of the Period.

CONFIDENTIAL

(ii) An unresolved inconsistency occurring between any applicable laws and regulations and the provisions of this Agreement, as and to the extent provided in Section 3.03(f) hereof; provided that in the event a resolution of any problem caused by the inconsistency is not reached pursuant to the review process forth in this section, nor is performance of such inconsistency permitted by IBM; and provided further that IBM in good faith determines that such inconsistency threatens its legal rights in and to the Licensed Marks or may subject it to liability for penalties or damages to a third party or government entity or is otherwise injurious to IBM, in each case in a material respect. In such case, IBM may then terminate (or suspend, as and to the extent possible) the license to the Licensed Marks with respect to those Home Director Products and related Licensed Materials affected thereby, in the country whose laws or regulations are inconsistent with any provision of this Trademark Agreement. In determining the appropriate action to be taken under this clause (ii) IBM shall consider whether the inconsistency results from any law or regulation in effect on the Closing Date that affects the use of any mark licensed hereunder, the relative injury to IBM as compared to the relative injury to Home Director, and whether such inconsistency results from activity of Home Director in such country that was materially different from activity of IBM in such country; provided that in no event shall any party be required to take any action that violates any law or regulation.

(iii) Continued use of the Licensed Marks in any particular country where such continued use is prohibited in any respect by the action of any judicial, administrative or like authority, or as a result of an agreement with a third party to

CONFIDENTIAL

settle a dispute relating to the Licensed Marks (it being understood that in settling any dispute IBM shall act in good faith consistent with past practices).

- (iv) IBM's reasonable apprehension that Home Director's failure to comply with local law as described in the second sentence of Section 3.03(f) will cause an immediate material loss or consequential dilution of its trademark rights in any country.
- (v) In the case of all the above-described events, no later than ten (10) Business Days after Home Director's date of receipt of written notice (the "Notice Date") from IBM, Home Director shall cease using the Licensed Marks specified by IBM in such notice.

SECTION 6.02. Upon termination or suspension pursuant to the provisions of Sections 6.01 and 6.04 of a license granted under this Trademark Agreement, Home Director shall immediately cease or suspend, as the case may be, shipping the affected products bearing the Licensed Marks or identified in the notice and any mark confusingly similar thereto ("Terminated Marks") in the affected countries and shall use best efforts to discontinue or suspend, as the case may be, as quickly as possible all other affected use in the affected countries of the Terminated Marks that is within the control of Home Director, and destroy all Licensed Materials in inventory bearing said Terminated Marks or remove or obliterate the Terminated Marks therefrom and from Home Director Products only as and to the extent required. Upon such termination or suspension, as the case may be, all sublicenses of the terminated or suspended license theretofore granted by Home Director pursuant to Section 4.01 of this Trademark Agreement to

CONFIDENTIAL

its Home Director Resellers which involved the Terminated Marks shall be automatically terminated or suspended, as the case may be, with respect to affected products and Licensed Materials in affected countries. Home Director shall provide notice of such termination or suspension to each of its Home Director Resellers.

SECTION 6.03. The parties acknowledge that each shall have available to them all remedies at law or in equity (including specific performance), for breach of this Agreement, in addition to or as a substitute for all remedies that they may have under this Trademark Agreement. Neither party shall be liable to the other, regardless of the nature of the action for any incidental or consequential damages or compensation for lost profits arising out of this Agreement.

SECTION 6.04. Notwithstanding any other provision of this Trademark Agreement, in the event Spencer Trask or its designees cease to control more than 50% of the Board of Directors of Home Director or there is a sale of more than 15% of the total outstanding shares of common stock of Home Director to any person or company in the Information Handling Systems Business, the licenses granted in Section 3.01 for the Licensed Mark and any sublicenses granted to Home Director Resellers pursuant to Article IV shall all terminate, provided, however, that in such event Home Director shall be entitled to seek IBM's consent to continue the License for the duration of the Period and IBM shall not unreasonably withhold its consent. Information Handling Systems shall mean any instrumentality or aggregate of instrumentalities primarily designed to compute, classify, process, transmit, receive, retrieve, originate, switch, store, display, manifest, measure, detect, record, reproduce, handle or utilize any form of informa-

CONFIDENTIAL

tion, intelligence or data for business, scientific, control or other purposes.

SECTION 6.05. Upon the expiration of the Period under this Trademark Agreement, Home Director shall thereupon cease shipping all Home Director Products and related Licensed Materials that bear the Licensed Marks (the "Marked Products"). Home Director shall have no obligation to recall or stop the shipment or sales by its dealers or customers of any Marked Products shipped by Home Director prior to the expiration of the Period or such other license. Home Director hereby agrees that it shall not ship an abnormally high quantity of Marked Products, in conformance with Home Director's historical shipment quantities and reasonable forecasted quantities, during the six months preceding the expiration of the Period or such other license.

SECTION 6.06. Upon the expiration of the Period or termination of the License under this Trademark Agreement, Home Director and its Home Director Resellers shall thereupon immediately cease all use of the Licensed Marks and shall immediately turn over to IBM for destruction all Home Director Products, Licensed Materials and all other materials bearing any Licensed Mark (except to the extent exhaustion of inventory is permitted elsewhere in this Trademark Agreement or the Agreement).

CONFIDENTIAL

ARTICLE VII
Use by Others

SECTION 7.01. During the Period, Home Director shall notify IBM in writing of any unauthorized use of the Licensed Marks or any Composite Mark including the Licensed Marks or any marks confusingly similar thereto by others promptly as such unauthorized use comes to its attention. IBM shall have the sole right and discretion to bring, prosecute and/or settle infringement or unfair competition proceedings involving a Licensed Mark or any Composite Mark including the Licensed Marks or any confusingly similar marks.

ARTICLE VIII
Acknowledgment and Covenant

SECTION 8.01. Home Director acknowledges that IBM owns the ~~[Home Director Trademarks, Home Director Common Law Marks and the]~~ ^{JM} Licensed Marks and all registrations thereof throughout the world. Home Director shall do nothing inconsistent with such ownership and it shall forbear, to the extent that agreeing to forbear is not prohibited by local law, from attacking the validity of the ~~[Home Director Trademarks, Home Director Common Law Marks or the]~~ Licensed Marks or any registrations thereof, or IBM's title thereto. Home Director covenants that all use during the Period of the Licensed Marks and Licensed Trade Dress by Home Director shall inure to the benefit of and be on behalf of IBM for as long as IBM remains the owner thereof. Home Director acknowledges that nothing in this Trademark Agreement shall give Home Director any right, title or interest in the Licensed Marks or Licensed Trade Dress at any time, other than the right of Home Director to

CONFIDENTIAL

use the Licensed Marks and Licensed Trade Dress in accordance with the licenses granted pursuant to Article III hereof.

SECTION 8.02. Home Director shall bear the cost and expense of IBM's outside legal fees for infringement and unfair competition claims, actions and proceedings related to trademarks brought by IBM after the effective date of this Agreement, to the extent such claims, actions and proceedings involve the use by a third party of a Licensed Mark, or a confusingly similar mark, Licensed Trade Dress, Composite Mark including the License Mark but only if Home Director requests in writing after such effective date and with specific reference to this Section 8.02 that such claim, action, or proceeding be brought by IBM. Such Home Director request may place limitations on the above request, for example a cap on the expenses Home Director will bear. If IBM does not accept the limitation, the Home Director request shall be null and void. Nothing in this Agreement shall require Home Director to make such a request or IBM to act on such a request. Home Director and IBM each shall be entitled to damages actually recovered in such actions and proceedings up to and in proportion to the outside legal fees borne by it. Any damages actually recovered in excess of these amounts shall be shared equally between IBM and Home Director.

ARTICLE IX
Indemnification

SECTION 9.01. IBM hereby agrees to indemnify and hold harmless Home Director, its officers, directors, employees, owners, agents and Affiliates (as defined in the Agreement) for, against, from and in respect of any and all Losses (as defined in the Agreement) which may be sustained or suffered by any of them arising out of, resulting from or pertaining to all claims arising solely

CONFIDENTIAL

out of Home Director's use of any of the Licensed Marks during the Period, provided that such use is in accordance with the restrictions and/or requirements of this Trademark Agreement and arise from the use of the Licensed Marks in conformance with the grant of trademark licenses hereunder by IBM. IBM shall also indemnify and hold harmless Home Director for all claims made by Electronic Engineering and Manufacturing Inc. arising solely out of Home Director's use of the IBM name (or some other distinguishing corporate identifier) in connection with its display of the HOME DIRECTOR mark (as provided in paragraph 3 of the agreement with Electronic Engineering and Manufacturing Inc. (Schedule H)) in connection with only those goods described in paragraph one (1) of that agreement. In addition to the other limitations in the Agreement, IBM will not be responsible for (a) incidental, consequential or special damages, except as such damages may be awarded to a third party claimant or (b) claims by any party to the extent such claims are covered by Section 9.03 of this agreement or to the extent such claims are a result of the actions or omissions of Home Director.

SECTION 9.02. Home Director hereby agrees to indemnify and hold harmless IBM, its officers, directors, employees, owners, agents and affiliates (as defined in the Agreement) for, against, from and in respect of any and all Losses (as defined in the Agreement) which may be sustained or suffered by any of them arising out of, resulting from or pertaining to all claims from the sale, distribution, promotion or marketing of the Home Director Products by Home Director or its Home Director Resellers or any other actions or omissions by Home Director or its Home Director Resellers with respect thereto; provided, however, that Home Director's obligation to indemnify and hold harmless IBM under this agreement shall not include and Home Director will not be respon-

CONFIDENTIAL

sible for (a) incidental, consequential or special damages, except as such damages may be awarded to a third party claimant, or (b) claims by any party to the extent such claims are covered by Section 9.01 of this Agreement, or to the extent such claims are a result of the actions or omissions of IBM.

SECTION 9.03. The foregoing provisions of this Article IX recite the entire obligations of indemnification between the parties as such obligation applies to the Home Director Trademarks, and the Licensed Marks except that they shall also be subject to the Procedures set forth in Section 7.3 of the Agreement.

ARTICLE X

Representations and Warranties by IBM

SECTION 10.01. Subject to, and in accordance with, Article VI of the Agreement, IBM represents and warrants that:

(a) IBM is the owner of all Home Director Trademarks and the Licensed Marks [that are registered] and any registrations thereof in the U.S. Patent and Trademark Office ("PTO") and, to the best of its knowledge, in foreign Trademark offices. All such registrations in the PTO of the Licensed Marks and to the best of its knowledge, the Home Director Trademarks listed on Schedule A are duly registered or applied for with the PTO and are in 'full force and effect.'

(b) each of the Home Director Trademarks, Licensed Marks, and to its knowledge, the Home Director Common Law Marks, is free and clear of all licenses, mortgages, liens, security interests except for the consent Settlement Agreement between IBM and Elec-

CONFIDENTIAL

tronic Engineering and Manufacturing, Inc. d/b/a Audio Control attached as Schedule H;

(c) it has the full right and power (i) to make the assignment of the Home Director Trademarks, and the Home Director Common Law Marks, and (ii) to grant the licenses granted hereunder to the Licensed Trademarks;

(d) it has not granted to any person exclusive licenses or options to obtain exclusive licenses to the Home Director Trademarks, or entered into any agreements for the purchase or sale of a Home Director Trademark except for the transactions entered or to be entered into in connection with this Agreement;

(e) the trademarks listed in Schedules A and C to this Trademark Agreement, which trademarks are being assigned to Home Director pursuant to this Trademark Agreement, are together with the Licensed Marks, (i) the only trademarks adopted and used by IBM as of the Closing Date for and on the Home Director Products, (ii) the only trademarks material to the operation of the Home Director Business as currently conducted;

(f) there are as of the Closing Date (i) no judgments, orders or decrees of any court or claims of which IBM has received notice (as defined below) that materially adversely affect the Home Director Trademarks or the Licensed Marks, (ii) no judgments, orders or decrees of any court of which IBM has received notice that materially adversely affect the Home Director Common Law Marks, and (iii) no claims of which IBM has received notice (x) that adversely affect Home Director Trademarks or the Home Director Common Law Marks or the Licensed Marks and (y) that, individually or in the aggregate would have a material adverse effect

CONFIDENTIAL

upon the operation of the Home Director Business taken as a whole, and that the grants, assignments and licenses made in this Trademark Agreement do not contravene any such judgments, orders or decrees;

(g) To IBM's knowledge and belief there are no third party infringements of the Licensed Marks or of the Home Director Trademarks that have a material adverse effect on the operations of the Home Director Business taken as a whole;

(h) none of the Licensed Marks, or Home Director Trademarks as of the Closing Date are owned by the Foreign Subsidiaries.

ARTICLE XI

Representations and Warranties by Home Director

SECTION 11.01 Subject to, and in accordance with, Article V of the Agreement, Home Director covenants that:

- (a) Home Director will not use a New Trademark on a Home Director Product on which a Licensed Mark also appears without first obtaining IBM's approval;
- (b) it will not use a Licensed Mark in a manner prohibited by this Agreement either directly or through a Subsidiary, Affiliate or Home Director Reseller and will promptly correct to the extent commercially reasonable any such prohibited uses;

CONFIDENTIAL

- (c) all Home Director Products are of merchantable quality and conform with the specifications and requirements of quality in materials design and workmanship in this agreement;
- (d) All new Home Director Products are Year 2000 ready which means the Home Director Products are capable of correctly processing, providing and/or receiving accurate date data within and between the 20th and 21st centuries provided all other products used with them properly exchange date data with them;
- (e) All Home Director Products are new and do not contain anything used and Home Director shall have processes, procedures and documentation in place to comply with and substantiate this representation and warranty.

ARTICLE XII

Notices and Other Communications

Any notice or other communication required or permitted to be made or given to either party hereto pursuant to this Trademark Agreement shall be sent to such party at the address listed below by express, registered or express airmail, or return receipt requested, certified mail, return receipt requested (except that registered or express airmail, return receipt requested, shall be used where delivery is not in the same country as mailing), postage prepaid, addressed to it at its address set forth below, or to such other address as it shall designate by written notice given to the other party. Such notice or communication shall be effective on the date of receipt. The addresses are as follows:

CONFIDENTIAL

(1) In the case of Home Director:

Before December 11, 1999:

3039 Cornwallis Road
Research Triangle Park, NC 27709

After December 11, 1999:

991 Aviation Parkway
Morrisville, NC 27560

(11) In the case of IBM:

IBM, Trademark and Copyright Counsel
International Business Machines Corporation
North Castle Drive
Armonk, New York 10504

ARTICLE XIII

Assignment

This Trademark Agreement or any rights hereunder may not be assigned or otherwise transferred by Home Director and shall not inure to the benefit of any trustee in bankruptcy, receiver or other successor of any part, whether by operation of law or otherwise, without the prior written consent of IBM, and any attempted or actual assignment or transfer during the Period without such consent shall be null and void.

CONFIDENTIAL

ARTICLE XIV

Governing Law, Consent to Jurisdiction and Waivers

SECTION 14.01. The interpretation and construction of this Trademark Agreement (unless otherwise expressly provided herein), and all amendments hereof and waivers and consents hereunder shall, to the extent the particular subject matter is controlled by state law, be governed by and be construed in accordance with the substantive law of the State of New York without regard to the conflicts of laws principles thereof (such choice of law being made pursuant to Section 5-1401 of the General Obligation Law of the State of New York).

SECTION 14.02. Each of IBM and Home Director irrevocably submits to the exclusive jurisdiction of (i) the Supreme Court of the State of New York, New York County, and/or (ii) the United States District Court for the Southern District of New York, for the purposes of any suit, action or other proceeding arising out of this Trademark Agreement or any transaction contemplated hereby and agrees not to commence any action, suit or proceeding relating hereto except in such courts. Each of IBM and Home Director further agrees that service of any process, summons, notice or document by U.S. registered mail to such party's respective address set forth above shall be effective service of process for any action, suit or proceeding in New York with respect to any matters to which it has submitted to jurisdiction as set forth above in the immediately preceding sentence. Each of IBM and Home Director irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of this Trademark Agreement or the transactions contemplated hereby in (x) the Supreme Court of the State of New York, or (y) the United States District Court for the Southern

CONFIDENTIAL

District of New York, and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court has been brought in an inconvenient forum.

SECTION 14.03. No failure or delay of either party in exercising any power or right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the parties are cumulative and are not exclusive of any rights or remedies which they would otherwise have. Neither this Trademark Agreement nor any provision may be waived except pursuant to an agreement in writing executed by each of the parties.

SECTION 14.04. Each party hereby waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any litigation directly or indirectly arising out of, under or in connection with this Trademark Agreement. Each party (i) certifies that no representative, agent or attorney of the other party has represented, expressly or otherwise, that such other party would not, in the event of litigation, seek to enforce the foregoing waiver and (ii) acknowledges that it and the other parties have been induced to enter into this Trademark Agreement by, among other things, the mutual waivers and certifications in this Section 14.04.

ARTICLE XV
Miscellaneous

SECTION 15.01. Nothing contained in this Trademark Agreement shall be construed as:

CONFIDENTIAL

(i) conferring any right to use in advertising, publicity or other promotional activities any name, trade name, trademark, or other designation of either party hereto (including any contraction, abbreviation, or simulation of any of the foregoing) except as specifically provided herein; and each party hereto agrees not to use the existence of this Trademark Agreement or any provision thereof in any advertising or sales promotional activity, without the express written approval of the other party; or (ii) limiting the rights which either party has outside the scope of the rights granted hereunder.

SECTION 15.02. This Trademark Agreement will not be binding upon the parties until it has been signed by or on behalf of each party, in which event, it shall be effective as of the date first above written. No amendment or modifications shall be valid or binding upon the parties unless made in writing and signed as aforesaid. The requirement set forth above that amendments or modifications shall be in writing may only be waived in a writing signed as set forth herein. This Trademark Agreement embodies the entire understanding of the parties and shall supersede all previous communications, representations or understandings, either oral or written, between the parties relating to the subject matter hereof.

SECTION 15.03. If any provision or provisions of this Trademark Agreement shall be held to be illegal, invalid or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. In such case, the parties shall negotiate in good faith to replace the illegal, invalid or unenforceable provision by such legal,

CONFIDENTIAL

valid or enforceable provision as has the effect nearest to that of the provision being replaced.

SECTION 15.04. The headings of the several Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Trademark Agreement.

IN WITNESS WHEREOF, to be effective as of the Closing Date only if a Closing occurs, the parties hereto have caused this Trademark Agreement to be duly signed as of the date first above written.

INTERNATIONAL BUSINESS MACHINES CORPORATION

By *[Handwritten Signature]*

HOME DIRECTOR CORPORATION

By _____

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TRADEMARK AGREEMENT BETWEEN IBM AND Home Director DATED December
7, 1999

SCHEDULE A

Home Director REGISTERED TRADEMARKS

1) Home Director

COUNTRY	APPLICATION NO.	APPLICATION DATE	REGISTRATION NO.	REGISTRATION DATE	CLASS (ES)	STATUS
Brazil	819555255	10/10/96			9	Pending
Canada	82232100	09/04/96	TMA515916	08/31/99	9 and 16	Regis- tered
Japan	8-102851	09/11/96	4134799	04/10/98	9	Regis- tered
United States	75/091592	04/19/96			9	Notice of Allowance - dtd 10/5/99